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CHARITABLE TRUSTS IN MARYLAND

By CHARLES McHENRY HOWARD*

CHARITABLE TRUSTS IN ENGLAND

At the time as of which we took over the principles of Common Law and Equity from England, trusts of the character known as Charitable Trusts had long been recognized and enforced in that country. A brief mention of the condition of the law on that subject in England is necessary for any intelligent consideration of the course of decisions in the States of this country.

It is commonly said that charitable trusts have three leading and distinguishing features,¹ viz:

1. They must be for the benefit of the public generally, or some considerable portion of it;
2. Their beneficiaries must necessarily be indefinite;
3. Their duration is not restricted by the rule against perpetuities.

Directing our attention for the present to the second of these requirements, or supposed requirements (its universality as excluding all trusts for charitable purposes when the beneficiaries at any given time may be susceptible of precise ascertainment under the terms of the trust has been questioned;² but the rule is substantially true for present

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² Miller, Construction of Wills (1927), Sec. 162, p. 428.
² II Bogert, Trusts and Trustees (1933) 1093, Sec. 362. The converse proposition that private trusts must be for definite beneficiaries has been recently somewhat questioned. Note, Private Trusts for Indefinite Beneficiaries (1936) 45 Yale L. J. 1515, reprinted in Daily Record, October 19, 1936.
purposes), it may be said that charitable trusts begin where private trusts end or fail by reason of indefiniteness or unenforceability. For instance a bequest in trust to complete the education of a poor orphan, in whom the testator had a purely charitable interest, would be a good private trust and enforceable as such, and would not be a charitable trust under both the first and second requirements above stated.

Trusts for charitable purposes having the characteristics above noted were fully established and recognized in England prior to the settlement of this country.

A statute for their regulation and governance, commonly cited as the Statute of Elizabeth, had been passed and this statute plays a prominent part in the subsequent history of charitable trusts. This statute contained a long enumeration of the purposes of such trusts (which has since been treated as not exclusive, but as indicating the general nature of such trusts), and provided special methods for inquiring into existing abuses and diversions.

Since trusts and equitable rights generally exist only because of their enforceability by the courts of chancery, and since to be so enforceable there must be some one who can sue in equity for their enforcement, a private trust for unascertained beneficiaries would fail with a resulting trust to the settlor. Public or charitable trusts were saved from such failure because the Attorney General, as the representative of the state or public, was allowed to sue in equity to enforce them.

The English law upon the subject also included what is called the "Cy Pres" doctrine or rule. The name is derived from the Norman French, and may be roughly translated as "next thing to it". Under this doctrine, if a donor showed a general intent to devote his gift to charitable purposes; and the gift failed because the specific purpose

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8 Or as said by the Supreme Court "In the books it is said that the thing given becomes a charity where the uncertainty of the recipient begins", Fontain v. Ravenel, 17 How. 369, 384, 15 L. Ed. 80 (1854). "A trust is not a charitable trust if the persons who are to benefit are not of a sufficiently large or indefinite class so that the community is interested in the enforcement of the trust". American Law Institute, Restatement of Trusts (1936), Sec. 375.

43 Eliz. C. 4 (1601).
directed was too indefinite to be carried out, or was otherwise unenforceable; or if the trust while originally useful became subsequently impracticable of further administration (as in the case, for instance, of charitable foundations to maintain hospitals for lepers in England after leprosy ceased to exist in England), the chancery court might direct the application of the charitable fund to some other purpose or purposes which it might determine to be "near" (pres) to the charitable purpose designated by the testator or founder.

In a case sometimes referred to, there may be seen an instance of this. A Hebrew testator in England bequeathed a fund for instruction in his religion. This was held to be invalid as contrary to the established religion, but in order that the pious purposes of the testator might not be altogether defeated, the crown directed that the fund be used to educate foundlings in the Christian religion.

The cy pres doctrine was further complicated by a division into the ordinary cy pres power of applying charitable funds to other similar purposes, which was vested in the courts of chancery; and a special or prerogative power to divert charitable funds, vested in the crown, and exercisable by its direction. The case described in the preceding paragraph is usually cited to illustrate the prerogative power.

**Supreme Court Decisions**

As the decisions in Maryland on the subject of charitable trusts have been largely influenced, if not determined, by decisions of the Supreme Court of the United States (especially the case of Baptist Association v. Hart next mentioned), it is necessary to consider those decisions before taking up the cases in this State.

*Baptist Association v. Hart,* decided in 1819, was a case in which a Virginia testator made a bequest to the "Baptist Association that for ordinary meets at Philadelphia" (an

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5 Da Costa v. De Pas, Amb. 228 (1754).
6 II Bogert, Trusts and Trustees (1935) 1291, Sec. 432.
7 Trustees of Phila. Baptist Ass'n. v. Hart's Ex'r., 4 Wheat 1, 4 L. Ed. 499 (1819).
unincorporated agency of the Baptist Church), as a perpetual fund for the education of youths who should appear promising for the Baptist ministry.

The bequest was held invalid. An elaborate opinion was rendered by Chief Justice Marshall, and a similar opinion by Mr. Justice Story is included in the report of the case, though it was not delivered at the time of the decision.

The argument for the decision proceeds upon the two grounds: (1) that the jurisdiction to enforce charitable trusts in England (not clearly distinguished from the prerogative right of the Crown) was dependent upon the Statute of Elizabeth, and, (2) that this statute was not in force in Virginia.

About twenty-five years later, the Girard Will case came up before the Supreme Court. Tested by the principles of the decision in Baptist Association v. Hart, the munificent gifts made by Mr. Girard’s will to the City of Philadelphia for the founding of Girard College and other charitable purposes, would doubtless have been invalid. But since that prior decision, many of the old records of the English court of chancery had been published, and they showed beyond doubt that charitable trusts had been generally enforced prior to the Statute of Elizabeth.

While the opinion in the Girard case, which was written by Mr. Justice Story, who, as we have mentioned, wrote a concurring opinion in Baptist Association v. Hart, professes to distinguish the two cases, yet the principle of the former case was practically overruled. As subsequently stated by the Supreme Court, in a case arising from the District of Columbia, the effect of the decision in the Girard case was

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8 Vidal et al. v. Girard’s Ex’r., 2 How. 126, 11 L. Ed. 205 (1844).

9 The argument of Daniel Webster for the contesting heirs is almost entirely devoted to the contention that the provision of the will excluding ministers of religion from teaching in the College was hostile to the Christian faith. The list of cases in which jurisdiction was exercised over charitable trusts before the Statute of Elizabeth, as shown by the recent publication of the Record Commissioners in England, is given in a long footnote to Horace Binney’s argument for the executors. 2 How. 126, 155, 11 L. Ed. 205, 217. That these cases were a surprise to counsel for the heirs is indicated by the “hastily drawn up remarks” presented by one of the counsel for the heirs to the Court, which are included in the report of the argument of the case. 2 How. 126, 179, 11 L. Ed. 205, 226.

that "the former idea" (that the jurisdiction was dependent on the Statute of Elizabeth) "was exploded, and has since nearly disappeared from the jurisprudence of the country. Upon reading the statute carefully, one cannot but feel surprised that the doubts thus indicated ever existed."

And while reaffirming Baptist Association v. Hart as the law of Virginia, the Supreme Court said in 1879 that it believed that the contrary was then the accepted rule in all of the States of the Union, except Virginia, Maryland and North Carolina.\textsuperscript{11}

**MARYLAND DECISIONS**

In Maryland, the specific question of the validity of charitable trusts for unascertained beneficiaries does not appear to have arisen prior to the decision of the Supreme Court in Baptist Association v. Hart. It is true that the Statute of Elizabeth was not included among the English Statutes designated in Chancellor Kilty's report as in force in Maryland at the time of the Revolution. While this selection is not necessarily exclusive, yet it has been called by the Court of Appeals "a safe guide in exploring an otherwise very dubious path".\textsuperscript{12} But, as we have seen, the enforceability of charitable trusts in England was not dependent on that statute.

One form of charitable trust, at least, was not uncommon in Maryland prior to the decisions which we are about to consider. Land for the use of an unincorporated church or religious body was not infrequently conveyed to trustees on specified uses for such religious association. Curiously enough, the validity of such trusts seems to be assumed in cases following the unqualified adoption of the earlier rule laid down by the Supreme Court, and in which land had been conveyed to trustees for use as a graveyard, etc., by the members of unincorporated religious associations.\textsuperscript{13} Pos-

\textsuperscript{11} Kain v. Gibboney, 101 U. S. 362, 366. 25 L. Ed. 813, 814 (1879).
\textsuperscript{13} Reed, Howard et al. v. Stouffer et al., 56 Md. 236 (1881); Second Universalist Society v. Dugan, 65 Md. 460, 5 Atl. 415 (1886).
sibly it might be suggested that the constitutional prohibition against the gift, sale, etc., of land "to or in trust for" any religious sect or denomination, without the sanction of the Legislature, except conveyance of less than five acres for a church, burying ground, etc., was a recognition of such otherwise indefinite and unenforceable trusts. But this would be inconsistent with subsequent decisions, which make no distinction between such conveyances in trust for a church or graveyard, and other trusts for indefinite beneficiaries.\textsuperscript{14}

Within three years after the decision of the Supreme Court in \textit{Baptist Association v. Hart}, the same questions were presented to the Court of Appeals in 1822, in the case of \textit{Dashiell v. Atty. General}.\textsuperscript{15} Here a testator had made charitable provisions for the poor children of certain congregations and of a certain county, which would undoubtedly have been good charitable trusts in any jurisdiction where the law of charitable trusts was in force and recognized. On suit of the Attorney General for their establishment and enforcement, it was held, as in \textit{Baptist Association v. Hart}, that the "peculiar law of charities" originated in the Statute of Elizabeth, which was not in force in Maryland; and that therefore a trust, though for charitable purposes, was not enforceable unless there were beneficiaries identified with the same certainty as in private or non-charitable trusts, who could sue for enforcement of the trust.

The course of decisions in Maryland was uninfluenced by the action of the Supreme Court in practically overruling in the \textit{Girard} case its own previous decision in \textit{Baptist Association v. Hart}; and Maryland never adopted, as many other States did, the more liberal rule of the later decision.

It also held that the charitable purpose of a trust did not prevent such limitations from being subject to the rule against perpetuities, and by decisions rendered while the

\textsuperscript{14} Trustees v. Jackson Square Church, 84 Md. 173, 35 Atl. 8 (1896); Baltimore Life Ins. Co. v. Woodberry M. E. Church, 148 Md. 603, 129 Atl. 908 (1925); Mayfield v. Safe Deposit & Trust Co., 150 Md. 157, 132 Atl. 595 (1925).

so-called "duration rule" of Barnum v. Barnum\textsuperscript{16} was the recognized rule in this State (according to which the duration of a trust or other limited estate beyond the period of the rule, and not merely the time within which future limitations must vest, must not exceed the period permitted by the rule), it was held that charitable trusts were also void for this reason if created to extend beyond a life or lives in being plus twenty-one years.\textsuperscript{17} While the Barnum case rule has been abandoned,\textsuperscript{18} yet these decisions are still important, since it has been held in subsequent cases that a trust created so as to continue beyond the limiting period of the rule, may be void in toto, and not merely the future limitations dependent on it, if the trustee has active duties to perform; and one of these cases, it may be noted, was a case of a trust for a charitable object.\textsuperscript{19}

In a long series of cases, following Dashiell v. Atty. General, trusts which would be good in any jurisdiction recognizing charitable trusts, have been held void as being for indefinite beneficiaries, or as violating the rule against perpetuities.\textsuperscript{20}

Bearing in mind that the distinguishing feature of a charitable trust is that it is one for indefinite beneficiaries, who are not so identified or determined that any of those comprising the class to be benefited can sue to enforce their rights, the effect of these decisions might be said to be to establish that there are no charitable trusts in Maryland, and any discussion of our subject might be as brief as the often quoted chapter concerning snakes in the often quoted

\textsuperscript{16} Barnum v. Barnum, 26 Md. 119, 169, 90 Am. Dec. 88 (1866); 31 Md. 425 (1869); 33 Md. 283 (1870); 42 Md. 251 (1875); 51 Md. 440 (1879).
\textsuperscript{17} Cases are collected in Miller, Construction of Wills (1927), Sec. 327.
\textsuperscript{18} Gambrill v. Gambrill, 122 Md. 563, 89 Atl. 1094 (1914).
\textsuperscript{19} Amer. Colonization Soc. v. Soulsby, 129 Md. 605, 99 Atl. 944 (1916); Ortman v. Dugan, 130 Md. 121, 100 Atl. 82 (1917). But apparently the decision and subsequent appeals in the American Colonization Society case supra indicated that such a "perpetuity trust" will become good by adverse possession; 129 Md. 605, 99 Atl. 944 (1916); 131 Md. 296, 101 Atl. 780 (1917); 132 Md. 524, 104 Atl. 120 (1918); 134 Md. 406, 108 Atl. 858 (1919). And cf. Turner v. Safe Deposit & Trust Co., 148 Md. 37l, 129 Atl. 254 (1925); Hawkins v. Ghent, 154 Md. 261, 140 Atl. 212 (1928), and Safe Deposit & Trust Co. v. Sheehan, 169 Md. 93, 179 Atl. 536 (1935); though we are here concerned only incidentally with the Maryland cases on the application of the rule against perpetuities to trusts.
\textsuperscript{20} These cases are collected and quoted in Miller, Construction of Wills (1927) Secs. 162, 327.
history of Iceland. But, even apart from statutory changes, the subject may not be disposed of by so summary a statement, and, in the case of gifts to charitable corporations for special purposes, one class of what may well be called charitable trusts has become well established.

That a testamentary gift to or in trust for an unincorporated religious or other charitable association is void or ineffective, was well settled under the long line of cases refusing to recognize charitable trusts. Whether a consummated gift _inter vivos_ to such an association was similarly invalid, was not raised or decided until 1911.21

In the case in which this question was decided a donor had in his lifetime given shares of stock in a Maryland corporation to an unincorporated branch of a missionary society, expressed to be in trust for an unincorporated auxiliary of the unincorporated branch; and the gift had been consummated by delivery of the stock certificate and transfer of the shares into the name of the treasurer of the unincorporated society, designated as such treasurer. After the death of the donor, the shares were claimed on behalf of his estate.

Three judges of the Court of Appeals, dissenting, held that no logical distinction could be drawn between such a case and the long line of cases in which similar testamentary dispositions, or even conveyances of real estate made during the grantor’s lifetime in trust for unincorporated associations, had been held invalid. The majority of the Court, however, held that a gift _inter vivos_, consummated by actual delivery, or transfer of corporate shares, stood upon a different basis, and was not invalid or the subject of a resulting trust to the donor or his estate.

While the conclusion did present some logical difficulties, yet the contrary conclusion would have meant that whenever the plate is passed in an unincorporated church, the pastor or church official holds the proceeds upon a resulting trust for the contributors, _suum cuique reddere_; at least if demanded.

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The decision was affirmed in a subsequent case, a year later.\textsuperscript{22}

\textbf{Gifts to Charitable Corporations, for Special Uses}

A long line of decisions in Maryland has established the rule that testamentary gifts to a corporation to be applied to specified purposes which are within the scope of the charitable purposes which the corporation was formed to promote, are not invalid either as trusts for indefinite beneficiaries or as perpetuities.

A decision of the Supreme Court which antedated any of these Maryland decisions had at least an indirect influence on them, so that the consideration of this part of our subject, like that of charitable trusts in general, may also begin with a Supreme Court case.

John McDonogh, a native of Baltimore but a resident of Louisiana, who died in 1850, left a large fortune in equal shares to the Cities of New Orleans and Baltimore, with elaborate provisions and directions as to the administration and application of the funds and income. With the share left to Baltimore, McDonogh Institute was founded in accordance with the directions of the will, and has been operated by a board of Trustees, who were not separately incorporated until a few years ago.\textsuperscript{23}

The gifts so made were contested, and the case went up to the Supreme Court from the Federal Court in Louisiana, which had held the gifts invalid. The Supreme Court held them good, in an opinion written by Mr. Justice Campbell.\textsuperscript{24}

The greater part of the opinion deals with the question of the validity of the dispositions under the peculiar law of Louisiana; but the question of the validity of the provisions for the creation of McDonogh Institute under Maryland Law is also considered.

The Maryland Legislature, a few years before McDonogh's death, had passed an amendment to the charter of

\textsuperscript{22} Book Depository v. Trustees, 117 Md. 86, 95, 83 Atl. 50, 54 (1912).
\textsuperscript{23} Acts 1929, Ch. 563.
\textsuperscript{24} Mr. Justice Campbell was appointed from Louisiana.
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the City of Baltimore, expressly authorizing it to receive and hold gifts in trust for educational and charitable purposes.25

All that the opinion says upon the validity of the trust in Baltimore, is as follows:

"The question remains to be considered, whether the destination of the legacy to public uses in the City of Baltimore affects the valid operation of the bequest. All the property of a corporation like Baltimore is held for public uses, and when the capacity is conferred or acknowledged to it to hold property, its destination to a public use is necessarily implied. Nor can we perceive why a designation of the particular use, if within the general objects of the corporation, can affect the result; nor is there anything in the nature of the uses declared in this will which can withdraw from the legacy a legal protection."26

This case is principally important, for present purposes, because of its connection with the Barnum case, decided by the Court of Appeals twenty years later; and sometimes cited as the first Maryland case in which the validity of gifts for special corporate uses was recognized. Prior to that case, however, there was an earlier case which has been often cited to the same effect. The case was one of a bequest of $500 to a vestry (Protestant Episcopal vestries are corporations under the old Vestry Act27). The bequest was to be invested by the Vestry and the annual interest devoted to the support of the minister. The only question that seems to have been urged or considered, however, seems to have been that of whether the assent of the Legislature had been properly obtained, under the clause in the Maryland Bill of Rights requiring such consent to bequests for religious purposes. The gift was held valid.28

At the time of the death of the testator in the Barnum case, the City of Baltimore had already received, under the decision of the Supreme Court in the McDonogh case, the

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25 Acts 1842, Ch. 86, now part of Sec. 2 of the Charter of Baltimore.
26 McDonogh's Ex'r. et al. v. Murdoch et al., 15 How. 367, 413, 14 L. Ed. 732, 752 (1853).
27 Bartlett v. Hipkins, 76 Md. 5, 23 Atl. 1089, 24 Atl. 532 (1892).
28 England, Ex'r. v. Vestry of Prince George's Parish, 53 Md. 466 (1879).
property left it under McDonogh's will, and was operating, through a Board of "Trustees of the McDonogh Educational Fund and Institute", the school for which the McDonogh will had provided. Mr. Barnum left his residuary estate to the City of Baltimore "in trust for the McDonogh Educational Fund and Institute" to be applied to establishing a chair in said school, to be called the Zenus Barnum Chair for the practical application of the Mechanic Arts, with additional provisions as to the application of his bequest.

In answer to the objection that the Board of Trustees of the McDonogh fund was not an incorporated body and that therefore the beneficiaries of the trust were uncertain and undefined, and could not be legally identified, the Court said that the municipal corporation, taking the fund in trust, takes it for the benefit of its citizens or the public to be applied according to the terms of the trust; and that it was therefore in a certain sense cestui que trust as well as Trustee, and that the property acquired, though in trust, being for a public use, the corporation was liable for the execution of the trust by and through the agencies which it might have created for the purpose. It was further said that if the bequest instead of being to the City in trust for an educational purpose had been to the City in trust to establish or maintain a house of correction, or a hospital there would be no doubt of the validity of such trust, and that the objects would be sufficiently defined, notwithstanding the trustees or managers of such institutions appointed by the City had never been incorporated by law.

And in answer to the argument that there was no power or jurisdiction by which the trust could be enforced and that if the property were once turned over there was no power that could prevent the corporation from using the property for other corporate purposes, the opinion said that if such proposition was maintainable no further argument against the validity of the trust would be necessary; but that no principle was better settled than that where property is held by a municipal corporation, in trust, or where the trust reposed in the corporation is for a charity within the scope of its duties, that then a Court of Chancery
would prevent a misapplication of the trust fund, and compel the execution of the trust.\textsuperscript{29}

Prior to the decision in the \textit{Barnum Will} case,\textsuperscript{30} though after that in \textit{England v. Prince George’s Parish}\textsuperscript{31} the Court of Appeals had held two corporate bequests invalid under the rule of \textit{Dashiell v. Atty. General},\textsuperscript{32} in a decision containing statements which can hardly be reconciled with the subsequent cases upholding gifts to charitable corporations for special uses. In \textit{Church Extension v. Smith}\textsuperscript{33} a bequest to an incorporated agency of the Methodist Episcopal Church, “to be used as a part of the Perpetual Loan Fund of said Society”, and loaned out to necessitous churches, and a bequest to an incorporated church “for the benefit of the Ladies’ Mite Society” of said church, were held invalid as trusts for an indefinite class of “necessitous churches” and for an unincorporated “Mite Society”, an agency of the church in question.

But in \textit{Crisp v. Crisp},\textsuperscript{34} a bequest to an incorporated Presbyterian Church, part to be used in building a branch church, and the balance to be used “for the promotion of the worship of God according to the forms and ceremonies of the Presbyterian Church and for no other use whatsoever”, was sustained; and in \textit{Eutaw Place Church v. Shively},\textsuperscript{35} the principle which we are considering was clearly enunciated. The bequest there was one to an incorporated church, “the income, interest or proceeds thereof to be applied to the Sunday School belonging to or attached to said Church.”

Sunday Schools, like “Mite Societies”, are not of great antiquity, and they had not been in use for a hundred years at the time of this decision. It was held, however, that while the Sunday School was not itself incorporated, yet, its relation to the incorporated church was one of entire dependence and control, and that it was an “integral part”

\begin{itemize}
  \item\textsuperscript{29} Barnum et al v. Mayor, etc., Baltimore, et al., 62 Md. 275, 291, 297, (1884).
  \item\textsuperscript{30} Supra, note 16.
  \item\textsuperscript{31} Supra, note 28.
  \item\textsuperscript{32} Supra, note 15.
  \item\textsuperscript{33} Church Extension of M. E. Church v. Smith, 56 Md. 362 (1881).
  \item\textsuperscript{34} Crisp v. Crisp, 65 Md. 422, 427, 5 Atl. 421 (1880).
  \item\textsuperscript{35} Eutaw Place Baptist Church v. Shively et al., 67 Md. 493, 10 Atl. 244, I Amer. St. Rep. 412 (1887).
\end{itemize}
of the church organization, and therefore embraced within the scope of the corporate functions and work of the Church; and that the purposes of the bequest were sufficiently certain and capable of being enforced; so that the bequest was valid.

The subsequent cases in which this same principle has been applied are too numerous for statement and explanation in this text. As, however, the massiveness of the body of decisions can only be appreciated by some conspectus of them, we are adding most of them in a note, with a brief statement of the terms of the special uses declared in each.

36 Gift to an incorporated academy "not to be appropriated to any building or improvement on the academy lot, but to constitute a perpetual fund for education". An attempted application of part of the fund to build was enjoined at the suit of a dissenting trustee or director.

Peter v. Carter et al, Trustees, 70 Md. 139, 16 Atl. 450 (1889).

Gift to Convention of P. E. Church (incorporated) of certain land, with buildings, furniture, etc., "to be held as a place for a church school for boys, to be under the control and supervision of said corporation and to be called Warfield College" in memory of testatrix's brother. Another gift of $5,000 to the same corporation, "as an endowment to the above named Warfield College".

Also legacy of $6,000 to the vestry of Holy Trinity Church (incorporated) for the support of the rector and for the repair of the church.

"Here, then, is a devise of land to a body corporate, capable of taking and holding the same. And the object for which the land and legacies are given, is declared to be for the purpose of founding and supporting a church school for boys, to be called 'Warfield College'. The object and purpose of the trust are definite and certain, and such as a Court of Chancery has full power to enforce. And this being so, we are of opinion that the devise ... and the several bequests ... are valid devises and bequests."


Bequest to an incorporated missionary society which had two branches of work, domestic and foreign, to be applied to domestic missions only.


Deivate to Vestry of a parish, "to be applied to the maintenance of the parish school connected with said church." "What we have said in Eutaw Pl. Baptist Church v. Skively, et al., 67 Md. 494, and in Halsey, et al. v. The Convention of the Prot. Epis't Church, et al., 75 Md. 275, would seem to be conclusive as to the validity of the bequest to the vestry." After discussing these cases, and the uses expressed in the case before it, the Court proceeds: "It is obvious, therefore, there can be no foundation in fact for the contention that the testator directed the vestry to execute a trust not germane to the object for which it was incorporated."

Hanson et al. v. Little Sisters of the Poor, et al., 79 Md. 434, 436, 438, 32 Atl. 1052, 1053, 32 L. R. A. 293, 296 (1894).

Bequest to incorporated church, to be invested in safe securities and the annual income applied to the support of the pastor of said church; and another bequest to the Trustees of Randolph-Macon College (a corporation) to be applied to aid deserving and promising young women by loans or free scholarships, and another bequest to the same institution for the education of one or more worthy girls. These bequests were held valid. Other bequests for purposes not sufficiently within the scope of the corporate purposes, were held invalid.

Trinity M. E. Church v. Baker, 91 Md. 539, 566, 575, 46 Atl. 1020 (1900).
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Some comment on the nature of this exception to the rule of the unenforceability of charitable trusts in Maryland (if indeed these gifts for corporate purposes can be called charitable trusts) is necessary.

Gift of residue to be held in trust by the Board of Managers of the Foreign Missionary Society of the M. E. Church (held to mean the Woman's Foreign Missionary Society, a corporation), for the following purposes, . . . that sufficient be used to educate as Bible readers in India six girls, . . . the money remaining after that set aside for the education of the aforesaid Bible readers to be applied to the purchase of a building to be used for the education of girls in India, to be called the M. A. S. Home".


Gift of residue of estate to Trustees of Monthly Meeting of Friends (a corporation), "in trust to invest and hold the same, etc., and apply the income thereof for the use of the school under the charge and conduct of the said Monthly Meeting".


Devises of land to Vestry "to be used for such charitable purposes as the Rector should direct". Held not to create a trust void for uncertainty. Must be cestuis que trustent to make a trust, etc.

Doan v. Ascension Parish, 103 Md. 662, 679, 49 Atl. 561 (1901).

Gifts over in remainder to the Church Home and Infirmary of $5,000 "to endow a bed according to the custom and purpose of that institution," and to two missionary societies, to be applied to the purposes of their organization.


Bequest of one-half of fund to Church Home and Infirmary "to be kept as a separate fund in remembrance of my wife and daughter, and the income thereof used in maintaining aged and infirm persons in said home or in maintaining free beds in their infirmary, in the discretion of the legatee" and bequest of other one-half to Emmanuel Church Home "to be kept as a separate fund, to be called the 'A. M. P. Fund', and the income thereof used under their rules and in the discretion of said legatee in assisting or maintaining poor respectable sewing girls or apprentices, unable to pay over two dollars a week for their board, or unable to pay anything."

Baltzell v. Church Home, 110 Md. 244, 73 Atl. 151 (1909).

A devise of real estate to the Trustees of St. Patrick's School (incorporated), for the purpose of establishing a regular free school for boys and girls and for no other object was held valid, but two devises to other corporations with a prohibition of sale held to be invalid as violating the rule against perpetuities.


The next case was one of a devise in trust with a direction that a corporation be formed as authorized in the statute which we are considering further on. The purpose was to provide a home for white orphan children of Washington County. The Court seems to have considered the case from the same standpoint as that of a gift to an existing corporation, and held that no "trust" was intended; the Court saying that in order that it might be a trust it would be necessary to suppose that the testator intended that every white orphan child in Washington County should have the right of admission.

In the first place it is a mistake to suppose that the principle established by these authorities is that such gifts to charitable corporations are valid because the corporation takes the gift for its general corporate purposes and can use it, within those limits, as it sees fit; or that the directions

Gift to an incorporated church, in trust to apply net annual income to support of minister. Held no trust, but a gift to a corporation on condition that it be applied to the particular use.  
Conner v. Trinity Reformed Church, 129 Md. 360, 99 Atl. 547 (1916).

Bequest of residuary estate to a religious college, to be used for the erection of a new church. Held no trust but a gift to be applied to a use within the corporate powers of the college.  
Mt. St. Mary's College v. Williams, 132 Md. 184, 103 Atl. 479 (1918).

So, too, in the case of a devise to be used as a parsonage with authority to sell and spend the money on a pipe organ, and a bequest, the interest on which was to go towards keeping the church cemetery in repair, and another bequest to be put out on interest and the interest therefrom to be paid annually to the Board of Foreign Missions, the latter being recognized as one of the religious interests which the church was organized to promote.  

Devise and bequest to the Convention of the P. E. Church (incorporated) for the use of the Trustees of the Hannah Moore Academy and the establishment of a memorial therein. Held valid as the Academy was one of the many agencies of the Convention.  
Mather v. Knight, 143 Md. 612, 123 Atl. 109 (1923).

Deed to the same Convention of the P. E. Church, for use as a place of worship by a particular named congregation.  
Rydzewski v. Grace Etc., Church, 145 Md. 531, 125 Atl. 717 (1924).

Gift of residuary estate to the Order of the Holy Cross (a New York religious and charitable corporation) as a memorial to the testator's son, and to be used by them for such educational and charitable purposes as they may deem proper under the direction of the Bishop of Maryland.  

Appointment by will under a power contained in the will of a resident of Maryland appointing the property to a New York educational corporation, in trust to create a fund in memory of his father, and to apply the income therefrom to the education of deserving and talented art students by study abroad, with provisions authorizing the investment and reinvestment of the fund, excusing the "Trustee" from giving bond, etc. This case was brought in the Federal Court and the opinion of Judge Soper goes quite fully into the history of the subject; the Circuit Court of Appeals adopting his opinion on that part of the case.  

Two bequests, one to the Home for Incurables for Men and the other to the Home for Incurables for Women. There was only one corporation called the Home for Incurables, which was receiving only women; and it was held that it took both bequests.  
Another bequest to the invalid fund for disabled ministers in the care of the Trustees of the General Assembly of the Presbyterian Church was
CHARITABLE TRUSTS

as to the use to which the gift is to be applied are considered as merely precatory and not enforceable.

On the contrary it has been frequently said that the application of the fund to the designated purpose is enforceable. The Court of Appeals has said that they are "capable of being enforced";\(^{87}\) that "no principle is now better settled than that . . . where the trust reposed in the corporation is for a charity within the scope of its duties, a Court of Chancery will prevent the misapplication of the trust funds, and compel the execution of the trust";\(^{38}\) "for we may concede that there is a trust";\(^{39}\) and "this direction of his can certainly be enforced by a Court of Equity";\(^{40}\) that "the object and purpose of the trust are definite and certain, and such as the Court of Chancery has full power to enforce";\(^{41}\) that "a Court of Chancery has the same power to enforce such a trust for a charitable or religious purpose, as it has to enforce a trust for any other purpose";\(^{42}\) and that "here, then, is a corporation capable of taking, and the object and purpose of the bequest and devise are definite and certain, and can be enforced by a Court".\(^{43}\)

And in one case at least it was conclusively shown that such purposes are enforceable by the Court's enjoining an

\(^{87}\) Eutaw Place Baptist Church v. Shively et al., 67 Md. 493, 497, 10 Atl. 244, 246, 1 Amer. St. Rep. 412, 415 (1887).
\(^{88}\) Barnum et al. v. Mayor, Etc., Baltimore et al., 62 Md. 275, 299 (1884).
\(^{89}\) Crisp v. Crisp, 65 Md. 422, 426, 5 Atl. 421, 422 (1880).
\(^{40}\) Ibid, 65 Md. 427, 5 Atl. 423.
\(^{42}\) Hanson et al. v. Little Sisters of the Poor, et al., 79 Md. 434, 438, 32 Atl. 1062, 1063, 32 L. R. A. 293, 297, (1894).
attempted misapplication of such a fund to other corporate purposes, at the suit of a minority trustee or director.\footnote{Peter v. Carter, et al., Trustees, 70 Md. 139, 16 Atl. 450 (1889).}

Whether such gifts to a charitable corporation to be applied to a purpose within the scope of its corporate work, can properly be called "trusts", is perhaps a mere matter of nomenclature. It is true that there are no decisions in which such uses or purposes have been enforced by suit of the Attorney General; whose right to sue in such cases would probably be regarded as dependent on the Statute of Elizabeth. That they are enforceable, we have already seen; and it may be noted that in the earlier cases on this subject the Court of Appeals did not hesitate to call them "trusts" over and over again, and say that they were enforceable as such. In many of the cases, also, the testator not only used the word "trust" but gave directions as to collection and disbursement of income, powers of the "Trustee" and other details specially appropriate to the creation of trusts.

In later cases, the Court has avoided the use of the word "trust", in connection with such limitations; or has frequently said that in the case before it that no "trust" was created; with the implication that if it were a "trust" then it would be invalid, or as stated in one of these cases,\footnote{Baltzell v. Church Home, 110 Md. 244, 270, 73 Atl. 151, 156 (1909).} and since several times quoted or repeated, that such gifts for corporate uses are valid "unless the intention to create a trust be clear". But having in mind the number of earlier cases in which the court itself called the disposition a "trust", and the cases in which the testator not only used the word "trust" but expressed his gift with many of the incidents appropriate to "trusts", it would seem that as long as the designated uses are within the scope of the corporation (or possibly, if much importance is to be attached to the adjective used in the Sunday School case,\footnote{Supra, note 37.} form an "integral" part of the corporation's work), it will be held that no "trust" has been created. In this connection the statement in one of the cases cited above in which the
purpose of the bequest was to provide for a home and manual training for white orphan children of Washington County, that in order to find that the testator intended to create a "trust" for such beneficiaries it would be necessary to find that he intended that every white orphan child in the county should have a right of admission to the Home, may throw some light on what is meant by "unless the intention to create a trust be clear".

Nor perhaps can it be said that the test is merely whether the purpose stated is ultra vires. If this were so, since trust companies are authorized generally to accept and execute trusts of every nature and description, it might follow that bequests for charitable purposes would be valid when made to a trust company as trustee although invalid if similarly made to individual trustees; a position which is hardly maintainable.

**LEGISLATION IN MARYLAND**

In 1888 the Legislature passed a statute that no devise or bequest for charitable uses shall be held void for uncertainty of beneficiaries, provided the will contains directions for the formation of a corporation to take the same, and such corporation is formed within twelve months after probate of the will or termination of any previous life estates.

Referring to this statute, a textwriter has said that "the relief afforded by the Maryland Legislature has been extraordinarily meager". It has however been availed of to a considerable extent by testators of large means, having a considerable fund which they desired to devote to establishing a charity. It does not supply so well the need of the testator of limited means, who would not consider the formation of a corporation to carry out his charitable intentions. Perhaps it might be said that such testators have

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48 Md. Code, Art. 11, Sec. 46, Part Eighth.
49 Md. Code, Art. 93, Sec. 337.
50 Zollman on Charities, Sec. 43. It may be noted that charitable bequests have never been exempted from inheritance tax in Maryland; except, since 1924, bequests to any county or city in the State; Md. Code Supp., Art. 81, Sec. 105.
sufficient choice in being able to leave their gift to any existing charitable corporation for its general purposes, or for some special purpose within their scope.

In 1906 the Legislature added two sections to the Code, intended to validate the device, conveyance, etc., of burial lots, and bequests of sums not exceeding $5,000, in trust for the perpetual care and maintenance of such lots and funeral vaults, tombs, etc.

It should be noted that this statute merely says that such trusts, etc., "shall not be held void as offending against the rule against perpetuities"; and says nothing about the other objection to such dispositions, that they are not for beneficiaries who could sue to enforce the trust. Possibly the heirs and assigns of the testator may be held to be such beneficiaries.

Since such trusts for graves, etc., have been generally held not to be charitable trusts, this statute is only indirectly related to our subject matter.

In 1908 a section was added to the Code, that the rule against perpetuities should not apply to any contingent limitation over from a charitable corporation on a future event; which in most cases would mean a limitation over for failure to observe the conditions or terms of the charitable gift to such corporation. It is directed to validating such future limitations over, rather than to any supposed perpetuity in the duration of the "trust" or original gift.

This brings us up to a few years ago, when the statute next mentioned, was passed. It left testators with two principal means of making charitable bequests, viz, either to leave the gift to an existing charitable corporation, or to direct the formation of a special charitable corporation to receive and administer their gift.

In 1931, however, a statute was enacted, having for its apparent purpose the full recognition of charitable trusts in Maryland, or it might be said, the adoption of the principle of the Girard Will case rather than that of Baptist

51 Md. Code, Art. 93, Secs. 327, 338.
52 American Law Institute, Restatement of Trusts, Secs. 124-d, 374-h.
53 Md. Code, Art. 93, Sec. 330.
Association v. Hart and Dashiell v. Atty. General. Its full text is as follows:

"Courts of Equity within this State shall have full jurisdiction to enforce trusts for charitable purposes, upon suit of the State by the Attorney General or upon the suit of any person or persons having an interest in the enforcement thereof; and as to all trusts hereafter created for charitable purposes, whether by gift, deed, will or other form of settlement, and whether the subject thereof be real or personal property, it shall be no objection to the validity or enforceability of such trusts or of such gift, deed, bequest, devise, etc., that the beneficiaries of such trust, constitute an indefinite class or that such trusts or the limitations under such settlement are limited to extend for a perpetual or indefinite period. 'Charitable purposes' under this section shall include all such purposes as are within either the spirit or letter of the Statute of 43 Elizabeth Ch. 4 (1601), commonly known as the statute of charitable uses."

The statute approaches the subject from the standpoint of the grounds upon which charitable trusts have been held to be invalid in Maryland. By vesting a right to sue for their enforcement in the Attorney General, it removes the objection that there must be a resulting trust if no one, because of uncertainty of beneficiaries, can sue for their enforcement. It also removes any such objection as would otherwise lie against them as perpetuities, if unlimited in duration. And while not enacting the provisions of the Statute of Elizabeth, it adopts the enumeration of charitable objects therein contained, as the English courts had done, and courts in this country, as illustrative of the general classes of purposes which are the objects of charitable trusts.

Its validating provisions apply, in terms, only to charitable trusts created subsequent to its passage. Although it has been on the statute books for nearly six years, it is somewhat surprising that it has not yet been passed upon or construed in any way by the Court of Appeals. It has been
cited in one case, but merely to say that the case was decided without reference to this statute, as the disposition in question was clearly valid without the aid of the statute.

Assuming that the statute has accomplished its professed purpose of making charitable trusts enforceable and valid, a further question of considerable importance remains, i.e., does the statute establish the *cy pres* doctrine, power or jurisdiction in Maryland, and do courts of equity here now have the power to direct the application of charitable funds to cognate purposes, when the designated purposes are either impracticable at the beginning or become so in course of time?

Professor Bogert, in his recent monumental work on Trusts, already several times cited, says that the Maryland statute seems broad enough to give the courts *cy pres* power. Doubtless he bases his conclusion on the fact that the statute confers upon the equity courts full power to enforce charitable uses, and the fact that the *cy pres* power has been accepted by most of the States in this country which have adopted the English law of charitable trusts, as part of the system and jurisdiction so inherited.

Having in mind the particular background upon which the statute was passed, and the previous history of charitable trusts in Maryland, which we have traced, it is submitted that it is improbable that it will be held that the statute confers *cy pres* powers upon the Maryland courts. Full power to enforce charitable trusts and uses does not necessarily include or imply a power to divert the subject matter to other uses, even though conceived of as done to carry out some general charitable intent which the court finds or professes to find in the will. And as said by Professor Bogert, the *cy pres* power is “admittedly an unusual doctrine”; and if it had been the intention of the

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55 Board of Home Missions v. Lynch, 168 Md. 117, 176 Atl. 619 (1934). It is also cited in the case of Second National Bank v. Second National Bank, Daily Record, February 22, 1937 (Md. 1937) which was decided while this article was being printed.

56 II Bogert on Trusts and Trustees (1935), Sec. 433, p. 1298.

57 American Law Institute, Restatement of Trusts, Secs. 399 et seq., p. 1208.

58 II Bogert on Trusts and Trustees (1935), Sec. 431, p. 1288.
legislature to introduce it, it would seem that such intention would have been made clear by express terms.

At the same session of the Legislature, however, another statute was passed which does in terms introduce the *cy pres* doctrine in part, at least.\(^5\)

It reads as follows:

"Whenever any charitable or religious corporation is dissolved or about to be dissolved, or for any reason it is impracticable or inexpedient to continue the corporation activities, and all or any part of the corporate property is not needed for the payment of the corporate debts, a court of equity shall have power to determine by its decree the disposition of said property; and, in such case, in so far as any donors of property to the corporation, or their successors in interest, may not be entitled to such property as a result of the cessation of the corporate activities, or may fail to assert any claim thereto, after having received notice of the substance and object of the bill or petition either by personal summons or by such publication as the court shall direct, the court shall, so far as possible, direct or provide for the transfer of such property to any other corporation or association of this or another State, having a similar or analogous character or purpose, or in some way associated or connected with the corporation to which the property has previously belonged, the intent of this act being that courts of equity may in such cases exercise the judicial power of *cy pres*, in order to carry out, in spite of the change of circumstances, the general purpose of the donor or donors of the property as regards the application and utilization of the gift or gifts."

This statute is, however, in terms confined to cases of charitable or religious corporations which are about to be dissolved, or whose activities are for any reason not to be continued; and the express granting of *cy pres* powers to courts of equity is limited by the words "in such case". It would seem therefore that it does not apply to charitable trusts in general; at least not to charitable trusts when a charitable corporation does not hold or own the property.

Whether it applies to those charitable trusts (which it would seem are not to be called trusts) which have been held

\(^5\) Acts 1931, Ch. 291; Md. Code Supp., Art. 16, Sec. 116-A.
to arise, as we have seen, when a gift is made to a charitable corporation with binding instructions that it be held and applied to some purpose or purposes which are within the scope of its corporate purposes, remains to be decided; as the statute apparently has not yet been before the Court of Appeals. It may be noted that it limits its provisions by the qualification "in so far as any donors . . . may not be entitled to such property as a result of the cessation of the corporate activities". Some such qualification was, of course, necessary or inherent, at least with respect to gifts made before the statute. For if, for instance, there were an express condition or clause of reverter limiting the property back to the donor in case the corporation should cease to exist or to carry on the particular line of work to which the gift was dedicated, then such donors could not be deprived of their express right of reverter by such a statute. Whether in the absence of some such express provision in the instrument of gift, the donors have such a right of reverter as is excepted from the operation of the statute, or as they could not be deprived of, constitutionally, by such a statute, may depend, in part at least, upon the terms on which the particular gift was made.