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Trusts for Masses

John W. Curran

TRUSTS FOR MASSES

From time to time various aspects of a trust for Masses have been presented to the courts for interpretation. The meaning of the word charity within or without the Statute of Charitable Uses of 1601 (43 Eliz.) and the failure to understand the nature of the Mass have been the cause of much of this litigation.

The Statute of Charitable Uses (43 Eliz.) restated the scope of charitable uses but studiously avoided mentioning religion as a charitable use. But under the principle of contemporaneous construction the cases justify the conclusion that uses for religious purposes were considered as charitable uses within the equity of the statute.[1] Thus, in a case decided in 1639 where money was given to maintain a preaching minister it was held to be a charitable use although not specifically mentioned in the Statute of Charitable Uses of 1601.[2]

In England a trust for Masses was originally held valid, subsequently invalid, and again valid in 1919.[3] Although the Catholic Relief Acts of 1791 and 1829 and the Catholic Charities Acts of 1823 and 1860 would have warranted the courts of England in upholding a trust for Masses, it was not until 1919 that such a trust was held valid and not void as a superstitious use.[4] In the United States the doctrine of superstitious uses has never been recognized, but the validity of a trust for Masses has been questioned on other grounds.

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1 It should be noted that the STATUTE OF CHARITABLE USES did mention that the repair of churches was a charitable use. *Cf.* Scotch case of Baird's Trustees v. Lord Advocate, 15 Sess. Cas. (4th ser.) 682.

2 Pember v. Inhabitants of Knighton, Duke 82 (1639) (SCOTT'S CASES ON TRUSTS, 2nd ed., 1931, p. 304).

3 Bourne v. Keane, A. C. 815, (1919) (This contains a summary of the law in England on this question. Bequest of personal estate for Masses valid).

4 *Ibid.* In Ireland in O'Hanlon v. Logue, 1 Irish Rep. Ch. Div. 247 (1906) it was held that a trust for Masses was a charitable trust.

"Masses are religious ceremonials or observances . . . and come within the religious or pious uses which are upheld as public charities." [5] This observation from a recent New York decision has not always been recognized either in New York or in some of the sister states.

Where a testator has manifested an intention to bequeath property for Masses, the courts at different times have arrived at the following varied results:

(1) A valid charitable trust
(2) A valid private trust and not a charitable trust
(3) An invalid private trust
(4) A valid gift and not a trust
(5) Neither a valid gift nor a trust
(6) An attempted private trust that failed on account of the absence of a living beneficiary
(7) An attempted charitable trust that failed because Masses for the soul of the testator was not for the common good or general welfare
(8) A private trust that failed because it violated the rule of perpetuities
(9) Neither a charitable trust nor a private trust but sustainable as "funeral expenses"
(10) An attempted trust that failed because it was for a superstitious use
(11) A religious trust, but not a charitable trust and void if made within a certain period before death.

An examination of some of the leading cases will be made in order to ascertain the cause of such inconsistency and to determine what the law is to-day.

In a well known case it is stated:

"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*; [6] and trusts for other purposes

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[5] In Re Smallman's Will, 247 N. Y. S. 593, at 602 (1931).
[6] Italicised by the present writer.

beneficial to the community, not falling under any of the preceding heads." [7]

The nature of the Mass should be considered in reference to its charitable category. This would prevent confusion where the Masses are to be celebrated for the repose of the soul of the testator, instead of for all poor souls.

At the outset, it should be kept in mind that the Mass is essentially a public rite. In a commendable Wisconsin case the following definition is stated:

"The Mass is the unbloody sacrifice of the cross and the object for which it is offered up is in the first place, to honor and glorify God; secondly, to thank Him for his favors; third, to ask His blessing; fourth, to propitiate Him for the sins of all mankind. The individuals who participate in the fruits of this Mass are the person or persons for whom the Mass is offered, all of those who assist at the Mass, the celebrant himself, and for all mankind, within or without the fold of the church." [8]

In the United States, there has been some difficulty caused by the question whether the jurisdiction of Chancery over charitable uses is to be determined by referring to the Statute of Charitable Uses of 1601 (43 Eliz.) or the inherent power of a court of Chancery.[9] In Spence's classical treatise it is stated:

"Originally, where a gift for a charitable or pious purpose was made in a will of personal estate, no doubt the ordinary, who, as before observed, assumed a right to provide that a portion of *every man's* personal estate should be applied for pious or charitable uses, would see to its execution, even though the gifts were indefinite and there were no specific objects pointed out, as where the gift was for the poor or the like; more especially as the Roman Law afforded ample precedents for the establishment and regulation of such charitable trusts. So where gifts of personal estate were made by act *inter vivos,* to

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7 Commissioners for Special Purposes of Income Tax v. Pemsel, A. C. 531 at 583 (SCOTT'S CASES ON TRUSTS, 2nd ed., 1931, p. 302). See: Jackson v. Phillips, 14 Allen 539 (1867) for another definition of charity.

8 Will of Kavanaugh, 143 Wis. 90, 126 N. W. 672, 28 L. R. A. (N. S.) 470 (1910).

9 Trustees of the Baptist Church v. Hart's Executors, 4 Wheat. 1 (1819), and Vidal v. Girard's Executors, 2 How. 128 (1844). The latter case overruled the former which relied on the STATUTE OF CHARITABLE USES (43 ELIZ.) 1601.

persons capable of taking, for definite charitable purposes or uses; and where lands, or the use of lands, were by deed or will directed to be applied for the like purposes, the Court of Chancery, apparently under its general power to enforce the performance of trusts, entertained jurisdiction of trusts of this description equally as of private trusts." [10]

In the Indiana case that follows some aspects of the matters referred to in the previous chapters were discussed. In this instance the testator provided that a specified amount should be used for Masses for the repose of *all poor souls*.[11] The Rector of St. Mary's Catholic Church of Greensburgh, Indiana, and the parish councillors and their successors in office were named as trustees. The will was contested on the ground that there was not a living beneficiary having capacity to enforce the trust. Another objection to the validity of the request was that the trustees named were not representatives of an incorporated body capable of taking legal title to property. Since the trustees had been individually named the court properly overruled the objection on that point. The court further concluded that the absence of a living beneficiary was not fatal. As previously indicated, the beneficiaries in cases of this nature are the living and the dead. It was pointed out that the court could see that the trust was fulfilled due to the fact that the trustees were subject to the control of the court. That is a sound test. This case also brings out the importance of the form of expression used by the testator. As a matter of principle, the case should not turn on whether the Masses were to be celebrated "for the repose of my soul" or "for all poor souls." But note the following statement made by the court in this case (referring to the Mass):

"It is common, public to all, as a religious ceremony, and is therefore a religious or pious use, and is a public charity, as distinguished

10 SPENCE, THE EQUITABLE JURISDICTION OF THE COURT OF CHANCERY, Vol. 1, Book III, Chap. XI, p. 587, (1846). See: *Fourfold Nature of Equity* in unpublished manuscript of B. F. Brown, Cand. D. Phil. (Oxford, 1931).

11 Ackerman v. Fichter, 179 Ind. 392, 101 N. E. 493, 46 L. R. A. (N. S.) 221, (1913). *Cf.* Estate of Lennon, 152 Cal. 327, 92 Pac. 870 (1907).

from a *private charity, which it might be if restricted to masses for the souls of designated persons.*" [12]

If the testator had not used the expression "for all poor souls" the aforesaid dictum [13] indicates the trust probably would have been held non-charitable and invalid. It was probably the failure to understand the nature of the Mass that caused the court to make a statement that cannot be accepted as a matter of principle. In other words, the pivotal point should not be rested on the souls of the departed, when all mankind is included.

In a leading Illinois case [14] a testator named the Holy Family Church on West Twelfth Street in Chicago as trustee of specific real estate for the purpose of selling the property and expending the proceeds for Masses for the souls of the testator, his deceased wife, his mother-in-law, and brother-in-law. The will also provided that another $1,000.00 was left in trust for Masses for the souls of the testator and his father, mother, and brother. It was contended that the trust was a private trust for the souls of particular individuals and that it failed because it lacked living beneficiaries capable of compelling the trustee to execute the trust. It was also claimed that the Holy Family Church had no capacity to act as trustee as it was an unincorporated association and could not take the title to the property. The court held that the trust was a valid charitable trust and although the Holy Family Church was legally incapable of being trustee, the court would appoint a trustee to take the gift and apply it to the purposes of the trust. It was pointed out that the Statute of Charitable Uses is a part of the

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12 *Ibid.*

13 *Ibid.* In Todd v. Citizens' Gas Co. of Indianapolis, 46 F. (2nd) 855, at 865 (1931), the court said: "The doctrine of charitable uses is a part of the law of Indiana."

14 Hoeffer v. Clogan, 171 Ill. 462, 49 N. E. 527, 40 L. R. A. 730 (1898). See: Wittmeier v. Heiligenstein, 308 Ill. 434, 139 N. E. 871 (1923) (SCOTT'S CASES ON TRUSTS, 2nd ed., p. 231) (where a deed to St. Clare's Roman Catholic Church of Altamond was held void as the grantee was an unincorporated religious society. It did not preclude a trust from arising under the facts.)

common law of Illinois and that it was not a question of whether the Mass was to be celebrated for all souls or individual souls, since the trust for Masses was a charitable use within the statute.[15]

In a Wisconsin case the trust for Masses provided that the Masses should be celebrated for the souls of the testator's family.[16] As an earlier Wisconsin case [17] had held that a somewhat similar trust was void as a private trust, the lower court in the present case was influenced by that erroneous interpretation. On appeal the Supreme Court said:

"The main question in the case before us, therefore, is whether a bequest for masses is a charitable bequest, and this being determined in the affirmative, we easily reach the conclusion that the trust is valid." [18]

In this instance if the dicta of the Indiana case [19] had been recognized the decision would have been to the contrary. The Wisconsin court [20] and the Illinois court [21] seem to be in harmony on this question and hold that the ultimate test is the manifest intention of the testator and that the classification of a trust will not be changed from charitable to non-charitable if the testator specifies Masses only for his own soul.

Another aspect of this question was presented in a California case where the testator left bequests to an Archbishop for Masses and other bequests to pastors for Masses to be celebrated by them.[22] In this case the Masses were limited

15 *Ibid.* On the collateral point that there is not a living cestui que trust, see: In Re Gibbon (1917) 1 I. R. 448, where the bequest was to be used "to my best spiritual advantage, as conscience and sense of duty may direct."

16 Will of Kavanaugh, *supra* note 8.

17 McHugh v. McCole, 97 Wis. 166, 72 N. W. 631 (1897).

18 Will of Kavanaugh, *supra* note 8.

19 Ackerman v. Fichter, *supra* note 11.

20 Will of Kavanaugh, *supra* note 8.

21 Hoeffer v. Clogan, *supra* note 14.

22 In re Hamilton's Estate, 181 Cal. 758, 186 Pac. 587 (1919) (COSTIGAN'S CASES ON TRUSTS, p. 359).

to the souls of relatives and to that extent this case was on all fours with the previous Wisconsin case.[23] Due to the use of the expression "and I request that Masses be offered for the repose of my soul" it was contended that a private trust was involved and that it failed for the want of a living beneficiary, and that the expression was precatory. After upholding the trust for Masses as charitable where the Archbishop was to have Masses celebrated, the court added:

"This is not true of the bequests to particular pastors for Masses in their churches. As we have said, these bequests go personally to such priests for them to use as they see fit, *and there is no trust.*" [24]

In other words, the court holds that there is a trust where the trustee is to select others to celebrate the Mass, but there is no trust where the trustee is to celebrate the Mass. This line of demarcation is unsound in principle. Fundamentally both instances indicate that the manifest intention of the testator was to create a trust for Masses. The fact that the particular pastors named as trustees were to say the Masses did not change the inherent nature of the trust. If a testator bequeaths $500 to his parish priest for Masses to be said personally by him and also makes a bequest of $500 to his parish priest for Masses to be said by another priest to be selected by the parish priest, there would be a trust for Masses in both cases. The fact that the trustee is the celebrant in one case and not in the other is a collateral matter that has no bearing on the validity of the trust. Although in other respects the California case is to be approved, as a matter of principle the unsoundness of the above statement should not be overlooked.[25]

In an important Iowa case the testator directed the executor to sell specific real estate and expend the proceeds for Masses for the souls of the testator and his deceased

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23 Will of Kavanaugh, *supra* note 8.

24 In re Hamilton's Estate, *supra* note 22. (Italicised by present writer). *Cf.* ZOLLMAN, AMERICAN LAW OF CHARITIES, p. 568 (1924).

25 See statement *supra* note 24.

wife.[26] No particular parish or priest had been designated in the will and a contest arose because of the uncertainty and indefiniteness in the designation of a beneficiary. Technicalities were brushed aside, and the manifest intention of the testator stressed in an opinion upholding the validity of the bequest as a private trust. This interpretation is peculiar to Iowa. In the light of reason and the facts, at the present day such a bequest is generally held to be in the category of a charitable trust. The Iowa Code and decisions compel the bequest to be defined as a private trust or fail. The court states:

"The doctrine of charitable or pious trusts as applied to bequests of this character (for Masses) has not been adopted in this state. . . . " [27]

But the court realizes it might be misunderstood and says:

"Bequests for masses are generally sustained in this country (except where same contravenes some provision of statute) under the doctrine of charitable or pious trusts. . . . " [28]

Legislation would seem to be the remedy for such a condition. Besides being unsound in principle such a doctrine often causes trouble on collateral issues that do not arise where the orthodox view prevails.

In a Kentucky case the testator provided in his will that Three Hundred Dollars should be expended for the celebration of Masses for the repose of his soul.[29] It was contended that such a provision was void because, "first, it is not a charitable use within the meaning of our statute; secondly, there is no trustee appointed to carry out the bequest; and thirdly, since no beneficiary is designated, and this is a private trust, it is invalid for the want of a beneficiary to enforce it." [30] The objections were overruled

26 Wilmes v. Tiernay, 187 Iowa 390, 174 N. W. 271 (1919).

27 *Ibid.*

28 *Ibid.* (In an earlier case in Iowa the private trust doctrine was recognized where the bequest was, "to the Catholic priest, who may be pastor of Beaver Catholic Church . . . . that masses may be said for me." See: Moran v. Moran, 104 Iowa 216, 73 N. W. 617 (1897).

29 Obrecht v. Pujos, 206 Ky. 751, 268 S. W. 564 (1925).

30 *Ibid.*

and the validity of the bequest sustained on the ground that a charitable use was involved and the rule of private trusts was not applicable. The absence of a trustee was not material as the court could remedy that situation by appointing one. The court said: "Both before and since the enactment of the Statute of 43 Elizabeth, after which our statute is modeled, it has been the rule that a gift for religious purposes is one for a charitable purpose." [31] One cannot fail to observe that the decision is outstanding for its clearness.

A Canadian case exposes another angle of this question. A bequest of the residue of the testator's estate to St. Basil's Roman Catholic Church, "to be invested and kept invested . . . . forever and the interest . . . . to be applied and expended . . . . for saying of Holy Masses . . . . for the repose of the soul of the testator and his descendents forever," was held invalid as creating or tending to create a perpetuity and not a charitable use.[32] This case illustrates the importance of placing the fact pattern in its proper mould. The manifest intention of the testator would not have been violated if the court had considered this as involving a charitable trust because the perpetuity would not have been applicable.[33]

A trust for Masses has been held invalid in India on the grounds of public policy.[34] In a recent case in India in-

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31 *Ibid.* (In Strother v. Barrow, 246 Mo. 241, 151 S. W. 960 (1912) it is stated: "From ancient times a pious use has been considered a charitable use. The quoted statute speaks of both, but in a broad sense the one includes the other. The principles of law governing one govern the other." The court referring to the English STATUTE OF CHARITABLE USES says: "That act is part of our common law, but it has been held that its enumeration of charities is not preclusive.")

32 Re Zeagman, 37 Ontario L. R. 536 (1916). *Cf.* Elmsley v. Madden, 18 Grant 386 (1871). See 36 L. Q. REV. 152.

33 On an aspect of perpetuity see: Reichenbach v. Quin, 21 L. R. Ir. 138 (1888), SCOTT'S CASES ON TRUSTS, 2nd ed., p. 282. But note that O'Hanlon v. Logue, (1906) 1 Irish R. 247, overcomes the previous objection by its holding that the trust for Masses is charitable.

34 Colgom v. Administrator General, Madras, 1 L. R. 15 Mad. 424-446 (1892), cited in BOMBAY LAW JOURNAL, May 1929, p. 582.

volving perpetual death ceremonies or Dharam Kriya it was held that the bequest was valid and not void for uncertainty.[35] Previously dharam had been held void for vagueness. If the court has changed its view on the validity of Dharam Kriya it is bound, if it is going to be consistent, to uphold the validity of a trust for Masses since the principle of religious uses would apply to Masses in India if it does to Dharam Kriya. Since the decision of *Bourne v. Keane*[36] in England in 1919 upheld a bequest for Masses as not being void as a superstitious use, the holdings in courts influenced indirectly by the English law will no doubt be affected by it. *Cessante ratione legis, cessat ipsa lex.*[37]

In one instance an individual thought that a trust for Masses was a sum of money that had been bequeathed to charity for the masses of the people. In a sense this is correct, because the trust for Masses is for the moral and spiritual benefit of all mankind. The universality of the Mass and its benefits is important in ascertaining the true significance of such a trust in the eyes of the law. The Mass is not as some courts think for the benefit exclusively of a single soul, even though it is celebrated by virtue of a former request of a deceased individual.

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35 Abdul Sakur v. Abu Baker, suit No. 1431 (1928), discussed in BOMBAY LAW JOURNAL, May 1929, pp. 582-587.

36 Bourne v. Keane, *supra* note 3. In an English case one hundred years ago —Heath v. Chapman, 2 Drew. 417—a trust for Masses for the souls of the POOR dead was held not to be a charitable trust.

37 See: Yeap Cheah Neo v. Ong Cheng Neo, L. R. 6 P. C. 381 (1875) (Chinese religious ceremonies held not charitable).

No cases were found in which the unusual practice in the orthodox Jewish religion of a member of the Synagogue bequeathing money to the Synagogue for yearly services. As a rule this only occurs where there are no children or where the unorthodox belief of the children causes the father to think the children might neglect the services after his death. In some instances the money is sent to Palestine. (Prayers are said for deliverance after death.)

In re Michel's Trust, 28 Beav. 39, 54 Eng. Rep. 280 (1860): "A bequest by a Jew who died in 1821 of 10 pounds per annum to be paid to three persons to learn, in their Beth Hammadrass, or college, two hours daily, and on every anniversary of the testator's death to say the prayer called in Hebrew 'Candish,' and which is a short Hebrew prayer in the praise of God and expressive of resignation to His will, is valid."

The factual situation in these cases has not been given a consistent meaning that lawyers can interpret and uniformly accept. Although there are many sound conclusions it is likewise true that other generalities fail to fit the pattern of particular cases. In this period of investigation and restatement of values, the legalist will find this a fertile field for focusing forces.

It has been suggested that the medical profession use symbols to identify specific cases. If that idea could be used to advantage in the law for identifying legal cases, the following symbols might apply to the matter being discussed: S - M - T - C -

S represents the deceased who bequeathed money for Masses (Settlor)

M represents Masses requested to be celebrated

T represents the person who is to expend the money for Masses (Trustee)

C indicates the cestui que trust—charity.

In every case of this nature the symbols S - M - T - C - are constant and the conclusion is always the same. Though collateral issues might vary in every case because of the recalcitrancy of facts, the constant symbols S - M - T - C - if present, would indicate that the case related to a charitable trust. The symbols constitute a framework in a sense. Additional accidental details do not change its essence any more than additional garments change an individual.

An examination of the cases indicates that a trust for Masses does not have a uniform legal significance. This is especially true of the cases decided in the 19th Century in the United States, Canada, England, and Ireland. Within the last thirty years, however, there has been a trend towards a settled rule upholding the validity of a trust for Masses. In the United States to-day, nevertheless, there are three general classifications: charitable trust, private trust, and an outright gift, though the charitable trust cate-

gory is the only one sound in principle. This inconsistency seems to be primarily caused by a failure to realize the true significance of the Mass, *viz.*, that it is not primarily individualistic, but is essentially a public rite for the benefit of all mankind. It seems to be difficult to point out to some courts that the money to be expended for the celebration of Masses is always held in trust. This rule applies to trustees who are to expend the fund for Masses whether they are going to celebrate the Mass or have it celebrated. In other words whether the bequest is to a layman to select a priest, or direct to the pastor, the money is nevertheless held in trust. If the fund would be used for other purposes a breach of trust would result. For this reason a trust and not an absolute gift is always involved. The weight of authority supports the trust theory and holds that a charitable trust results in these cases. A weak minority hold a private trust results. A still weaker minority hold that an absolute gift is involved.

Since 1900 there have been decisions upholding a bequest for Masses as a charitable trust in Ireland in 1906;[38] New Zealand in 1910 [39] and Australia in 1917.[40] In 1919 England upheld the validity of such a bequest and overruled a line of earlier decisions which consistently held the bequest void as a superstitious use.[41] Practically all decisions in the United States within the last twenty years have been in favor of the validity of the bequest but not on the same grounds, that is, usually as a charitable trust but occasionally as non-charitable. In a Canadian case in 1916 the court followed an unorthodox rule and held the bequest invalid.[42] In spite of the fact that there is not a

38 O'Hanlon v. Logue, 1 Irish Re. Ch. Div. (1906) 247.
39 Carrigan v. Redwood, 30 N. Z. L. R. 244 (1910).
40 Nelan v. Downes, 23 C. L. R. 546.
41 Bourne v. Keane, *supra* note 3. GODEFROI ON TRUSTS, 5th ed. (1927), p. 186 states that such bequests ought to have been held valid since 1829.
42 Re Zeagman, *supra* note 32.

uniform rule on this subject today, it appears that the law is progressing towards the true doctrine. Proof of this trend is indicated by the overwhelming weight of authority to the effect that a bequest for Masses is for a charitable use.[43]

John W. Curran.

De Paul University, College of Law.

The following sources present various aspects of the bequest for Masses. A few of the cases and treatises and articles on the subject for ready reference have been included.

DECISIONS

ALABAMA: Festorazzi v. St. Joseph's Catholic Church, 104 Ala. 327, 18 So. 394, 25 L. R. A. 360 (1894). (A bequest for Masses was held not to be within the charitable or private trust categories.)

CALIFORNIA: In re Lennon's Estate, 152 Cal. 327, 92 Pac. 870, 125 Am. St. Rep. 58, 14 Ann. Cas. 1024 (1907); In re Hamilton's Estate, 181 Cal. 758, 186 Pac. 587 (1919).

IOWA: Moran v. Moran, 104 Ia. 216, 73 N. W. 617, 39 L. R. A. 204, 65 Am. St. Rep. 443 (1897); Wilmes v. Tiernay, 187 Ia. 390, 174 N. W. 271 (1919).

ILLINOIS: Kehoe v. Kehoe, Cook Co. C. C. (Ill.) 22 A. L. R. m. s. 656 (1871); Hoeffer v. Clogan, 171 Ill. 462, 49 N. E. 527, 40 L. R. A. 730, 63 Am. St. Rep. 241 (1898); Gilmore v. Lee, 237 Ill. 402, 86 N. E. 568, 127

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43 In O'Hanlon v. Logue, *supra* note 38, Pallas, C. B. Said: The Court "must ascertain the spiritual efficacy according to the doctrines of the religion in question: and if, according to those doctrines, that divine service does result in public benefit, either temporal or spiritual, the act must in law, be deemed charitable."

(It was not within the purview of this article to consider restriction on charitable gifts, that is as to the time the instrument must be executed before death, the amount that may be given and the amount that a charity may receive. The writer will be pleased to receive any suggestions for the purpose of considering them in reference to another article on other aspects of this subject now being prepared).

Am. St. Rep. 330 (1908); Burke v. Burke, 259 Ill. 262, 102 N. E. 293 (1913).

INDIANA: Ackerman v. Fichter, 179 Ind. 392, 101 N. E. 493, 46 L. R. A. (N. S.) 221, Ann. Cas. 1915D, 1117 (1913).

KANSAS: Harrison v. Brophy, 59 Kan. 1, 51 P. 883, 40 L. R. A. 721 (1898).

KENTUCKY: Coleman v. O'Leary's Ex'rs, 114 Ky. 388, 70 S. W. 1068, 24 Ky. Law Rep. 1248 (1902); Obrecht v. Pujos, 206 Ky. 751, 268 S. W. 564 (1925).

MASSACHUSETTS: Ex parte Schouler, 134 Mass. 426 (1883).

MINNESOTA: In re Shanahan's Estate, 88 Minn. 202, 92 N. W. 948 (1903).

MISSOURI: Schmucker v. Reel, 61 Mo. 592 (1876); Strother v. Barrows, 246 Mo. 241, 151 S. W. 960 (1912).

NEW HAMPSHIRE: Webster v. Sughrow, 69 N. H. 380, 45 Atl. 139, 48 L. R. A. 100 (1898).

NEW JERSEY: Moran v. Kelley, 95 N. J. Eq. 380, Aff'd 96 N. J. Eq. 699, 126 Atl. 924 (1924); Chelsea Nat. Bank v. Our Lady Star of the Sea, Atlantic City, N. J., 105 N. J. Eq. 236, 147 Atl. 470 (1929).

NEW YORK: Gilman v. McArdle, 99 N. Y. 451, 2 N. E. 464 (1885); Holland v. Alcock, 108 N. Y. 312, 16 N. E. 305 (1888); In re Welch, 105 Misc. 27, 172 N. Y. S. 349 (1918); Morris v. Edwards, 227 N. Y. 141, 124 N. E. 724 (1919); In re Beck's Estate, 130 Misc. 765, 225 N. Y. S. 187 (1927); In re Brown's Will, 135 Misc. 611, 238 N. Y. S. 160 (1930); In re Werrick's Estate, 135 Misc. 876, 239 N. Y. S. 740 (1930).

PENNSYLVANIA: Appeal of Rhymer, 93 Pa. 142, 39 Am. Rep. 736 (1880); Appeal of Seibert, 18 Wkly. Notes Cas. 276, Pa. 6 Atl. 105 (1886); In re O'Donnell's Estate, 209 Pa. 63, 58 Atl. 120 (1904).

ENGLAND: Bourne v. Keane, A. C. 815 (1919).

NEW ZEALAND: Carrigan v. Redwood, 30 N. Z. L. R. 244 (1910).

AUSTRALIA: Nelan v. Downes, 23 C. L. R. 546 (1917).

IRELAND: O'Hanlon v. Logue, 1 Ir. Rep., Ch. Div. 247 (1906).

CANADA: Elmsley v. Madden, 18 Grant 386 (1871); Re Zeagman, 37 Ontario L. R. 536 (1916).

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BOGERT ON TRUSTS (1921), p. 208.

DILLON, BEQUESTS FOR MASSES, (1897).

GODEFROI, TRUSTS AND TRUSTEES, 5th ed., (1927), p. 185.

DUKE, LAW OF CHARITABLE USES, (1676), p. 82 Case 35.

JARMAN ON WILLS, 7th ed., (1930), Vol. 1, p. 195.

LEWIN ON TRUSTS, 13th ed., (1928), p. 116.

MAITLAND ON EQUITY, (1920), pp. 52, 62.

PAGE ON WILLS, 2nd ed., (1926), par. 1075, p. 1757.

PERRY ON TRUSTS AND TRUSTEES, 7th ed., (1929), Vol. 2, par. 715, p. 1218.

REMSEN, WILLS AND TRUSTS, 2nd ed., (1926), par. 1075, p. 1757.

THEOBALD ON WILLS, 8th ed., (1927), p. 398.

WOYWOOD, A PRACTICAL COMMENTARY ON CODE OF CANON LAW, 2nd rev. ed., Vol. 1, Tit. 711, p. 380.

ZOLLMAN, AMERICAN LAW OF CHARITIES, (1924), pp. 177, 568.

TYSSEN, THE LAW OF CHARITABLE BEQUESTS, 2nd ed., (1921), pp. 5, 82, 99.

BOYLE, LAW OF CHARITIES, (1837), pp. 272, 275.

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Trusts for Pious Uses, 28 ALBANY L. J. 386 (1883).

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