

## DEFINITENESS OF CHARITABLE PURPOSE IN MISSOURI

There is a much quoted maxim in the law of charitable trusts that "charity begins where certainty of beneficiaries ends."<sup>1</sup> This statement is affected with elements of confusion unless the chameleon word "beneficiaries" is properly understood. In the sense that the ultimate *individual* recipients of the charity, John Doe or Richard Roe, must be uncertain, the maxim is substantially true, for certainty of these beneficiaries would import a private trust, with a consequent loss of the favorable status enjoyed by a charitable trust.<sup>2</sup> If, on the other hand, the word "beneficiaries" is construed to mean the *general object* or *class* of persons to be benefited, the maxim will not stand. Here there must be some certainty and definiteness. Thus a distinction is drawn between the individual recipient and the class of recipients; the former must be uncertain, the latter certain. Although it is an interesting question as to how *certain* individual beneficiaries of charitable trusts may be,<sup>3</sup> the problem here considered is, how *uncertain* may be the general object or class of beneficiaries in Missouri.

The principles which are supposed to lead to its solution are simple, so far as Missouri and the great majority of states are concerned. The trust must be declared with enough certainty and definiteness to enable the courts, on application of the attorney general who commonly represents the *cestuis* of a charitable trust, to (a) recognize the existence of a charitable intent and (b) understand the limitations placed upon the trustee's discretion in order to be able to restrain him within those limits.<sup>4</sup> If the court deems the language of the instrument inadequate to enable it to make either of the above findings, the trust will fail as a charity. These principles, applied to a given instrument, permit great elasticity; and the decision arrived at will depend on the individual court's willingness to don judicial spectacles and peer into the settlor's intent.

It is important at the outset to appreciate that some states for many years did not recognize charitable trusts as a class, treating them like any private trust.<sup>5</sup> Because of the influence their

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1. Stinson, *Modern Charitable Trusts and the Law* (1932) 17 *ST. LOUIS LAW REVIEW* 307.

2. Bogert, *Trusts and Trustees* (1935) 1089, Sec. 361.

3. *Ibid.* at 1093, Sec. 362.

4. *Irwin v. Swinney* (D. C. W. D. Mo. 1930) 44 F. (2d) 172, 178.

5. A named or ascertainable beneficiary must be evident, and all the requirements of the rule against perpetuities must be complied with.

decisions have apparently exerted upon some Missouri decisions, it is not inappropriate to investigate their positions briefly. Three states<sup>6</sup> very clearly repealed the English Statute of Charitable Uses,<sup>7</sup> raising the question whether charitable trust had any existence separate from the statute. The Supreme Court of the United States first answered this question in the negative,<sup>8</sup> and these states adopted the rule<sup>9</sup> and reaffirmed it,<sup>10</sup> even after the Supreme Court had changed its mind.<sup>11</sup> Statutes relieved the unfortunate situation by degrees until at present it is believed that for all practical purposes the charitable trust is recognized in these states.<sup>12</sup> A similarly unfavorable environment was furnished charitable trusts in four other states,<sup>13</sup> although by a somewhat different process of statutes and judicial decisions. The repeal of the English Statute of Charitable Uses was followed by statutes abolishing all trusts except those saved and enumerated, and omitting reference to charitable trusts. After a hard fight they were included under the statute,<sup>14</sup> and it was not until the people of New York had lost the Tilden estate<sup>15</sup> that a statute<sup>16</sup> was passed reestablishing in substance the English law of charitable trusts. The states which had followed New York into her embarrassment followed her out.<sup>17</sup>

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6. Virginia, West Virginia, and Maryland.

7. 43 Eliz. ch. 4 (1601), which enumerated the purposes generally considered in England to be charitable and set up machinery based upon the established church in order to rectify the abuses at that time attending charities.

8. Philadelphia Baptist Ass'n v. Hart (1819) 4 Wheat. 1, 4 L. ed. 499.

9. Gallego's Ex'rs v. Att'y Gen. (1832) 30 Va. 450, 24 Am. Dec. 650; American Bible Society v. Pendleton (1873) 7 W. Va. 79; Dashiell v. Att'y Gen. (1822) 5 H. and J. (Md.) 392, 9 Am. Dec. 572.

10. Fifield v. Van Wyck's Ex'r (1897) 94 Va. 557, 275 S. E. 446, 64 Am. St. Rep. 745.

11. Vidal v. Girard's Ex'rs (1844) 2 How. 127, 11 L. ed. 205.

12. 2 Bogert, *Trusts and Trustees* (1935) 1018, sec. 322 and footnotes; Note (1931) 17 Va. L. Rev. 302; Howard, *Charitable Trusts in Maryland* (1937) 1 Maryland Law Rev. 105.

13. New York, Minnesota, Michigan, Wisconsin.

14. 2 Bogert, *Trusts and Trustees* (1935) 1025, sec. 322; Dwan, *Minnesota's Statute of Charitable Trusts (1929-30)* 14 Minn. L. Rev. 587; Fowler, *Charitable Uses in New York* (1902) 2 Col. L. Rev. 10; Jollman, *The Development of the Charity Doctrine in Wisconsin* (1921) 1 Wis. L. Rev. 129; Holmes v. Mead (1873) 52 N. Y. 332.

15. Tilden v. Green (1891) 130 N. Y. 29, 28 N. E. 880, 27 Am. St. Rep. 487.

16. N. Y. Laws (1893) ch. 701, construed in Allen v. Stevens (1899) 161 N. Y. 122, 55 N. E. 568.

17. Mich. Comp. Laws (1929) secs. 13512-13521, construed in Scudder v. Security Trust Co. (1927) 238 Mich. 318, 213 N. W. 131; Minn. Laws (1927) ch. 180; Wis. Stat. (1931) sec. 231. 11 (6, 7) construed in In re Monaghan's Will (1929) 199 Wis. 273, 226 N. W. 306.

Missouri was spared these difficulties. The first and perhaps best reasoned case on charitable trusts in this state<sup>18</sup> held that the English statute was in force and also that charitable uses were not dependent upon the statute. The court recognized that an opposite view was taken in some states, but explained that cases from these jurisdictions were of no persuasive influence in Missouri.<sup>19</sup> This fundamental difference between states which recognize charitable trusts and those which do not has not always been observed by our courts, as will be noted later.

To return to the problem of certainty, it is submitted that instruments purporting to set up charitable trusts may be roughly categorized, according to the definiteness of their provisions, into three groups. Thus, one may convey his property (a) in trust for charity generally, or (b) in trust for religion or for education, thus naming a sub-class of charity, or (c) in trust for education, as above, but with a further restriction of use, either as to the group to receive the benefits, *e. g.*, negro children, or the way it is to be applied, *e. g.*, the construction of a school house, or both. It is apparent that the above provisions are progressively more definite and certain as one reads from (a) through (c) and logically one might perhaps expect that any trusts which fail for vagueness would be of group (a) or (b).

#### I

In this section an effort has been made to collect the Missouri cases the language of whose provisions qualifies them to be listed under group (c) above. First, there is the group where the restriction limits the gifts to a specified class of beneficiaries. This type is well illustrated by an instrument which put the property in trust "for the use of worn-out preachers in M. E. Church in North Mo. Conference."<sup>20</sup> Certainly it would be difficult to argue that a charitable intent could not be found or that the trustee had unbridled discretion, and the court properly upheld the trust, although condemning in *dicta* a conveyance in trust for charity generally.

An important case upheld a provision which left property to the City of St. Louis in trust "to furnish relief to all poor emigrants and travelers coming to St. Louis on their way, *bona fide*, to settle in the west."<sup>21</sup> Those seeking to avoid the trust manifested great concern lest the trustee be unable to apply

18. *Chambers v. St. Louis* (1860) 29 Mo. 543.

19. *St. Louis Union Trust Co. v. Little* (1928) 320 Mo. 1058, 10 S. W. (2d) 47.

20. *Buckley v. Monck* (Mo. 1916) 187 S. W. 31.

21. *Chambers v. City of St. Louis* (1860) 29 Mo. 543.

such ambiguous phrases as "poor emigrants and travelers," "bona fide," and "settle in the west." The court did not share their concern and allowed the trust to stand. A conveyance in trust "to be spent on the welfare of poor, homeless children,"<sup>22</sup> and one "to the Macon County, Mo., school funds,"<sup>23</sup> interpreted as a charitable conveyance in trust to the custodian of the school funds for the benefit of those entitled to their use, have similarly been upheld.

Another type of provision which provides an equal degree of guidance to the trustee or the court is that where the charitable purpose is limited, not by specifying the class which is to benefit, but by limiting the method in which the funds are applied to their purpose. This type is illustrated by gifts "to provide for the use of the public a botanical garden,"<sup>24</sup> and "in trust for the purpose of erecting and maintaining thereon a hospital for sick and injured persons, without distinction of creed."<sup>25</sup> In each case there was a sufficiently identified subclass of charity, *i. e.*, in the first, education of the public, in the second, the public health, further limited by restrictions as to how the money was to be expended. It cannot be said that the trustee's discretion was unconfined. Likewise a provision "for a home and place for the maintenance and education of poor children" was upheld.<sup>26</sup>

Two cases falling within this category reached a contrary result. In the first, a remainder "to the Methodist Episcopal Church *and* missionary cause,"<sup>27</sup> was held void for vagueness, first, because it was not indicated what creed was to be propagated and second, because, even if the word "for" could be substituted for the word "and" so as to limit the missionary cause to that of the Methodist Episcopal Church South, it would not be known whether the home missions or foreign missions of that church were intended to be benefited. Later cases have endeavored to bring this decision into line by explaining that had the will been "for missionary cause," a trustee would have been named who could determine the missionary recipients.<sup>28</sup>

22. *St. Louis Union Trust Co. v. Little* (1928) 320 Mo. 1058, 10 S. W. (2d) 47.

23. *Burrier v. Jones* (1936) 338 Mo. 679, 92 S. W. (2d) 885.

24. *Lackland v. Walker* (1899) 151 Mo. 210, 52 S. W. 414.

25. *Buchanan v. Kennard* (1911) 234 Mo. 117, 136 S. W. 415.

26. *Barkley v. Donnelly* (1892) 112 Mo. 561, 19 S. W. 305.

27. *Board of Trustees of M. E. Church v. May* (1906) 201 Mo. 360, 99 S. W. 1093.

28. *Irwin v. Swinney* (D. C. W. D. Mo. 1930) 44 F. (2d) 172; *St. Louis Union Trust Co. v. Little* (1928) 320 Mo. 1058, 10 S. W. (2d) 47.

It is submitted that the attempted reconciliation is specious for two reasons: (a) a trust will not ordinarily fail for want of a trustee,<sup>29</sup> and (b) even had a trustee been provided, the language of the court indicates that failure to designate between the home and foreign branches of the missionary service would have been an insurmountable obstacle to the validity of the trust.<sup>30</sup> In support of its decision, the court cited cases from West Virginia and Wisconsin which, as noted above, have been specifically held inapplicable in Missouri. The other unorthodox case involved a devise in trust "to be used for missionary purposes in whatever field he [the trustee] thinks best to use it, so it is done in the name of my dear Savior and for the salvation of souls."<sup>31</sup> Reciting the true principles involved and admitting that the terms of the trust limited the class to missionary service of the Christian religion, the court nevertheless declared itself unable to determine whether the testator had in mind "the Armenian or Calvinistic or if under the more limited classification \* \* \* the Catholic or Protestant faith, or one of the multi-form other subdivisions of the followers of Christ."<sup>32</sup> It is submitted that by either one of two logical constructions this trust might have been upheld. By leaving his property in trust for Christianity in general, the testator evidenced a broadmindedness far above the numerous divisions of Christian creed which perplexed the court; or, if it must be presumed that the testator was sectarian-minded, evidence of his own denomination or faith should have been available to establish intent. In disregarding these constructions, the court would appear to have violated the rule of construction which makes charitable trusts the favorites of the courts.<sup>33</sup> Of the cases cited as requiring the conclusion reached by the court, several were handed down in states which, at the time, did not recognize the charitable trust.<sup>34</sup>

## II

A few cases have designated a specific sub-class of charity, but have not restricted enjoyment of benefits to a limited class

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29. *In re Rahn's Estate* (1927) 316 Mo. 492, 291 S. W. 120, 51 A. L. R. 877; *Schmidt v. Hess* (1875) 60 Mo. 595.

30. *Board of Trustees v. May* (1906) 201 Mo. 360, 99 S. W. 1093, 1094.

31. *Jones v. Patterson* (1917) 271 Mo. 1, 195 S. W. 1004.

32. See 271 Mo. at 7.

33. *Burrier v. Jones* (1936) 338 Mo. 679, 92 S. W. (2d) 885; *Buckley v. Monck* (Mo. 1916) 187 S. W. 31; *Mott v. Morris* (1913) 249 Mo. 137, 155 S. W. 434; *Hadley v. Forsee* (1907) 203 Mo. 418, 101 S. W. 59, 14 L. R. A. (N. S.) 49.

34. *Tilden v. Green* (1891) 130 N. Y. 29, 27 Am. St. 487; *Owens v. Missionary Society* (1856) 14 N. Y. 380, 67 Am. Dec. 160; *Fifield v. Van Wyck* (1897) 94 Va. 557, 64 Am. St. Rep. 745; *Carpenter v. Miller* (1869) 3 W. Va. 174, 100 Am. Dec. 744.

or required that the charitable purpose be furthered in a special way. A provision giving property "to advance the cause of religion and promote the cause of charity in such manner as my wife may think will be most conducive to the carrying out of my wishes"<sup>35</sup> was declared inadequate to support a charitable trust. Subsequent cases<sup>36</sup> have limited the scope of the decision on the theory that the settlor intended to benefit a particular religion known to the wife, and since she had died, there was no way of ascertaining his intent. The latter part of the opinion undoubtedly supports this interpretation. The early part, however, is placed upon the more general ground that what one man would consider religion another would believe to be a superstition, and since no denomination was specified the trust failed for vagueness.<sup>37</sup> Limited to its facts, this case cannot be counted out of line. A subsequent case<sup>38</sup> squarely presented the problem discussed in the *dicta* of the previous case. Here the property was conveyed in trust "for the general advancement of Christianity." The court, with apparent surprise that the point should be contested, upheld the instrument as a charitable trust.

### III

Another group of cases involve provisions that the subject matter of the trust is to be used for charity as the trustee in his discretion deems best. It is difficult to imagine an expression giving the trustee a wider discretion while at the same time exhibiting the charitable intent which is a *sine qua non*.

An early case<sup>39</sup> was thought to sustain the proposition that a trust for charity in general was void for vagueness, but subsequent cases have properly limited its effect.<sup>40</sup> In that case a testamentary gift to a trustee "to apply in charity, according to his best discretion" was coupled with a clear indication in another clause that the testator had explained to the trustee just how he was to expend the monies. The decision against the trust was based not on any vagueness of the granting clause but on the theory that the court, not knowing the nature of the secret

35. *Hadley v. Forsee* (1907) 203 Mo. 418, 101 S. W. 59, 14 L. R. A. (N. S.) 49.

36. *Irwin v. Swinney* (D. C. W. D. Mo. 1930) 44 F. (2d) 172; *St. Louis Union Trust Co. v. Little* (1928) 320 Mo. 1058, 10 S. W. (2d) 47; *Harger v. Barrett* (1928) 319 Mo. 663, 640, 5 S. W. (2d) 1100.

37. The argument here is similar to that found in *Jones v. Patterson* (1917) 271 Mo. 1, 195 S. W. 1004.

38. *Sandusky v. Sandusky* (1914) 261 Mo. 351, 168 S. W. 1150.

39. *Schmucker's Estate v. Reel* (1876) 61 Mo. 592.

40. *Irwin v. Swinney* (D. C. W. D. Mo. 1930) 44 F. (2d) 172; *St. Louis Union Trust Co. v. Little* (1928) 320 Mo. 1058, 10 S. W. (2d) 47.

instructions which had been given the trustee, was unable to enforce the intent of the settlor.<sup>41</sup>

Ten years later an instrument instructing the trustee "to divide said remainder among such charitable institutions of the City of St. Louis, Missouri, as he shall deem worthy" was held to provide adequate certainty and definiteness.<sup>42</sup> One sentence in the decision proved misleading and formed the foundation for another case four years later. Speaking of an earlier case,<sup>43</sup> the court said, "There, it is true, a class of persons were selected to receive aid from the fund; here charitable institutions within a limited and defined locality are selected."<sup>44</sup> The limitation of locality thus made was strongly urged in the next case, involving a conveyance in trust "to such charitable purposes as my said trustee may deem best," with no mention of locality.<sup>45</sup> The court, however, declared that failure to limit the locality, which was the only difference between the two, was of no importance. The principle of the previous cases was reannounced in *dicta* a few years later.<sup>46</sup>

Some doubt has been cast on the rule by the latest Missouri decision in point,<sup>47</sup> where there was a gift of the residue "to such charitable uses and purposes as he (the executor) may determine." Both parties to the case were interested in defeating the trust on the ground of generality and uncertainty, the only question between them being where the money was to go if the trust fell. The trust was invalidated, but a subsequent federal case,<sup>48</sup> interpreting the Missouri law, has sought to weaken the effect of this holding by pointing out that the public or potential recipients of the trust were not represented and that the case for upholding the charity was not before the court. While this is true, the explanation does not dispose of the adverse holding.

#### IV

The review of the decisions just concluded does not encourage deductions and prophecies. The majority of cases uphold the trusts in all of the three classes; yet others involving all three either do not, or speak as if they would not, allow the trust to

41. Cf. *Hadley v. Forsee* (1907) 203 Mo. 418, 101 S. W. 59, 14 L. R. A. (N. S.) 49.

42. *Howe v. Wilson* (1886) 91 Mo. 45, 3 S. W. 390, 60 Am. Rep. 226.

43. *Chambers v. St. Louis* (1860) 29 Mo. 543.

44. *Howe v. Wilson* (1886) 91 Mo. 45, 3 S. W. 390, 60 Am. Rep. 226.

45. *Powell v. Hatch* (1890) 100 Mo. 592, 14 S. W. 49.

46. *Sappington v. School Fund Trustees* (1894) 123 Mo. 32, 27 S. W. 356.

47. *Wentura v. Kinnerk* (1928) 319 Mo. 1068, 5 S. W. (2d) 66.

48. *Irwin v. Swinney* (D. C. W. D. Mo. 1930) 44 F. (2d) 172.

stand. No trend toward the one view or the other is noticeable. Unquestionably all three types satisfy the requirement that a charitable intent must be apparent to the court. A trust for charity generally, which is the least detailed provision of the three, by the one word "charity" imports the necessary intent. The requirement that some limitation which the court can understand and enforce must be placed upon the trustee would seem to be satisfied even by a trust to charity generally. The court should have no difficulty in determining if the trustee is applying the money for charity. The common law of charitable trusts in England and the Statute of Charitable Uses, as well as the decisions of the Missouri courts, furnish precedents. Certainly if a trust for "charity" is adequate, a trust for "Christianity" should suffice, and, if this is so, a trust for "Christian missions" should not fail. The whole should include its parts. Yet, in the cases which invalidate a trust for Christian missions, for example, there seems to be an insinuation that since the settlor did not speak in terms of charity generally but limited his conveyance to religion and then further to missionary work, he must also have meant a special kind of missionary work; since he did not name it, the trust must fall. To state the proposition is to deny its validity.

Finally, two of the most doubtful holdings find the court citing decisions from states which, because of their singular doctrines, should be of no weight in Missouri. If private trust certainty is the standard by which charitable trusts are to be judged, a charity has little chance of a long useful life. A clear understanding of the reasons for the rule of certainty and an appreciation of the inapplicability of certain foreign authorities is called for.

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