

April 1928

Trusts--Charitable Trusts of a Religious Nature in West Virginia

William Thomas O'Farrell
West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Estates and Trusts Commons](#), and the [Religion Law Commons](#)

Recommended Citation

William T. O'Farrell, *Trusts--Charitable Trusts of a Religious Nature in West Virginia*, 34 W. Va. L. Rev. (1928).

Available at: <https://researchrepository.wvu.edu/wvlr/vol34/iss3/10>

This Student Notes and Recent Cases is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

tracks to prevent a possible fright to his horse, but this danger no longer exists in the case of the automobile. As pointed out by the West Virginia court: "An automobile may be driven within a few feet of a passing train without danger * * * . It is easily stopped and controlled, when driven at a reasonable rate of speed."¹⁹ Obviously, it is a choice between human lives and dollars. If we adhere to the rule which places the question of negligence as a problem for the jury, this may result in money verdicts against the common carrier, because the jury may believe that the public utility can better carry the financial loss than the individual. If we adopt the standard of care of the United States Supreme Court and make a failure to use such care negligence *per se*, will such a requirement make the motorist more careful and thus save human lives? Which is the more socially desirable result?

—MOSE EDWIN BOIARSKY.

¹⁹ *Supra*, n. 7.

TRUSTS—CHARITABLE TRUSTS OF A RELIGIOUS NATURE IN WEST VIRGINIA.—In 1792 Virginia repealed the statute of 43 Eliz. ch. 4, which provided with the enforcement of charitable trusts. In 1819, the question of the validity of such a charitable trust, created in Virginia by a citizen of that state, came before the United States Supreme Court.¹ The court decided that such trusts were not valid at common law, and since 43 Eliz. ch. 4, which provided for their enforcement, had been repealed in Virginia, the trust was void. In 1832 the Virginia courts laid down the same rule.² This doctrine was reaffirmed by the Virginia court in later cases.³ In 1844, the United States Supreme Court overruled its former holding with regard to charitable trusts.⁴ It had been discovered by that time that charitable trusts had been enforced at common law prior to the passage of

¹ *Baptist Association v. Hart's Exrs.*, 4 Wheat. 1 (1819).

² *Gallego's Exrs. v. Attorney General*, 3 Leigh 460 (1832).

³ *Hill v. Bowman*, 7 Leigh 657 (1836); *Brooke v. Shacklett*, 13 Grat. 310; *Commonwealth v. Levey*, 23 Grat. 40 (1893).

⁴ *Vidal v. Girard's Exrs.*, 2 How. 127 (1844).

43 Eliz. ch. 4, and such being the case, the court held that they were still enforced at common law. But with regard to cases arising in Virginia, the Federal courts continued to apply their first rule, out of respect to the peculiar holding of Virginia on the subject.⁵ Such was the state of the law on the subject in Virginia, when the state of West Virginia was formed.

In considering the subject with reference to West Virginia, charitable trusts of a non-religious nature will be dealt with in a later article,⁶ while the present discussion will concern itself with charitable trusts of a religious nature in this state. West Virginia followed the rule laid down by the Virginia courts⁷—that charitable trusts were void at common law for want of a definite cestui, and were only enforceable when made so by statute.⁸ The Constitution of West Virginia⁹ provides that no charter of incorporation shall ever be granted to any church or religious denomination. It provides, however, that the legislature may fix a manner in which to secure the title to church property. This has been done.¹⁰ It is enacted that “every conveyance of land which shall hereafter be made for the use or benefit of any church, religious sect, society, congregation, or denomination, as a place of public worship, or as a burial place, or as a residence for a minister, shall be valid.” The title to such property is to be held by trustees appointed by the circuit court of the county, on application to that tribunal. The trustees have no right to sue for the property so held.¹¹ It will be noticed that there are only three valid purposes for which land can be conveyed to a religious denomination or church—all others fail.

One of the first questions that arose under the construction of the statute, was whether the word “conveyance” as used in the enactment, also included a devise. The court held it did not.¹² The decision was influenced by a like holding in a Virginia case.¹³ This strict construction should

⁵ *Wheeler v. Smith*, 9 How. 55 (1850).

⁶ See next issue of the West Virginia Law Quarterly.

⁷ *Supra*, n. 2.

⁸ *Bible Society v. Pendleton*, 7 W. Va. 79 (1873).

⁹ Art. 6, §47.

¹⁰ Code, c. 57, §§1, 2, 4, 7, 8, 9.

¹¹ *Supra*, n. 10; *Potts v. Longest & Tessier Co.*, 86 W. Va. 157, 102 S. E. 788 (1920).

¹² *Supra*, n. 8; *Knox v. Knox's Exrs.*, 9 W. Va. 124 (1876).

¹³ *Seaburn's Exrs. v. Seaburn*, 15 Grat. 423 (1859).

be borne in mind in connection with a more liberal interpretation of a similar statute with reference to charitable trusts of a non-religious nature, which will be discussed later.

Although a religious denomination cannot be incorporated in this state, it has been held that a bequest to denominations incorporated outside the state are valid.¹⁴ The same has been held in the case of a devise to religious societies incorporated out of the state.¹⁵ But in the case of *Miller v. Ahrens*,¹⁶ a federal court seemingly reached just the opposite conclusion. Certain land in West Virginia was devised to a church in Baltimore, which had been incorporated under the laws of Maryland. The court held the trust to be invalid on the ground that it was contrary to the public policy of West Virginia. Whether the similar West Virginia cases¹⁷ were cited to the court does not appear. It would seem that they were not, since the federal courts hold such trusts to be good¹⁸ if they do not violate the policy of the state where the property is situated.¹⁹

A bequest of personal property for one of the purposes enumerated in the statute, to an unincorporated religious society has been held invalid on the ground that the statute only legalizes conveyances of land.²⁰ Gifts *inter vivos* are seemingly covered by implication in the statute,²¹ which provides that when personal property is acquired to be used in ceremonies of public worship, or at the residence of the minister, title shall vest in the trustees who hold the title to the real property. Personal property for the burial ground has been omitted, for some reason.

In summarizing the present law on the topic, it may be said that these charitable trusts of a religious nature are void at common law in West Virginia. But by statute—a conveyance of land in trust to a church or religious organization is valid, if for one of the three purposes named in the act. A devise or bequest to an unorganized body with-

¹⁴ *Genton v. Elliott*, 73 W. Va. 519, 81 S. E. 887 (1914).

¹⁵ *Pack v. Shanklin*, 43 W. Va. 304, 27 S. E. 389 (1897); *University v. Tucker*, 81 W. Va. 621, 8 S. E. 410 (1888).

¹⁶ 180 Fed. 644 (1907).

¹⁷ *Supra*, n. 14 and 15.

¹⁸ *Supra*, n. 4.

¹⁹ *Supra*, n. 5.

²⁰ *Supra*, n. 8; *Wilson v. Perry*, 29 W. Va. 169 (1886).

²¹ CODE, c. 57, §2.

in or without the state fails. But a bequest or devise to an out of state corporation of a religious nature is good.

In contrast to the strict and narrow enactments of the present code on the subject, stand the broad provisions of the proposed code.²² It is there provided²³ that no conveyance, dedication, devise, gift or bequest to a church or religious denomination shall fail, because of a lack of a definite beneficiary or object, where trustees of the church or denomination are in existence or can be appointed. When the gift, bequest, devise, dedication or conveyance shall be too indefinite to be enforced by a court of chancery, it shall be used for the religious or benevolent purpose of the organization. The only limitation is that in force by the present code—not more than four acres shall be held by the trustees in an incorporated city, town, or village, and not more than sixty acres in the country.²⁴ All modes of transfer are valid by these enactments. They in effect legalize any gift or devise to a church, and any devise or conveyance not in excess of the limit set, for benevolent and charitable purposes of any kind. There are some other changes as to the manner of holding and conveying the property, but the above noted are the outstanding differences.

With respect to these trusts, the new code is but following the trend of the times, as exemplified by comparatively recent statutes on the subject passed by Virginia and New York. It is submitted that the provisions of the proposed code represent the best view; that such trusts are not so inherently dangerous as to deserve being hedged about as they now are, but on the contrary would confer a benefit on the public if permitted to function freely. There is no danger in this state that the churches will ever acquire so much property that their wealth will become a menace. Indeed, just the opposite seems to be a true state of affairs.²⁵

—WILLIAM THOMAS O'FARRELL.

²² REVISED CODE, c. 35, art. 1.

²³ *Supra*, n. 22, §4.

²⁴ *Supra*, n. 22, §8.

²⁵ See next issue for a discussion of charitable trusts of a non-religious nature.