

appear in a general way, for it does not stand on the same footing as a will, where the intention of the testator is distinctly and expressly expressed, there can be no question; here is where there is a general sort of contribution all around to a corporation that has certain powers; now, do you say this intention is to be established and to show what the usage is? Of course you can not show the intention of all these persons.

Mr. Broadhead—I think that is the best way in the world of showing it, by showing that these donations were given year after year, time after time, to the leaders of the Church as trustees to constitute a fund which was used for the relief of the poor, for education, and other purposes, and they still continue to give it, and that it is still used in the same way.

Mr. Stewart—Do you understand so far as this is applied to the purpose of education that the Gentiles were excluded from enjoying any benefits or instruction from the schools under this; that their children were excluded from sharing the benefits of the appropriation to the educational fund?

Mr. Broadhead—By whom, the Mormons?

Mr. Stewart—Yes, sir.

Mr. Broadhead—I do not know how that is. What I meant to say is they could exclude them if they chose, for it was intended for that particular sect and not for the world at large.

When a person makes a donation of what is his own, what has been acquired as the product of his own toil, he has the right to say how it shall be used, provided it is not for an illegal purpose; and it matters not in principle whether the mode of giving is by will or by donation *inter vivos*. If the intention can be ascertained, that intention must govern.

If the property in this case was given to the Mormon Church to be devoted to charitable uses, then the Church must determine how it shall be used to carry out those purposes according to the intention of the donor; if the Church as a corporation has been dissolved, as it has been in this case, then the court as the representative of the Government according to the rules laid down in this case must either manage the fund as it was intended to be managed, or must appoint a trustee or trustees to so manage it.

The statute of charitable use, 43d Elizabeth, followed in detail the objects of charity which had been organized and systematized in the Roman Empire under the reign of Constantine; the revenues provided for charitable uses under that statute were tithes, legacies, and donations of movables and immovables, and the intention of the donor was always carried out. The courts of this country tell us that the principles embodied in the statute of 43d Elizabeth have uniformly been adopted and carried out by our courts of equity, although the statute itself has not been adopted, for the plain reason that the statute

provides for the collection of the revenues for charitable uses, and appoints officers for that purpose; our political system tolerates no enforced methods of collecting revenues, such as tithes for charitable uses. Charity with us is voluntary and comes from the individual—no part of it from the State.

History tells us that in the year of the Norman Conquest, Baldwin, Count of Flanders, died, leaving a will, in which he said, remembering the words of our Lord, "I was a stranger, and ye took me in; naked, and ye clothed me; I was hungry, and ye gave me food:"

I have given a villa to a church for the support and refreshment of the poor.

We are told that the Jewish husbandman, when his harvest was over, left a sheaf of wheat upon the field for the benefit of the unknown stranger.

These are illustrations of general charities not confined to any individual or particular class of individuals, and the rule is that the purpose of the benefit must be general, or to a general class, for it is the uncertainty of the person upon whom the benefit may fall that gives merit to the action. A legacy to a friend is no charity. True charity must spring from a love of humanity and a desire to relieve the sufferings and necessities of our fellow-men.

Horace Birney, in the celebrated Girard will case, in his argument before the courts in the land said:

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 everything that is personal, private, or selfish—is a gift for charitable uses.

But these gifts may be limited to a certain class (8 Sharswood & Budd, Leading Cases on Real Estate, p. 333)—the requirement of generality: being satisfied by a comprehension of persons or designated communities, as the students of a certain religious faith, the suffering poor of a certain place, or the poor emigrants of a certain city. All such gifts for special charitable uses have been sustained by the courts, and I know of no better or more reliable book in which to find the authorities upon this subject than in the 3d volume of Sharswood & Budd, Leading Cases of Real Estate, Notes to the Report of the Opinion of the Supreme Court of the United States in the Girard will case.

And so I say in answer to the inquiry of the gentleman from Vermont as to whether the Gentiles were excluded from the benefit of this fund or not I do not know, but it was unquestionably intended for the benefit of the members of the Mormon sect and their families, the same sect to which has been decreed by the court the Temple Block in Salt Lake City, for the erection and use by them of houses of worship, for their use and convenience in the lawful exercise of worship, according to the tenets of said sect and body. This property, the court says, is set apart to the voluntary religious worshippers and unincorporated sect and body known as "the Church of Jesus Christ

of Latter-Day Saints." It is thus that the Mormon Church is organized as a sect, a body of religious worshippers—capable of holding real property through trustees, and why should not the personal property given from time to time by members of that sect for the benefit of the poor, the aged, the infirm, the afflicted, and the ignorant of this generation and of generations yet unborn belonging to that sect be turned over to trustees and devoted to the objects for which they were intended?

A devise to an unincorporated society for religious purposes is a good devise (6, Watts and Sergeant, 218).

A gift to the poor generally, or to the poor of a particular town, parish, age, sex, race, or condition is a good charitable gift (Jackson vs. Phillips, p. 551).

Now it was known to these parties when gifts were made that they were used for this purpose, and I mentioned this because it did not appear in the trial of the case before the court, and I believe if they had been brought before the court Judge Bradley would have made an order accordingly.

I ask, then, that the legislative department of the government shall keep its hands off this question until the court has settled it, because the court has ample jurisdiction without any action of Congress which would undertake to interfere with the jurisdiction of the court. It is true there is no statement as to what disposition should be made of this fund, amounting to four or five hundred thousand dollars, but I say it is a wrong against the principles of common justice to take it away from this common object to which it was evidently intended to be devoted and give it to the general objects of education. It is true that such a disposition as is contemplated will benefit the cause of education very much, but these people have not the control of the political machinery in Utah; the management of the schools has been taken away from them and the right of suffrage has been taken from them to a great extent, and here is a fund which should be left in the hands of the court to determine whether it shall be put to the purposes to which it was originally intended or whether it shall be given to the Jew, Gentile, Mormon, and all the others alike in that Territory. I say, it is not right that it should be so, and not according to the principles of justice and not in accordance with the adjudications of the courts.

Mr. Stewart—The court has power under the Edmunds-Tucker act to make final disposition of that fund?

Mr. Broadhead—It says "according to the law."

Mr. Stewart—I remember that, as I had something to do with that. But it did not point out what law.

Mr. Reed—They hesitated about finding any law.

Mr. Chairman—I should think there would not be much divergence of opinion in the committee with reference to the general doctrine which you have expressed.