The City of Philadelphia,

vs.

GIRARD, et al.

ARGUMENT OF

F. CARROLL BREWSTER, Esq., *City Solicitor*,

BEFORE THE

SUPREME COURT,

MAY 22d, 1863.

THIRD EDITION.

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MAY IT PLEASE YOUR HONORS:—

This case is presented here for argument upon a writ of error to the Court of Common Pleas of Schuylkill county. In that Court the heirs of Stephen Girard brought an action of ejectment to recover the possession of certain valuable tracts of coal land. They obtained a judgment below, and the city of Philadelphia has sued out this writ of error. Statement of the case.

The points for discussion here arise upon exceptions to the rulings of the learned Judge, before whom the cause was tried, in his construction of the will of Mr. Girard, through whom both parties to this controversy claim title —the plaintiffs as his heirs at law, the city as his devisees.

Mr. Girard was for many years preceding his death, one of the most active merchants of this city. By persevering efforts, joined with keen foresight and habitual prudence, he was enabled to amass a princely fortune. It was most aptly remarked of him by Mr. Horace Binney, (in an argument before the Supreme Court of the United States, which must ever stand as a monument of its author's fame,) "that "the influence of Mr. Girard's life upon a solitary man, "might have ended at last without surprising us in the "death of all the social affections and in a sullen intestacy "distinguishing nothing by his remembrance, from loving "nothing that he left behind him." But from this imputation, Mr. Binney rescues Mr. Girard's fame, by an analysis of the will, which shows the testator to have been mindful of every claim and claimant upon his bounty or his love. Reference to the testator.

His benevolence.

Your Honors will perceive that this will opens with a bequest to the Pennsylvania Hospital of $30,000; then he gives liberty and future support to his slave; then he endows the "Institution for the Deaf and Dumb," the "Orphan Asylum," the "Public Schools;" then a fund is provided "to purchase fuel for poor white house-keepers "and room-keepers of good character;" and a school is founded.

From these matters of public concern, the testator turns to those which, from his pursuits and associations, might be presumed to be nearer to his heart. He gives liberally to the poor masters of ships, their widows and children, and to his Masonic brethren. Then his next of kin—these very plaintiffs are all remembered with bequests of $140,000 in money, and the whole of his real estate in France. All of this they received, besides lands of which it was decided Mr. Girard had died intestate, and which were then worth $60,000. (4 RAWLE, 323, and 1 WHARTON, 490.)

The plaintiffs enriched.

The plaintiffs' first attack upon the will.

Not content with this, the heirs at law have been persistent in their efforts to wrest the residuary estate from the city. They first filed a bill on the Equity side of the Circuit Court of the United States for the Eastern District of Pennsylvania, to October Sessions, 1836. In this proceeding they divided their forces by making two of their number complainants, and the others they named as defendants along with the city and the executors of the will. They contended that the trusts for the Orphan College—which are now before this Court for decision—were void. They could then have assigned the reasons now urged. They preferred other objections, but the *point* presented by them was then as now, that Mr. Girard had died intestate as to the residuary estate. Their argument was directed to these points. That the city could not take by devise—that she could not act as trustee—and that the trusts were indefinite and incapable of execution. They based upon these allegations a prayer for the whole property, including of course, the land now in dispute. The

answers of the city denied all the equity of the bill, and maintained the validity of the trusts. History of that suit.

The executors pleaded the pendency of the settlement of the personalty in the Orphans' Court. The heirs at law named as defendants, of course, admitted the whole bill. An amended bill praying for further discovery and a bill of revivor, to substitute certain representatives of a complainant who died pending the suit, were filed in the progress of the cause, which finally came on for argument before Mr. Justice Baldwin, at April Sessions, 1841. The complainants' counsel declined to argue the case, the bill was dismissed and an appeal taken to the Supreme Court at Washington, where the case was twice elaborately and ably argued, and finally decided by a unanimous Court in favor of the city. (Vide 2 HOWARD, 127.) Decided in favor of the city.

One would naturally suppose that this contest, which embraced or afforded opportunity of presenting every available objection to the will, would have quieted the title. The heirs, however, upon the passage of the law consolidating the old city and its districts, filed their second bill in the Circuit Court of the United States for this district, and therein presented their claim anew, upon the allegation that the Consolidation Law had annihilated the trustee and the trusts. In this case they had again every opportunity afforded to them which the law could supply of attacking this will. They were fully and patiently heard and their bill dismissed. The learned opinion of Mr. Justice Grier is to be found at page 311 of our Paper Book; so complete and unanswerable was his logic, that the complainants did not appeal from the decision. As a last resort the present action of ejectment was brought in a neighboring county nearly thirty years after Mr. Girard's death. Second suit brought. Second decision against the plaintiffs. This suit brought nearly 30 years after Girard's death.

Having thus hurriedly given your Honors a history of the testator and of the suits which have been brought to avoid the trusts created by his will, I come to the ques-

tions presented by this record for our discussion and your decision.

The question here.

The argument on both sides will be directed to the determination of the proper construction to be given to certain clauses in the will.

It will only be necessary for you to consider four out of the twenty-six sections of this document.

Sketch of the will.

The first eighteen clauses contain the bequests I have adverted to—in which he generously provides for charitable associations, his family, friends, and dependents. The nineteenth section disposes of certain real estate in Louisiana, devising part thereof to the city of New Orleans, the remainder to be sold and the proceeds to be applied "to the "same uses and purposes" as directed "concerning the resi- "due of the personal estate."

The succeeding sections, numbered in the will from twenty to twenty-four inclusive, contain the devises and declare the trusts which are to be here considered; the twenty-fifth and twenty-sixth sections simply directing the manner of winding up his bank and appointing his executors.

The contested sections of the will.

The sections under review are to be found at pages 208 to 224 of our paper book. An analysis of them may assist the argument.

The 20th section opens with this touching explanation of the testator's motives.

"XX. *And whereas I have been for a long time impressed* "*with the importance of* EDUCATING THE POOR *and of placing* "*them by the early cultivation of their minds and the* DEVELOPE- "MENT OF THEIR MORAL PRINCIPLES *above the many tempta-* "*tions to which, through poverty and ignorance, they are exposed;* "*and I am* PARTICULARLY DESIROUS TO PROVIDE *for such a* "*number of poor* MALE WHITE ORPHAN CHILDREN, *as can be* "*trained in one institution a better education as well as a more* "*comfortable maintenance than they usually receive from the ap-* "*plication of the public funds: and whereas, together with the object*

"*just adverted to, I have* SINCERELY AT HEART THE WELFARE
"OF THE CITY OF PHILADELPHIA, *and as a part of it, am desir-*
"*ous to improve the neighborhood of the river Delaware, so that the*
"*health of the citizens may be promoted and preserved, and that*
"*the eastern part of the city may be made to correspond better*
"*with the interior. Now I do give, devise and bequeath all the*
"*residue and remainder of my real and personal estate of every*
"*sort and kind wheresoever situate, (the real estate in Pennsyl-*
"*vania charged as aforesaid,) unto the Mayor, Aldermen and*
"*Citizens of Philadelphia, their successors and assigns in trust*
"*to and for the several uses, intents and purposes hereinafter*
"*mentioned and declared of and concerning the same, that is to*
"*say, so far as regards my real estate in Pennsylvania, in trust,*
"*that no part thereof shall ever be sold or alienated by the said*
"*Mayor, Aldermen and Citizens of Philadelphia or their suc-*
"*cessors, but the same shall forever thereafter be let from time*
"*to time, to good tenants, at yearly or other rents, and upon*
"*leases in possession not exceeding five years from the com-*
"*mencement thereof; and that the rents, issues and profits arising*
"*therefrom, shall be applied towards keeping that part of the*
"*said real estate situate in the City and Liberties of Philadel-*
"*phia, constantly in good repair, (parts elsewhere situate to be*
"*kept in repair by the tenants thereof respectively,) and towards*
"*improving the same whenever necessary, by erecting new buil-*
"*dings, and that the nett residue (after paying the several*
"*annuities herein before provided for) be applied to the same*
"*uses and purposes as are herein declared of and concerning*
"*the residue of my personal estate.*"

I have quoted his words at length for I have felt that no mere statement of their substance could do them justice, and because it has occurred to me in reading and re-reading this will, that no man could furnish a more complete answer to all arguments against it than that contained in the few simple but eloquent words I have quoted.

To those who are seeking to destroy the fabric of a trust reared upon the foundation of so pure a philanthropy and

Plaintiffs are seeking to destroy charities.

so noble a benevolence, it has seemed to me these opening sentences of the disputed clauses must sound with peculiar significance.

These claimants are warring against the following objects of this trust:

1. The "educating of poor white male orphans."

2. The "development of their moral principles."

3. The placing of them by these means "above the "many temptations to which they are exposed."

4. The "welfare of the City of Philadelphia."

5. The "promoting and preserving of the health of its "citizens."

The 21st section of the will.

The 21st Section appropriates so much of $2,000,000 of the residuary estate as may be necessary to the erection of a college on his square between Eleventh and Twelfth, and Chestnut and Market streets, and contains minute directions as to the building and its future organization and management. It is not necessary to refer to any of these clauses in detail, but the student of this case will not fail to notice the great care bestowed in the plan of the building itself to secure the health and comfort of its intended occupants, and in the directions as to their education and training to instil into their minds, to use his own language, "the purest principles of morality, so that on their entrance "into active life they may, from inclination and habit, "evince benevolence towards their fellow creatures, and a "love of truth, sobriety and industry."

A codicil to the will changed the location of the college to the lot on which it now stands.

The 22d section of the will.,

The 22d Section appropriates the income of $500,000, to the improvement of Delaware Avenue; the removal of frame buildings; the widening of Water street; the distri-

bution of the Schuylkill water "to secure the safety, health "and comfort of the citizens."

The 23d Section donates $300,000, to the Commonwealth of Pennsylvania, "for the purpose of internal improve- "ments by canal navigation," to be paid on the passage of certain laws by the Legislature.

The 24th and last Section under consideration provides thus:

The 24th section of the will.

"As it regards the remainder of said residue of my per- "sonal estate in trust to invest the same in good securities, "and in like manner to invest the interest and income "thereof from time to time, so that the whole shall form "a permanent fund, and to apply the income of the said "fund."

1st. "To the further improvement and maintenance of "the college."

2d. "To enable the city to provide more effectually for "the security of persons and property" in the city "by a "competent police."

3d. "To enable the corporation to improve the city "property and the general appearance of the city itself, and "in effect to diminish the burden of taxation now most "oppressive, especially on those who are the least able to "bear it."

"To all which objects the prosperity of the city and the "health and comfort of its inhabitants I devote the said "fund as aforesaid, *and direct the income thereof to be applied* "*yearly and every year forever*, after providing for the college "as hereinbefore directed as my primary object."

Then follows a direction appropriating certain funds to the State, if the City "knowingly and wilfully violated the "conditions of the will," and to the United States if the State failed to "apply the bequest to the purposes men- "tioned."

And the section concludes with the conditions,

1st. That none of the monies shall be applied "to any other purposes than those mentioned."

2d. That "separate accounts" shall be kept.

3d. That the City "render a detailed account annually to the Legislature," and submit all books, &c., to a committee of the Legislature for examination whenever required, and

4th. That the city shall also publish in January annually in two or more newspapers of Philadelphia, "a concise, but plain account of the state of the trusts," &c.

The object of the will lawful.

It is submitted, that after a most searching perusal of these sections, it is impossible to discover any provision which is in derogation of the law.

The good of his fellow-man; the welfare of the City and State of his adoption; the diffusion of knowledge; the lightening of the burdens of taxation; the promotion of the health and prosperity of a city and its inhabitants are surely objects which would call rather for the approval than the condemnation of courts.

Let us see whether those who impugn the motives of their kinsman, whilst they attack his will, have any foundation in the law for their objections.

What was and is their exception to this devise?

The plaintiffs' objections to the will.

It is to be found in the 4th point presented by them to the learned Judge in the Court below, which received his affirmative answer, coupled with the positive instruction "that upon the evidence the plaintiffs are entitled to re-"cover." (p. 126.)

This point is in these words:

4. "That the devise in trust to apply the rents of the "real estate in Pennsylvania, first to the erection of new "buildings upon so much thereof as is situate in the City "and Liberties of Philadelphia, from time to time as the "same may be necessary, has no limitation as to time when "such piling up of capital by the accumulation as aforesaid "is to cease, but the same may continue beyond the period

"fixed for the vesting of an executionary limitation, and is "therefore void."

The clause referred to in this point is to be found in the 20th section of the will, and has been already quoted at length.

The point does not correctly represent the will. It presents its objections thus:

The objections do not fairly represent the will.

1st. "That the devise is in trust to apply the rents *first* "to the erection of new buildings."

This is not so in point of fact. The words of the will are:

"In trust, that the rents arising therefrom shall be ap- "plied *towards keeping* that part of the said real estate "situate in the city and Liberties of Philadelphia, *con-* "*stantly in good repair*, and towards improving the same "*whenever necessary* by erecting new buildings."

The "*first*" object, therefore, is the repair of the buildings—the erection of new buildings "whenever necessary," is the second purpose.

The second and main objection presented by the heirs appears to be:

"That the devise has no limitation as to time when such "piling up of capital by the accumulation is to cease." In effect, this objection to the will is that it provides for "an accumulation which has no limitation," and that the devise "is therefore void."

The plain reading of the will would be a sufficient answer to these objections.

The will answers the objections.

It provides for no "accumulation." The word itself is not used, and such thing is not directed.

A trust, devoting the rent of a house to a charity, is surely not void, because the testator directs what the Court of Chancery would order to be done, if he omitted it, viz.: that the house shall be "repaired," or that "whenever necessary" a new building shall be erected.

And yet that is the whole of this case. It is submitted

that the argument might rest here. No principle of the law is violated by either of these directions—no authority has been or can be cited to impugn them, and they are the mere directions which the necessities of such a trust would require. The property would cease to produce any rent if not repaired or rebuilt "when necessary," and a Chancellor would direct all this, even if the testator had omitted it.

Amount at stake.

A large amount is however, involved in this controversy. "Eight thousand five hundred acres" are demanded by this writ, and it is not to be concealed from us, that valuable as are the interests at stake in this suit, they are almost trifling when compared with the enormous amount of property the ultimate disposition of which is to be affected by your judgment.

If the objections here presented by these heirs at law of Mr. Girard should prevail, there is nothing to prevent them from wresting from the city the whole of this valuable property, estimated at many millions of dollars. Nor would this loss, though very grievous, be anything compared with the results to the dependents upon this trust. Under the able superintendence of its present presiding officer, Henry W. Arey, Esq., the Girard College is now fostering and educating five hundred orphans, and it annually graduates sixty scholars. Many of those who have passed through its walls have become distinguished in the arts and sciences, and all of them have been made useful members of society. This great blessing to the present and future ages depends upon the result of this case, and your Honors, I am sure, will not regard me as prolix, if, in view of the magnitude of this issue, I advance a few steps further than the mere threshold of argument.

I submit then, in support of this will, and in answer to my opponents' objections, the following

Points presented by the city.

PROPOSITIONS,

as containing the law applicable to this case:

I. That the devise in question provides for no indefinite accumulation, and is not void.

II. That the doctrine against perpetuities has no application to this case.

On the first point the language of the will would hardly seem to admit of doubt. Let us consider—

No indefinite accumulation provided for.

1. The residue of the personalty.

2. The rents of the realty.

As to the first (the personalty,) the direction is (p. 223,) "to invest so that the whole shall form a *permanent* fund, and to *apply* the income, first, to the College contingently; second, to the city for police; third, in diminution of taxation." This would hardly create an indefinite accumulation.

1st. The fund is to be "*permanent*"—that is fixed, invariable—certainly the opposite of "indefinite" as to amount.

2d. The income is to be *applied* "*yearly and every year* forever," to the designated purposes. How, then, can it accumulate?

Wants to be supplied are annual.

The wants to be supplied were annual stated necessities. The pay of a "competent police."

The "improvement of the general appearance of the city."

The "diminution of the burden of taxation," were each and all objects which would annually and statedly demand all the income.

Expenditure commenced at Mr. Girard's death.

These objects were to be supplied at once. "Yearly and every year forever" after his death, this income was to be so applied.

The idea then, that this distribution was not to begin at once, but was to be postponed until some indefinite accumulation could be made, is as repugnant to the clear, common sense reading of this will as it is to the well-known character of the testator.

"To provide more effectually than they *now* do."

"To diminish the burden of taxation, *now* most oppres-
"sive,"—

—are the objects of these trusts. Their language refutes the argument of "indefinite accumulation."

Now, 2d. As to the rents and profits of the realty.

The rents not to be accumulated.

They are not to be invested or accumulated. They are to be applied—

1. To keeping in repair the properties.

2. To erecting new buildings "whenever necessary." This is not for the purpose of an accumulation, but to supply a necessity. If a house fell down, or should be pulled down, or whenever *necessary*, a new building was to be erected.

3. The nett residue is to "be applied to the same uses as "declared of the residue of the personal estate."

And this we have already considered. The whole difficulty would seem to have arisen from the use of these words in the twenty-fourth section, "to invest the interest "and income thereof from time to time, so that the whole "may form a permanent fund."

Proper construction of the objectionable words.

What do those words, "to invest the interest from time "to time" mean? This is the usual direction found in all wills directing investments and applications of investments. A small balance may remain on hand from the year's expenditures. Is that to be kept idle? Again, the will must be construed as a whole, and we must consider the condition of the estate at the time of the testator's death.

He owned a large and valuable realty, and he was the head of a prosperous bank. The bank was to be wound up as directed by the twenty-fifth section—not by his executors but by assignees named in a deed, which was to take effect the day before his death. His declared object in making this arrangement was to close the concerns of the

The object simply was to wind up the bank first.

bank without "blending them with his general estate." The trustees of the bank were to pay over from "time to "time" to the executors the balances in their hands, "as "the capital shall be received and shall not be wanted for "the discharge of the debts."

It is plain that this would, in the very nature of the case, require many years, and doubtless the testator had made this arrangement, in order that the trustees of the bank might not be coerced into a speedy settlement as executors might have been through the process of the Orphans' Court.

During this time—the rents of the realty would be the only source of supply for the trusts—the residue of the personalty would be uncertain, and increasing in amount by the "interest and income" derived from the bank and other sources. When the bank should be finally closed, then the trusts would have two sources of supply, the rents as before and the residue of the personalty, which was then to form "a permanent fund," and the income of the *said fund* was then to be "applied yearly and every year for "ever," as directed by the will.

It is submitted that this furnishes an interpretation which makes the various clauses of the will harmonious; which violates no part of the will, yet gives effect to the whole, and which does justice alike to the memory and the will of the testator.

This interpretation harmonizes the whole will.

To adopt the opposite construction, is to strike out at least three passages of the will in order to give effect to a strained interpretation of a single clause.

Again, the twenty-first section appropriates, "of the *resi-* "*due of the personal estate two millions of dollars, part thereof* "*to erect, as soon as practicably may be,*" the College; yet, according to the argument of the plaintiff below, not a dollar of the principal, or even of the income, was ever to be expended, but only the income of the income.

Further illustration of this view.

These views were presented by Mr. Binney, in the case of Vidal *v.* The City, already referred to and were enforced

This was Mr. Binney's construction of the will.

by him in language much more powerful than any that can now be employed in the mere repetition of his argument. He says:—

"The rents and profits of the real estate are not to be "invested at all. They are to be applied to the same uses "and purposes to which the residue of the personal estate "is to be applied; and the application of the permanent "fund of that residue is to be the *expenditure* of its income. "The rents are to be applied for police and taxation, with- "out any investment, after providing for the college as "hereinbefore directed. This is the key to the clause of "accumulation. The real estate was a permanent fund in "itself. Its rents and profits were applicable immediately. "The personal estate was to be for a year or more in a "course of settlement in his bank of between three and "four millions, to be wound up and from time to time "invested by the Trustees—in his outstanding shipments "and adventures of merchandise, to be sold and converted "into money by his executors, and in the various items of "his vast personal estate. While in this progress though "transferred from time to time to the city, he meant that it "should not be consumed, but that the interests and income "should from time to time be invested, until the fund of "the personalty became permanently ascertained and estab- "lished, in the same manner as the realty. When this "should be concluded application of the income of the per- "sonal was to begin."

"Such is the interpretation that has always been given "to the will by the city since the testator's death, and such "is its true interpretation. It is imputing to the testator "more than an absurdity, to say he meant indefinite accu- "mulation for years and centuries, though not a dollar of "the income may ever be wanted for further increase of "buildings or orphans. It is imputing to him a gross defect "of character, to which he was as much a stranger as any "man that ever lived, the *hypocrisy* of appearing to provide "for the city, while he was in reality ordering an inexor-

" able accumulation for a college that might never want a " dollar of it."

"If this was his design, why set apart two millions in " the first instance? The argument of the complainants " sets apart the whole residue, real and personal, *in secula* " *seculorum*, for the same purposes as the two millions. " That special appropriation, on the contrary, is the clearest " proof imaginable of the testator's present, instant purpose, " of liberating the rest of his estate, until the increase of " the college should require it, and to benefit the city by " the immediate income of the residue, without prejudicing " at his death, or at any future day the confessedly nearer " and dearer purpose of educating and maintaining the " fatherless poor."

"This construction of the clause of accumulation is sub- " mitted with great confidence."

After establishing this as the true interpretation of the will, Mr. Binney submits an unanswerable argument in support of his position that if the trusts for the college were void, the city would still take the residue for her own purposes.

The doctrine of perpetuities has no application to this will.

II. My second position is, that the doctrine of perpetuities has no application to this case.

This will creates a trust for charities.

MR. JUSTICE STORY said, (2 Howard 191.) "That the trusts are of an eleemosynary nature and charitable uses in a judicial sense, *we entertain no doubt.*"

Its trusts are charities.

We ought therefore to be spared the necessity of arguing this point, but as the claimants deny that there is any thing in this will except a "brazen perpetuity," we are compelled to discuss the question. "Charities" or the *piæ causæ* of the churchmen received a liberal interpretation. Mr. Reeves (History of the English Law, vol. 4, p. 80,) quoting from Lyndwood tells us:—

Examples of charities.

"That any person who was an object of compassion; *an* " *orphan*, widow or pauper destitute of support from him-

" self; those rendered infirm by disease or age, being also " poor; all such were objects that came under the descrip- " tion of *piæ causæ*. They also reckoned under the same " head, *the watching of a city, the repairing of bridges, roads,* " *walls, and ditches of a city* or castle, and the like, particu- " larly in cases of necessity."

And Coke speaks of a tenure *pro opere charitatis* " to bind a poor boy apprentice." (*Co. Litt.* 149, *a.*) The English Lawyer's Inns of court are themselves charities and Mr. Shelford (on Mortmain, p. 33,) tells us of their contrivance to preserve the succession to their lands for centuries, although not incorporated.

And beginning far back with the case of the Knights Templar referred to by Mr. Boyle (on Charities, 267.) I could, if time permitted, give scores of cases in which charities like those established in this will have received the favor and countenance of English and American courts.

Charities could be enforced before Stat. of Elizabeth.

Sir Francis Moor who penned the Stat. of 43 Eliz. Ch. 4, tells us, that these charities were enforceable " where the prejudice was common or general," even before the passage of the protecting law of 39 Eliz. Ch. 6, or his Act of 43 Eliz. Ch. 4. And Lord Coke tells us in arguing Porter's Case, that " *no time* was so barbarous as to abolish learning, " nor so uncharitable as to prohibit relieving the poor."

As far back as 1381 we find a will appropriating the revenue of land to a charity.

Sir John Philpot who was Lord Mayor of London, nearly five centuries ago, devoted the rent of his land to this trust—

"I give to five poor men in honor of the five wounds " of Jesus Christ and to five impotent and poor women, in " honor of the five joys of the Virgin Mary, one penny each " per day." After the death of his wife the trust was to be administered by the Mayor of the City of London for the time being.

For this citation and many other items of interest upon the subject of 'Charitable uses,' the profession is indebted

to Professor Dwight, the learned and able writer of a series of articles in the Law Register of April, May, and June, 1862. He quotes an authority in the course of his argument which always of weight seems to apply with great force here. He tells us that Lord Bacon in an address to the Committees of Conference in the Lords and Commons, spoke thus of our science—

"The law of England is not insociable, but is advised by "other sciences; in words, by grammarians; in matrimony "by civilians; in minerals, by natural philosophers; in "*uses* by *moral philosophers*."

In order, however, that this argument may not be interrupted by needless citations from the Reports, I have collected these cases in an Appendix, which will be submitted herewith. A reference to them will demonstrate—if such reference is at all necessary—that the trusts of Stephen Girard's will are charities in the legal as well as the popular sense of the word, and that the authorities of the mother country, of Pennsylvania and her sister States, have been unbroken in sustaining the declaration of the Apostle that "Charity never faileth."

I have thus far endeavored to show that the objections taken to the will in the point affirmed by the Court below are unfounded in fact, and that the great leading object of these trusts is the foundation of that which the law protects as charity. It only remains for me to show that no doctrine of perpetuity is applicable for the destruction of the trust.

Doctrine of perpetuities considered.

The declamatory definition of a Perpetuity, "a thing "odious in law and destructive to the Commonwealth," (Vern. 164,) would hardly apply to this charity.

And Mr. Lewis (On Perpetuity, p. 689,) would seem to answer, in a very few words, the seventy printed pages of argument which we have been favored with on the other side. He tells us "This, it is obvious is the characteristic "of alienations to *charitable uses*, it is in the very nature of "such dispositions to withdraw the subject of them from

" every kind of circulation since a contrary course defeats " their manifest object, viz.: the sustentation of the chari- " table or religious institutions, or the carrying out in " *continuity* of the benevolent purposes and designs in favor " of which they are made. Land thus dedicated to the " service of charity and religion is, therefore, practically " inalienable."

The reason and spirit of the rule against perpetuities do not apply to Charities.

The moment we look at the " reason and spirit" of the rule excluding perpetuities, we must see how it fails to apply as against a charity.

A perpetuity tends "to destroy the Commonwealth." (Vern. 164.) By it, Mr. Jarman tells us, (Wills, 219, 220,) " The free and active circulation of property is obstructed, " the *improvement* of *land checked*," *&c.* " Indeed," he continues, "such a state of things would be utterly incon- " sistent with national prosperity."

And Mr. Lewis (On Perpetuities, p. 2,) remarks, " This " *jus disponendi*, however surely guaranteed by the laws of " a country, would, in the end, serve little purpose, were it " open to an individual to exercise his right of disposal in " a manner that would *deprive the Commonwealth* forever, or " for a long period of time, of *all practical benefit from* the " property in his possession. The political necessity that " conferred on the owners of property the absolute right " to dispose of the whole or a portion of it at their pleasure, " would then forbid their exercise of that power, in a man- " ner fatal to its enjoyment in all future time, or prejudicial " to the general interests of society. But prejudicial, the " exercise of that right, assuredly is, when the property " which an individual may have amassed by successful in- " dustry, or have acquired by fortune, thereby becomes (as " it were) a stagnant possession, and, for all purposes of " the Commonwealth, useless."

And to the same effect are all the writers upon the subject. Without multiplying references, it is clear that the mischief to be prevented by the rule is,

1st. The check upon the "improvement of land."

2d. "Depriving the Commonwealth of all practical benefit "from the property."

3d. Making the property "a stagnant possession, and for "all purposes of the Commonwealth useless."

Is not the will itself again my answer to its assailants? Where are such unlawful purposes to be found in its trusts? The testator tells us that his objects are the education of poor orphans—the lightening of the burdens of taxation—the prosperity of the city, (not its destruction,) and the health and comfort of its inhabitants.

Now, I contend—

I. That history proves this is a correct interpretation of the law. This is proved by history.

II. That the people have affirmed it through their Legislatures.

III. That Courts of justice have so declared it.

And first, let us refer to history.

1. The statutes of Mortmain have never been applied to charities. MR. CRUISE (vol. 4, p. 25,) tells us: "In consequence of the several statutes of Mortmain, all corporations have for a long time been incapable of taking lands by deed, without license from the crown. But as these statutes *did not extend to charitable uses*, lands might still be given for the maintenance of a school, hospital, or other purpose of that nature."

2. We find that men have by a common consent acted upon this interpretation of the law.

Professor Dwight, quoting from the 6th Report of Commissioners of Charities, p. 197, tells us of Barton's will, in 1434, and that two hundred and fifty charities in London alone, were endowed before 1600, most of them still existing.

Dr. Knight, in his Life of Dean Colet, says: "The noble

" impulse of Christian charity was one of the providential " ways and means for bringing about the blessed Reforma- " tion; and it is therefore observable that *within thirty years* " *before it*, there were more grammar schools erected and " endowed in England, than had been in those hundred " years preceding. And after the Reformation was estab- " lished, the piety and charity of Protestants ran so fast in " this channel that in the next age there wanted rather a " regulation of grammar schools, than an increase of them."

Coming to later times, we have the Smithsonian legacy—a noble bequest by an Englishman to the United States for general purposes of education.

The history of Pennsylvania, to her honor be it said, is full of these charities. Our law books give us a few of them. We find them scattered through our Reports. In 1798, (ADDISON, 362;) in 1820, (6 S. & R., 211;) in 1827, (17 S. & R., 89;) in 1829, (1 PENNA. REP., 49;) in 1832, (1 WATTS, 218;) in 1834, (3 WATTS, 440;) in 1836, (5 WATTS, 494;) in 1843, (6 WATTS & SER., 218;) in 1847, (6 BARR, 86;) same year, (6 BARR, 201;) in 1848, (8 BARR, 327; 9 BARR, 433; 10 BARR, 23;) in 1855, (12 HARRIS, 474; (in 1857, (4 CASEY, 23;) in 1858, (6 CASEY, 425 and 437; in 1860, (11 CASEY, 316.)

These are outside of Philadelphia. Mr. Binney has given a most interesting history of the charities of our city. I shall not mar it by attempting to abridge it. I shall only refer to the institutions and the dates in support of my argument from history, and shall thus pass to other points having possibly a more direct bearing upon this question. The Friends' Almshouse has existed since 1714. The Baptist Society held a charitable bequest for nearly a century before they were incorporated. Dr. Kearsley, in 1769, endowed the Christ Church Hospital. Christ Church and St. Peter's hold eight charities. The city has been made legatee in trust, for numerous charities by the wills of Dr. Franklin, Kirkpatrick, Blakely, Scott, and Dr. Boudinot. We have the Wills Hospital for the indigent

lame and blind; the legacies of Esther Waters and George Emlen for fuel to the poor; James Dutton's for food, clothing, &c.; Archibald Thompson's for bread; William Carter's and Bernard McMahon's for relief of the poor generally.

Surely, all this history teaches us some lesson in favor of charitable perpetuties.

I pass now to an argument of more weight than the mere existence of charitable wills, or even universal acquiescence in them. I come to the second point, and propose to show—

II. That the people have not merely acquiesced in, but have affirmed, through their Legislatures, the principle for which I am contending. This train of thought will, like its predecessor, carry us far back.

It is proved by the Legislation of England and the U. S.

Five centuries ago, the English Parliament, "for the health of their souls and the discharge of their consciences," enacted that the lands held by the Order of Knights Templar, which had been dissolved, "should not escheat," but that they should be devoted forever to the pious uses for which they were originally granted. (1 STATUTES OF THE REALM, 195; 17 ED. II., STAT. 2, DE TERRIS TEMPLAR, A. D. 1324.)

From that time numerous laws have been enacted in England in aid of charitable perpetuities. The most famous in the history of the law, are 39 ELIZ., CH. 6; 43 ELIZ., CH. 4.

I need not pause to discuss any of these laws. Their existence is my argument.

Turning to our own State, we find in the Constitution of 1776, it is thus written: "All religious societies or "bodies of men heretofore united or incorporated, for the "advancement of religion and learning, *or for other pious* "*and charitable purposes shall be encouraged and protected* in "the enjoyment of the privileges, immunities, and *estates* "which they were accustomed to enjoy, or could of right "have enjoyed under the laws and former Constitution of

" this State." The same principle is incorporated in the Constitution of 1790, and in that of 1838.

Laws assisting a charity may be found in 3 Dall. State Laws, 46, 659.

I pass by other Legislation to notice that which ought to be conclusive of this question.

The trusts of this very will, enforced by Pennsylvania Legislation.

On the 24th of March, 1832, an Act of Assembly was approved which assumed these very trusts in this very will to be valid. It is to be found in P. L., 1832, p. 176. Its preamble contains these words: "Now, for the purpose " of enabling the Mayor, Aldermen, and Citizens of Phila- " delphia to effect the improvements contemplated by the " testator and to execute *in all other respects the trusts created* " *by his will.*"

The 11th section provides that no road or street shall be laid out through the college grounds, &c.

The same Legislature passed another law which was approved on the 4th day of April following, (P. L., 1832, p. 275,) by which the City Councils were authorized " to " provide by ordinance or otherwise for the election or " appointment of such officers and agents as they may " deem essential to the due execution of the duties *and* " *trusts* enjoined and created by the will of Stephen " Girard."

Surely that Legislature did not regard these trusts as " brazen perpetuities" or as " transgressive and void."

If legislative interpretation can establish any thing, these Acts must be taken as demonstrating that in the view of that General Assembly these trusts were perfectly valid and deserving of protection at the hands of the law.

Judge Story's opinion as to this.

Mr. Justice Story says, (2 Howard, 127,) "*No doubt* " can then be entertained, that the Legislature meant to " affirm the *entire validity* of these trusts and the *entire com-* " *petency* of the corporation to *take and hold* the property " devised *upon the trusts named in the will.*"

" It is true that this is not a judicial decision and enti- " tled to full weight and confidence as such. But it is a

" legislative exposition and confirmation, of the competency " of the corporation to take the property and execute the " trusts; and if those trusts were valid in point of law, the " Legislature would be estopped thereafter to contest the " competency of the corporation to take the property and " execute the trusts, either upon a *quo warranto* or any " other proceeding, by which it should seek to divest the " property and invest other trustees with the execution of " the trusts, upon the ground of any supposed incompe- " tency of the corporation. And if the trusts were in " themselves valid in point of law, it is plain that neither " the heirs of the testator, nor any other private persons, " could have any right to inquire into or contest the right " of the corporation to take the property, or to execute the " trusts; but this right would exclusively belong to the " State in its sovereign capacity, and in its sole discretion, " to inquire into and contest the same by a *quo warranto*, " or other proper judicial proceeding. In this view of the " matter, the recognition and confirmation of the devises " and trusts of the will by the Legislature, are of the highest " importance and potency."

The Act of Congress of Feb. 5, 1829, (U. S. Stat., page 2,978,) recognized the existence of a charitable perpetuity, and the Smithsonian Bequest Law is to the same effect.

May I not therefore be spared the necessity of further citations, to show the construction placed by Legislatures upon the Law of Charities. I pass now to the consideration of the third point.

III.—That Courts of Justice have uniformly sustained charities like those created by this will.

These trusts sustained by the Courts.

Here, too, I might be spared the necessity of citing authorities, for not a single case has been found by our opponents in which a Court, in any country, or in any age, has broken down a charity like this. It is a reproach to this Court, to say that in HILLYARD *vs.* MILLER, 10 BARR, 326, they decided such a devise to be void.

The ruling in HILLYARD *vs.* MILLER, does not apply to this will.

The Court say, (referring to the hospital) "The first "thing that strikes the mind in regard to this is, that the "contingency which was to give practical existence to this "secondary and subordinate charity, might never happen "and then a trust for indisputable accumulation would "remain to go on forever, founded on what is substantially "a loan office, in the garb of a charity, and essentially no "more so than a bank is a charity. The second is, that if "it did happen, it would not be certain that the disburse-"ments for it would keep down the general income.

"Is it certain that the farmers and mechanics would "cease to borrow while a dollar was to be lent? The "affirmative rests on conjecture, which is not a basis for "judicial determination. Besides, the time is referred to "the unlimited discretion of the Trustees, who might exe-"cute the Testator's direction according to their notion of "its expediency, or not at all. The records of this Court "show how reluctantly those obscure charities are admin-"istered. There was neither certainty nor probability that "the hospital would be erected, and to sustain the trust, it "was necessary to be absolutely certain."

In Miller's will, the charity was the remote object. To give anything to the hospital, there had to be *an accumulation beyond the applications for loans.* It had to be likely that the amount would remain. The amount must justify the undertaking, and mechanics must want employment. When all these contingencies were overcome, then the hospital might be founded. How needless then to contrast that will with Mr. Girard's. A host of cases might be cited, to the contrary of the doctrine contended for by our learned opponents. I have preferred attaching a synopsis of them in the Appendix to this Argument, and shall cite but a few of them here.

In GRIFFIN *vs.* GRAHAM, 1 HAWKS. (VA.) 96.

Moses Griffin's Will directed his executors to buy two

acres of land and erect on it a school for indigent scholars and to teach, clothe and maintain orphans therein.

His real and personal estate was to be considered a principal sum, and the issues and profits were to be used for the support of the school, and "*all interest arising from* "*money, shall be put out at interest again, and be deemed* "*principal,* and continue at interest, until it was deemed "sufficient for the Institution."

It was *Held*—THIS WILL CREATED no perpetuity.

THE STATE *vs.* GERARD, 2 IREDELL, EQ. 210, (N. C.)

Chas. Gerard's Will devised lands to the poor of Beaufort,—never to be sold—but rented and cultivated—to be managed by the Poor Wardens.

Held—The will did *not* vest the legal title in the Wardens, and they could not recover, but that a devise to the poor of a county is a charity allowed by law. That a Court of Equity could enforce it, and "*That the perpetuities* "*forbidden are estates settled for private uses, so as to be una-* "*lienable, and do not include public charities.*"

In McDONOUGH'S EX'RS. *vs.* MURDOCH, 15 HOWARD, 367.

All the rest, residue and remainder of the testator's estate, real and personal, was devised to the Mayor, Aldermen and inhabitants of New Orleans, and the Mayor, Aldermen and inhabitants of Baltimore, in equal proportions.

The property was to be charged with annuities.

These bequests were—

"For purpose of public utility, and especially for the "establishment of free schools in said cities and their "suburbs, * * * wherein the poor, *and the poor only* "of both sexes, of all classes and castes of color shall have "admittance, free of expense, for the purpose of being "instructed in the knowledge of the Lord, and in reading, "writing, arithmetic, history, geography, singing," &c., &c.

And to colonize free people of color.

To found an asylum of the poor of both sexes and all ages and castes of color.

For the relief of orphan boys.

To establish a school farm.

There was an unequivocal intent to *increase* his estate *after* his death.

A forfeiture was to occur, should the property be alienated, to the States of Louisiana and Maryland.

It was held by the Supreme Court of the United States, that the City of New Orleans was a corporation by law, and therefore had a right to receive this legacy for the purpose of exercising the powers given to establish public free schools, and that the heirs at law, who sued, could not recover.

PERIN *v.* CAREY, 24 HOWARD, 465.

Charles McMicken, of Cincinnati, Ohio, died in 1858, devising real and personal property to the City of Cincinnati, for the purpose of building and maintaiaing two colleges for the education of boys and girls.

In case of a surplus, it was to be applied to making additional buildings and to the support of poor white male and female orphans.

A suit was brought by bill to set aside the bequest.

Held—This will should stand.

That the doctrines founded on the 43 Eliz., have been adopted by the Courts of Ohio:

That the city being a corporation, could take:

That English statutes of Mortmain were never in force in the English colonies.

And, *That the provision that the city cannot alien—constitutes no perpetuity in the sense forbidden—but in one allowed by law.*

THOMPSON *v.* SWOPE, 12 HAR. 474, in 1855, was an ejectment for lands, devised by *Isaac Thompson*, of Huntingdon, to the Methodist Preachers' Aid Society of Baltimore and to The Missionary Society of the Methodist

Episcopal Church in New York, "to be disposed of as the "Managers of said Societies should think best," so that "the profits and interests arising therefrom be annually "appropriated to the objects of said societies for ever," for the "purpose of affording relief to itinerant ministers" and "their wives, widows and children, and for the education "of the latter."

LOWRIE, J., *Held*—That "The devise was not forbidden "by the policy or law of this State, and was valid, there "being no evidence in the case that the corporations, by "this devise, would have a greater income than by their "charters they were competent to possess."

In PRICE *v.* MAXWELL, 4 CAS., 23, (A. D. 1857,) a devise to a school, under the control of a particular religious denomination, and at which the particular views of the sect are to be taught, was declared to be a charity.

This was the legacy of Thomas Smith to the Friends' Boarding School, at West Town, Chester County.

The bequest failed under the Act of 1855.

LEWIS, C. J., *Held*—

A gift to a school does not cease to be for charitable uses, because religious instruction is combined in such school with that of a literary and scientific character, nor because its benefits extend alike to the rich and the poor. *Whatever is given for the love of God, or for the love of our neighbor*, in the catholic and universal sense, given from these motives and to these ends, *free from the stain of every thing that is personal, private or selfish, is a gift for charitable uses.*

CRESSON'S APPEAL, 6 CAS. 437, in 1858, arose upon devises of the late eminent and philanthropic Elliott Cresson.

STRONG, J., *Held*, that—The legacy to the Mayor and Councils of this city, in trust, as *a perpetual fund*, the income whereof is to be "annually forever expended in "planting and renewing shade trees, especially in situa-

" tions now exposing citizens to the heat of the sun," *was a good charitable bequest.*

The same ruling was applied to the bequests to the University of Pennsylvania, "to endow a professorship of the " Fine Arts."

To the Pennsylvania Agricultural Society, "to be ap- " plied towards the erection and support of an Agricul- " tural College within said State."

And, also, the bequest for the relief of poor and decayed merchants.

And in that case the learned Judge admitted parol evidence to show that the Pennsylvania State Agricultural Society and the Merchants' Fund, were the particular societies meant by the testator to be endowed.

As to the Application of the Surplus Rents.

" Where a testator has devised his estate to charitable " uses, and has pointed out the particular objects of his " bounty, the Court construe his intention imperatively " to be not only *in exclusion of his next of kin, but to the dis-* " *inheriting of his heir* at law."

" And they uniformly decree the surplus rents and " profits to the augmentation of the charities, upon the " ground, that, as the charity must have borne the loss, if " the value of the thing devised had decreased, it shall " enjoy the benefit of its increase."

" 1 COKE REP., p. 67, NOTE W. 1, BY EDITOR.

" CITING CASE OF THETFORD SCHOOL, 8 Co., 130.

" ARNOLD *vs.* THE ATT'Y GEN. SHOW. P. C. 22.

" ATT'Y GEN. *vs.* MAYOR OF COVENTRY, COLLES, P. C. 280.

" 2 BRO. C. P. 236.

" VERN. 397.

" ATT'Y GEN. *vs.* PRICE, 8 ATK. 109.

" ATT'Y GEN. *vs.* SMART, 1 VES. 72.

" ATT'Y GEN. *vs.* JOHNSON, AMBL. 190.

" ATT'Y GEN. *vs.* SPARKS, ID. 201.

" SHEPHERD *vs.* THE CORPORATION, 3 MAD. 320.

" And the Court will either increase the bounty limited " to the objects—

" ATT'Y GEN. *vs.* MINSHULL, 4 VES. 11.)

" Or if the fund is very considerable in proportion to the " objects, it will apply the surplus upon the principle of " *cy pres* for the benefit of the same objects, to purposes not " expressly pointed out by the will.

" THE BISHOP OF HEREFORD *vs.* ADAMS, 7 VES. 324.

" Or after providing for the maintenance of those already " established, will extend the bounty, by increasing the " number of objects of the same description with those " pointed out by the testator.

" ATT'Y GEN. *vs.* EARL OF WINCHELSEA, 3 BRO. C. C. " 373.

" ATT'Y GEN. *vs.* HABERDASHER'S CO. OR TURNER, 2 " VES. JR. 1.

" 4 BRO. C. C. 103.

" ATT'Y GEN. *vs.* HURST, 2 COX, 365.

" ATT'Y GEN. *vs.* WANSEY, 15 VES. 231.

" ATT'Y GEN. *vs.* THE COOPER'S CO. 19 ID. 187."

On the question of the effect of the acceptance by these heirs, of the devises under the will, and how far that act bars them here, and also upon the effect of the two decrees in favor of this will, I can add nothing to the forcible and able arguments of my colleague, Mr. Olmsted, in the paper book. Were we to argue through countless folios, could we say any thing more conclusive than these two sentences of Mr. Justice Grier, in his opinion upon the last bill filed by these heirs? (Pages 311, 313.)

" The bill *admits* this to be a *valid charity*. Now it is " admitted (for it has been so decided) that, till February, " 1854, the corporation was vested with a *complete title to the* " *whole residue* of the estate of Stephen Girard, subject to

" these charitable trusts, and *consequently at that date his* " *heirs at law had no right, title, or interest whatsoever in the* " *same.*"

" The case of Vidal *vs.* Girard (2 How., 127) has put an " end to any further controversy as to the validity of the " trusts and the power of the city to execute them."

I have, I believe, now touched upon all the points presented by this interesting case.

I have endeavored, feebly and imperfectly I fear, to rescue the memory of this testator and his will from the interested attacks upon them, presented at your bar. I have attempted to show that this will creates no indefinite accumulation, that the objection is not founded in fact, that the doctrine of perpetuities cannot destroy this charity, that all history, legislation, and judicial decision, are upon my side.

And why should they not be so? Would it not be a reproach to any people, that they discouraged learning or charity? Is it not a cheering thought that even in what we sometimes call the darkness of the Middle Ages, there shines out upon us the beacon-light of love on earth, and good will towards man? Is it not a matter of honest pride that, searching all history through, we find but one Sir William Berkley to tell us, "I thank God there are no " free schools, nor printing, and I hope we shall not have " these hundred years; for learning has brought disobedi- " ence and heresy and sects into the world; and printing " has divulged them, and libels against the best govern- " ment. God keep us from both!" And as our hearts sicken at this libel upon learning, do we not turn with sympathy to the noble address of our townsman, Mr. Gustavus Remak, a few months since, to the pupils in this very college. "The place where you are assembled," he tells them, "is calculated to create lofty and serious, " yet pleasing reflections. This institution emanated from " the exercise of the cardinal virtues of benevolence and " charity, and you are living evidences of what such

" virtues can effect. Such an institution commands the " respect of civilized and intelligent man."

May it please your Honors, the most important interests ever committed to the keeping of a Court are placed by Providence in your hands. It is needless to say, that your decision will be looked for by many with anxiety. To the citizens of Philadelphia this cause is of great moment—to the present, to future generations of orphans, it is full of interest.

Many a waiting heart will be gladdened by the announcement that the blessings of education and support are to be continued to the bereaved—many a hope will be crushed should it be told to us that these trusts have been destroyed.

It is my lot to set forth to you this day a blessing and a curse.

I earnestly supplicate in defence of the right, His blessing who has given to the world this law—

" Pure religion and undefiled before God and the Father " is this: to visit the fatherless and the widow in their " afflictions, and to keep himself unspotted from the world."

"Sell all that thou hast and distribute to the poor."

F. CARROLL BREWSTER,
CITY SOLICITOR.

APPENDIX.

The following have been held good charities:

A man may give lands, tenements or hereditaments to any person or persons, and their heirs, for the finding of a preacher.

Hob. 136; Com. Dig., Uses, N. 3; Bac. Abr., Char. Uses, C.

—the maintenance of a school.

—the relief and comfort of maimed soldiers.

Com. Dig., Uses, N. 2; Duke, 134.

—the sustenance of poor people.

—the reparation of churches.

—of highways.

—of bridges.

Com. Dig., Uses, N. 4.

—of causeways.

—for the discharging of poor inhabitants of a town of common charges.

Com. Dig., Uses, N. 10.

—for making of a stock for poor laborers in husbandry, and poor apprentices.

—and for the marriage of poor virgins;

—or for any other charitable uses.

Com. Dig., Uses, N. 7; Cro. Car., 525; Duke, 136.

With respect to what shall be deemed a charitable use, the Stat. 43 Eliz., C. 4, enacts that the commissioners shall inquire of the following uses as good and charitable, viz.:

—For relief of aged and impotent, and poor people.
—maintenance of sick and maimed soldiers.
—schools of learning.
—free schools.
—scholars in Universities.
—houses of Correction.
—For repairs of bridges.
—of ports and havens.
—of causeways.
—of churches.
—of sea banks.
—of highways.

VISCOUNT GORT *vs.* ATT'Y GEN'L, 6 Dow, 136.

—For education and preferment of orphans.
— marriage of poor maids.
— support and help of young tradesmen.
— handicraftsmen.
— persons decayed.
— redemption or relief of prisoners or captives.
— ease and aid of poor inhabitants.
— concerning payment of fifteenths.
— setting out of soldiers.
— and other taxes.

1 Co. R. 26, *a*, NOTE W, 1.

Other gifts, though not within the letter, have been held to come within the equity of the statute.

—As for
— the building of a hospital for poor people.

VAUGHAN *vs.* FENER, 2 VES. 187; DUKE, 109.

— to maintain a preaching minister.

POPH., 139; DUKE, 109; 1 VES., 321; NEWCOMB'S CASE, 14 VES., 1.

—To a Protestant dissenting chapel, Quakers or Baptists.

COOK'S CASE, 2 VES. 273; FOWLER'S CASE, 15 VES. 85.

—To maintain a schoolmaster.

FONBL. TR. EQ., 210.

—For building a sessions house for a city or county.
—Making a new, or repairing an old pulpit.
— buying pulpit cloth or cushion.
— setting up, or mending church bells.

DUKE, 109; TURNER *vs.* OGDEN, 1 COX, 316.

—For the establishment of a life-boat, if judged expedient by the trustees.

JOHNSTON *vs.* SWAN, 3 MOD. 457.

—To a minister to preach an annual sermon and keep a tombstone and inscription in repair, and to a corporation for keeping accounts thereof.

DUROUR *vs.* MOLTEUX, 1 VES. 3, N., AND SEE OTHER CASES.

Schedule of cases (Charities in Chancery) in time of Queen Elizabeth.

Founding a chantry in a church.

Finding three priests to sing daily.

Founding a hospital.

Founding a chapel of ease to a parish church, and a free school and almshouse.

A grammar school.

Land held from time immemorial for repairing the parish church of Lyndsel—

An annuity for paupers and a schoolmaster, charged on lands.

£400 invested for producing a yearly fund for the relief of the poor of Bocking.

Repeated instances of funds to be invested for the benefit of the poor.

Legacies for the benefit of apprentices and other inhabitants of the city of Chester.

Legacies to a parish.

And very many others.

Vide note * *to page* 155, 2 HOWARD *cited in case of* VIDAL *vs.* GIRARD'S EXECUTORS.

IGLEBY *vs.* DOBSON, 4 ROSS, 342.

A bequest for the repairing and enlarging a school and of providing a salary for a schoolmaster. Valid.

ATTORNEY-GENERAL *vs.* HEELIS, 2 S. & S. 76.

Funds supplied from gift of Crown or of Legislature, or of private persons, for any legal, public or general purpose, are charitable funds.

ATTORNEY-GENERAL *vs.* GODDARD, 1 TURN. & R. 348.

"I do also give them power to make such purchase as they shall think best for perpetuating the gift." Held, good.

ATTORNEY-GENERAL *vs.* POWER, 1 BALL. & B. 145.

A bequest "for building a house for twelve reduced gentlemen," is valid.

WHITE *vs.* WHITE, 7 VES. 423.

Bequest to poor relations. Sustained.

KEDMORE *vs.* WOODROFFE, AMBL. 636. S. C. 1 BRO. C. C. 13.

Statute of Mortmain was not made to prevent charities.

DAVENPORT *vs.* MORTIMER. 3 JUR. 287. V. C.

A charitable donation of £3000 stock, toward the education of young men for college, and if their numbers should increase, a building to be purchased or rented as a seminary. Valid.

IN RE BEDFORD CHARITY, 2 SWANST. 487.

A bequest for the support of poor Jews is valid.

ATTORNEY-GENERAL *vs.* COMBER, 2 SIM & STU., 93.

A bequest to the widows and orphans of the parish of L.

SHEPHERD *vs.* BRISTOL, (MAYOR,) 3 MADD. 319.

Held, that the increased value of certain charity gifts belonged to the charities.

SUTTON'S HOSPITAL. 10 Rep. 23. Trust sustained—Lord Coke saying of Bacon's objections "they were not "worthy to be moved at the Bar, nor remembered on the "Bench."

The settlement of lands in the Leather-seller's Company.

HILLAM'S CASE. DUKE ON USES, 375.

Devise to the poor people of Bristol.

THE MAYOR *vs.* WHITTON. DUKE, 377.

The devise "to poor people maintained in the hospital of "St. Lawrence of Reading, forever."

THE MAYOR *vs.* LANE, DUKE, 361.

A bequest for the benefit of the poor, with a contingent limitation over to another charity. Held, not to create a perpetuity.

THE HOSPITAL *vs.* GRANGER. 1 MACN. & GORD., 460.

A bequest to lay out money for the erection and repair of an almshouse.

TYRE *vs.* THE CORPORATION, 14 BEAV. 173.

Lands devised to the Cordwainers' Company, with a remainder over to a charity.

ATTORNEY-GENERAL *vs.* THE CORDWAINERS, 3 M. & K., 534.

The rents of lands appropriated to the maintenance of an almshouse and schools, with any surplus to certain individuals.

COMMISSIONERS *vs.* DECLIFFORD, 1 DRU. & WAR. 245.

Thomas Clapham's Will, in 1852, making charitable bequests to

The General Infirmary of Leeds.

The Yorkshire School for the Blind.

The Bath Hospital at Harrowgate.

And the Society for the Relief of the Widows, Orphans, and distressed families of Clergymen.

ROBINSON *vs.* GODDARD, 12 E. L. & E. REP. 70.

Charities in the United States.

A fund devised to the American Board of Commissioners for Foreign Missions, to be used as they shall duly authorize and direct.

BARTLETT *vs.* KING'S EX'S, 12 MASS. 537.

Fund to the Trustees of Phillips' Academy, Andover, to be applied as they shall direct and require.

THE TRUSTEES *vs.* KING, 12 MASS. 546.

The residue of an estate given and bequeathed to the cause of Christ, for the benefit and promotion of true piety and religion.

GOING *vs.* EMERY, 16 PICK. 107.

Bequests to the Bible, the Education, the Colonization, and the Home Mission Societies.

BURBANK *vs.* WHITNEY, 24 PICK. 146.

And similar bequests.

BARTLETT *vs.* NYE, 4 MET. 378.

Lands set apart for the use of the gospel ministry.

SHAPLEIGH *vs.* PILSBURY, 1 GREENL., 271.

Other bequests to Religious, Bible, and Missionary Societies.

BURR *vs.* SMITH, 7 VT. 241.

A legacy to a town to build a town hall.

COGGESHALL *vs.* PELTON, 7 JOHNS. CH. 292.

Bequest to endow an Orphan Asylum in New York City.

MCCARTIE *vs.* THE ASYLUM, 9 COW. 437.

Land conveyed to build a meeting house upon and for the use of the church.

THE BAPTIST CHURCH *vs.* WETHERILL, 3 PAIGE, 296.

Land donated for a school house.

POTTER *vs.* CHAPIN, 6 PAIGE, 639.

Legacy to a Foreign Mission School.

KING *vs.* WOODHULL, 3 EDWARDS, 79.

Conveyance of land for a church in New York City.

DUTCH CHURCH *vs.* MOTT, 7 PAIGE, 77.

A public landing, long used.

PEARSALL *vs.* POST, 20 WEND. 111.

Various bequests by Archibald Campbell, to Meetings of Friends—to the Marine Society—to religious societies—to the House of Refuge—for the preaching of the Gospel to seamen.

WRIGHT *vs.* THE CHURCH, 1 HOFF. CH. 202.

Various charities mentioned in

ACKERMAN'S EX'RS LEGATEES, cited in New Jersey, in the report of SHOTWELL *vs.* HENDRICKSON.

MOORE'S EX'ORS *vs.* MOORE'S DEVISEES, 4 DANA, 354. Kentucky.

THE POOR SCHOOL *vs.* THE CANAL CO., 9 OHIO, 203.

1820. GRIFFIN'S WILL CASE—GRIFFIN *vs.* GRAHAM, 1 HAWKS, (VA.) 96.

1842. CHAS. GERARD'S WILL CASE, 2 IREDELL EQ. 210. NORTH CAROLINA.

1853. MCDONOUGH'S WILL CASE, 15 HOWARD, 367. LA.

1860. THE MCMICKEN WILL CASE—OHIO, 24 HOWARD, 465.

DERBY *vs.* DERBY, 4 R. I. 414.

A bequest of $5000 for the relief of the destitute, in such manner as charities are usually distributed by the minister at large in Boston, held to be a good and valid charity.

TRUSTEES *vs.* KELLOG, 16 N. Y. (2 SMITH,) 83.

For the education of pious men for the Gospel ministry, valid.

CHAMBERS *vs.* ST. LOUIS, 29 MISS. (8 JONES,) 543.

In the year 1849, Bryan Mullanphy made his last will—"I leave to the City of St. Louis, in the State of Missouri, in trust, to be and constitute a fund to furnish relief to all poor emigrants and travellers coming to St. Louis, on their way *bona fide* to settle in the West." Devise held valid.

VIDAL *vs.* GIRARD, 2 HOW. S. C. U. S. 127.

For the establishment of colleges, schools, and seminaries of learning, especially such as are for orphans and poor scholars, are charities.

HEADLEY *vs.* HOPKINS ACADEMY, 14 PICK. 240.

It is a rule in equity that a gift of real or personal estate, either *inter vivos* or by will to promote education, is a charity, and that such a gift *shall receive the most liberal construction.*

STATE *vs.* MCGOWEN, 2 IRED. CH. 9.

For the purpose of establishing a school for the benefit of the poor of a certain county, is valid.

INGLIS *vs.* SAILOR'S SNUG HARBOR, 3 PET. 99.

Where a trust is for charitable use, its being a perpetuity is no objection to it.

ANDREW *vs.* NEW YORK BIBLE AND PRAYER BOOK SOCIETY, 4 SANDF., SUP. CT., 156.

Charitable uses, contravening the general rules of law

relating to trusts and perpetuities, were not recognized or sustained in New York before the revised statutes, except in the single instance where the property was given to a corporation, which by its charter could accept and execute the trust.

WILLIAMS *vs.* WILLIAMS, 4 SELDON (N. Y.) 525.

"Where a testator gives property to a religious corporation for a legal purpose, and directs that it shall accumulate until it amounts to a certain sum before the income shall be used, the direction is void, but the bequest remains good."

It being the object of religious corporations founded under the general statute of New York, *to secure in perpetuity* the uses of the property acquired by them, a donor may prescribe as a condition that his gift shall be preserved in a particular manner, that it may promote the object for which he bestows it.

ID.; SWEENY *vs.* SAMPSON, 5 IND. (Porter) 465.

A bequest of property, to be applied, a part in Pennsylvania, and the residue in the United States generally, "for the diffusion of useful knowledge and instruction among the institutes, clubs, or meetings of the working classes, or manual laborers by the sweat of their brow, could be sustained as a charity.

FRANKLIN *vs.* ARMFIELD, 2 SNEED, (TENN.) 305.

A devise of property to trustees for the erection in Tennessee of proper edifices, and the establishment therein of a seminary of learning, for the permanency of which provision is made, in which are to be educated and supported during the period of pupilage, the children of the testator and their descendants, the children of his brothers and sisters and their descendants, and such of the poor children of the county as the trustees might select, creates a good and valid charity.

ZANESVILLE CANAL & MAN. CO. *vs.* CITY OF ZANESVILLE, 20 OHIO, 483.

A gift to a charitable use is to receive the most liberal construction.

TRUSTEES *vs* KELLOGG, 16 N. Y. (2 SMITH) 83.

The trustees of Auburn Theological Seminary being declared by their charter to be capable of taking and holding real and personal estate, and managing the same for the purpose of benefitting the funds of the institution, and of applying the avails of such funds to the education of pious men for the gospel ministry—it was held, the trustees could take a legacy for the purpose of endowing a professorship, and it *is no objection that the bequest creates a perpetuity.*

The following have been regarded as Charities in the Courts of Pennsylvania.

Land devised in trust to a priest to say mass four times every year.

BROWER *vs.* FROMME, ADDISON, 362.

For public uses for the benefit of the inhabitants of a town.

GREGG *vs.* IRISH, 6 S. & R., 211.

To educate students for the ministry.

WITMAN *vs.* LEX, 17 S. & R., 89.

To say a perpetual anniversary mass for the testator's soul.

MCGIRR *vs.* AARON, 1 PENNA. R., 49.

To purchase a lot, build an asylum (Will's Hospital), and maintain the indigent blind and lame.

THE MAYOR *vs.* WILL'S EX'ORS, 3 Rawle, 170.

For the benefit of a Religious Society.

METHOD. CHURCH, REMINGTON, 1 W. 218.

To establish an Orphan House and maintain and educate orphans.

EX PARTE, CASSEL, 3 W., 440.

Land to build a school house upon.

MARTIN *vs.* MCCORD, 5 W. 494.

Fund for the poor of a Religious Society.

ZIMMERMAN *vs.* ANDREWS, 6 W. & S. 218.

Legacy for the education of young men for the Baptist Ministry.

BAPTIST ASSOCIATION *vs.* HART, 4 Wheat. 1.

—Land, the rents to be paid into the stock of a Religious Society.

—Moneys to various Monthly Meetings of Friends.

—For the relief of the Indians.

SARAH ZANE'S WILL—MAGILL *vs.* BROWN.

NOTE TO BRIGHTLY'S REP., p. 346.

A bequest for a fire engine and hose.

MAGILL *vs.* BROWN, BRIGHT, 346. Note.

To endow the Emaus Orphan House.

BROWN *vs.* HUMMEL, 6 BAR., 86.

Money to be put in bank, and the interest to be paid to a Religious Society.

APP *vs.* CONGREGATION, 6 BAR., 201.

Ground for a church and graveyard.

BEAVER *vs.* FILSON, 8 BAR., 327.

And for a school house.

WRIGHT *vs.* LINN., 9 BAR., 433.

Fund in Sheppard's will to distribute good books among the poor people.

PICKERING *vs.* SHOTWELL, 10 BARR., 23.

$2,500 given in perpetuity to Princeton Theological Seminary, to be given to an association, who shall procure an annual address.

NEWELL'S APP., 12 HAR., 197.

Land to be disposed of, and fund to be applied for the relief of itinerant ministers, their widows and children, and to diffuse education, civilization and Christianity.

THOMPSON *vs.* SWOOPE, 12 HAR., 474.

A devise to a school, to be taught a peculiar denominational creed.

Whatever is for the love of God, and for the love of our neighbor, is a charity.

PRICE *vs.* MAXWELL, 4 CASEY, 23.

Legacy to the Missions and schools on the coast of Africa.

MISSIONARY SOCIETY'S APP., 6 Casey, 425.

To plant and renew shade trees in the city of Philadelphia.

ELLIOT CRESSON'S WILL.

CRESSON'S APP., 6 CASEY, 437.

Moneys to a Religious Society and to Common Free Schools.

EVANGELICAL ASSOCIATION'S APP., 11 CAS. 316.

THOMAS *vs.* ELLMAKER, 1 PARSON'S EQUITY, 98.

Where money is given, either by a will, gift, or voluntary contribution of individuals, it is a charity.

PEPPER'S ESTATE, 1 PARSON'S EQUITY, 436.

The law of charitable uses has always formed a part of the civil code of Pennsylvania. The Statute of 43 Elizabeth, as a statute, has never been adopted in this State, but its conservative provisions have been in force here by common usage and constitutional recognition. Not only so, but the more extensive range of charitable uses, which chancery sustained, before the Statute of Elizabeth, and even beyond it.

The Courts in this State, sitting in Equity, will not hesitate in supplying any formal defect in the execution of a power by a will, in favor of a charity. IB.