

June 1928

Non-Religious Charitable Trusts

W. T. 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](#)

Recommended Citation

W. T. O'Farrell, *Non-Religious Charitable Trusts*, 34 W. Va. L. Rev. (1928).

Available at: <https://researchrepository.wvu.edu/wvlr/vol34/iss4/12>

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.

STUDENT NOTES AND RECENT CASES

NON-RELIGIOUS CHARITABLE TRUSTS.—By the common law of Virginia, charitable trust of a non-religious nature shared the same fate as charitable trusts of a religious nature—they were held to be void because of vague and indefinite beneficiaries.¹ Having adopted the common law of Virginia, our state has endeavored to remedy this undesirable feature of that law by statute. Sec. 3, ch. 57 of the Code states that where any conveyance of land is made to trustees for the use of a school, or society of free masons, odd fellows, etc., or for an orphan asylum, childrens' home "or other benevolent association or purpose"; or, if, without the intervention of trustees such conveyance shall be made, "the same shall be valid."

The word "benevolent" as herein used, is a word covering a wide field. When used in connection with the word "charitable," it is generally held that the two words are synonymous.² But where used alone, as here, "benevolent" is a "word of somewhat broader, larger, and wider meaning than charitable. In other words, charity may be benevolence, but all benevolence is not necessarily charity, for the term includes all gifts prompted by good will or kind feeling toward the recipient, whether an object of charity or not."³ In this respect at least the statute is quite liberal.

In the article on religious trusts appearing in the last issue of the Quarterly,⁴ it was pointed out that in construing Sec. 1, ch. 57 of the Code, our Supreme Court of Appeals decided that the word "conveyance" occurring in that section, did not include a devise of real property. Reasoning from this conclusion, it would seem that the word "conveyance" occurring in Sec. 3, ch. 57 of the Code, which deals with trusts of a non-religious nature, would be construed in the same manner. Yet the court reached just the

¹ *Commonwealth v. Levey*, 23 Grat. 21 (1873); *Hill's Exrs. v. Bowman*, 7 Leigh 657 (1836); *Janey's Exrs. v. Latane*, 4 Leigh 327 (1833).

² *Estate of Hinckley*, 58 Cal. 457 (1881); *Sutter v. Hilliard*, 132 Mass. 412 (1882).

³ 7 C. J. 1141-1142. Also, *Hayes v. Harris*, 73 W. Va. 17, 80 S. E. 827 (1912); *German Corporation v. Negunee German Aid Society*, 172 Mich. 650, 138 N. W. 343 (1912); *De Camp v. Dobbins*, 31 N. J. Eq. 671 (1879)

⁴ 34 W. VA. LAW QUAR. 302.

opposite conclusion, holding in the case of *Hayes v. Harris*,⁵ that the word "conveyance" as used in Sec. 3 did include a devise of real property. Although a direct breach of the doctrine of stare decisis, this later decision represents the liberal view to be taken of the enactment, and the view which seemingly will reach the most desirable results.

But as liberally as the statute has been interpreted, it seems that the court will not go to the extent of invoking the doctrine of *cy pres* to aid charities created under it. In *Harris v. Neal*⁶ the testator left certain property in trust for the purpose of establishing a hospital to treat the sick poor. The trustees filed a bill stating that the amount so bequeathed was not sufficient to found a hospital, and asked that the court administer the estate under the doctrine of *cy pres* by allowing the trustees to purchase beds for the sick, poor, in hospitals already in being. The bill was dismissed. The court here had an excellent opportunity to invoke the principle of *cy pres*. But while not expressly rejecting the doctrine, they did so in effect, ordering that the will be carried out literally. Thereby, our court has refused to invoke a doctrine which, although capable of great good, yet requires from its very nature the utmost delicacy in application.

With respect to bequests of personal property in trust for religious purposes, it will be recalled⁷ that our Supreme Court of Appeals has held them valid, because they are not included in the word "conveyance" as occurring in Sec. 1, ch. 57 of the Code. But with regard to bequests of personal property in trust for non-religious purposes, our court has again thrown the doctrine of stare decisis by the boards, and has decided, in the case of *Mercantile Banking and Trust Company v. Showacre*,⁸ that the word "conveyance" occurring in Sec. 3, ch. 57 of the Code, includes a bequest of personal property. So, a bequest in trust for charitable purposes of a non-religious nature is valid, in West Virginia, although such a bequest for religious purposes is void. And a devise of real property in trust for charitable purposes of a non-religious nature is valid, but a similar devise for religious

⁵ 73 W. Va. 17, 80 S. E. 827 (1912).

⁶ 61 W. Va. 1, 55 S. E. 740 (1906).

⁷ Note on Charitable Trusts, 34 W. VA. LAW QUAR. 302.

⁸ 102 W. Va. 260, 135 S. E. 9 (1926). Also see *Hayes v. Harris*, *supra*, n. 5.

purposes fails. The word "conveyance" is construed in such a manner as to arrive at directly contrary conclusions. It is to be regretted that the court in the earlier decisions did not adopt the more liberal attitude and extend the statute to bequests and devises for all manner of charities.

In closing, we may glance briefly at the provisions of the proposed code on this subject. By it, "any conveyance, dedication, or devise of land, or transfer, gift, or bequest of personal property * * * * for the use of any * * * * benevolent or charitable institution, association or purpose" is made valid.⁹ The provision is not confined to conveyances, as the present code is.

It is further provided that whenever the objects of any such trust shall be undefined or uncertain, or no trustee shall have been appointed, or no trustee is in existence, a suit may be instituted in chancery court by anyone interested, for the appointment of trustees, or for the designation of beneficiaries, "or, where the trust does not admit of specific enforcement or literal execution, for the carrying into effect as near as may be the interest and purpose of the person creating the trust."¹⁰ This is a restoration in full of the ancient power of chancery over such trusts, on which subject the present code is deficient. It allows administration of these trusts by the doctrine of *cy pres*; and the provision is so broad that it "saves practically every charitable gift from failure."¹¹ It gives effect to the statement of Williams, J., in *Hayes v. Harris*,¹² that "such trusts are highly favored by the law."

—W. T. O'FARRELL.

⁹ PROPOSED CODE, ch. 35, art. 2, §1.

¹⁰ PROPOSED CODE, ch. 35, art. 2, §2.

¹¹ Revisers' note.

¹² *Supra*, n. 5.