heirs at law as a resulting trust, but is to be applied by the court of chancery, in the exercise of its jurisdiction in equity, as near the testator's particular directions as possible, to carry out his general charitable intent."

The court expressly said that when the gift is for a charitable purpose the general nature of which is pointed out, and no intention is expressed to limit it to a particular institution or mode of application and afterwards the scheme of the testator becomes impracticable or illegal, the fund must be applied by the court as near the testator's particular direction as possible to carry out his general charitable intent. The court cannot select any object of charity outside the scope of the general intent.

The doctrine *of cy pres* is only a liberal rule of construction to ascertain the intention of the donor, and all the rules relating thereto are intended to aid in ascertaining and carrying out as nearly as may be the true intention of the donor. His intention should be the aim of the court.

"The difference between the crown and the court is this: The court is governed by known judicial rules of interpretation; the crown is governed by its own good will and pleasure in deducing or imparting such intentions as it sees fit. 2 Perry on Trusts, Sec 727.

In discussing the doctrine of *cy pres* in its opinion in the case of Moore's Heirs vs. Moore's Devisees, 4 Dana, 354, after referring to the prerogative of the king as *parens patriae* as to gifts to charitable uses, the court said: "And this regal prerogative, with some other curative powers inherent in the crown, was delegated to the Chancellor of England in his ordinary ministerial capacity as the keeper of the great seal and official organ of the king." And then after remarking that we have no such officer in the United States as the Chancellor of England; that our chancery courts have no other jurisdiction than that of courts of equity and no other power than that which is judicial or regulated by law, said further that "We do not admit that the commonwealth, as *parens patriæ* can rightfully interfere unless there be an escheat to her; and then she may become absolute and beneficial owner. Rights here are regulated by law." * * * "We are satisfied that the *cy pres* doctrine of England is not, or should not be, a judicial doctrine, except in one kind of case; and that is, where there is an available charity to an identified or ascertainable object, and a particular mode, inadequate, illegal or inappropriate, or which happens to fail, has been prescribed.

In such a case a court of equity may substitute or sanction any other mode that may be lawful and suitable as will effectuate the declared intention of the donor, and not arbitrarily and in the dark, presuming on his motives or wishes, declare an object for him. A court may act judicially as long as it effectuates the lawful intention of the donor. But it does not act judicially when it applies his bounty to a specific object of charity, selected by itself, merely because he had dedicated it to charity generally, or to a specified purpose which cannot be effectuated; for the court cannot know or decide that he would have been willing that it should be applied to the object to which the judge, in the plenitude of his unregulated discretion and peculiar benevolence has seen fit to decree its appropriation, whereby he, and not the donor, in effect and at last, creates the charity."

This doctrine was re-affirmed in Curling's Admrs vs. Curling's Heirs, 8 Dana, 38, the court holding that propety tax dedicated by the donor to a certain charity could not be diverted or appointed by the court to any other object, and if property is devised in such general terms that it may be devoted to one or more of several charities it cannot be devoted by the court to any object not embraced in such general terms, and said that by doing so the court might apply the charity to an object which the donor did not intend it and to which he never would have devoted it. Gilman et al. vs. Hamilton et al., 16 Ills., 225, holds that the court cannot change the charity to any object not intended by the donor.

In City of Philadelphia vs. Girards Heirs, 45 P. St. 9, the court said "In all gifts for charitable uses the law makes a very clear distinction between those parts of a writing conveying them, which declares that the gift and its purposes and those which direct the mode of its distribution."

In the same opinion the court further said, "And this is the doctrine of *cy pres*, so far as it has been expressly adopted by us. Not the doctrine "grossly revolting to the public sense of justice" (1 Watts, 226) and "carried to the extravagant length that it was formerly in England (17 S. & R. 93) by which an unlawful and entirely indefinite charity was transformed by the court or the crown into one that was lawful and definite, though not at all intended by the donor or testator. But a reasonable doctrine of which a well defined charity, or one where the means of definition are given, may be enforced in favor of the general intent, even where the mode or means provided by the donor fail by reason of their inadequacy or unlawfulness."

From these authorities we may deduce the general rule that courts of equity in the exercise of their ordinary jurisdiction cannot devote any portion of a fund dedicated to charitable uses to any object not contemplated by the donor; that when property is given to a class of objects in general terms and also directed to be applied to one of them in special terms, if its application to that one becomes unlawful or impracticable the doctrine of *cy pres* authorizes the court to devote it to one or more of those embraced in the general intent most analagous to the one specially named; that the general intent may not be expressed in explicit terms if the devise or dedication in the light of the circumstances authorize the court to infer that such was the donor's wish in that event. The same rules apply when the charity is the result of contributions by a large number of people.

It is plain from the evidence before us that the members of the Church of Jesus Christ of Latter-day Saints contributed the fund in dispute, expecting and wishing it to be applied by the First Presidency to Church purposes—to objects promoted by the Church. We cannot find from the evidence before us that the Mormon people who contributed this fund intended or expected the fund or any part of it would be appropriated to the support of the common schools of the Territory. In common with non-Mormons the Latter-day Saints are taxed to maintain the public schools, and to take the money that they contributed for Church purposes and devoted also to their support would be unequal and unjust.

Were it simply a matter of discretion with us we would not be disposed to assume superior and peculiar wisdom and say to these people that we will devote the contributions made by you for Church purposes to a purpose that you did not intend it—to the support of the common schools, because we think that a more worthy object. We cannot adopt the scheme presented by the plaintiff and reported by the Master.

We will now consider the scheme for the application of this fund presented by the defendants. Their plan would vest this property in the First Presidency of the Church, now consisting of Wilford Woodruff, its President, and George Q. Cannon and Joseph F. Smith, his counselors, and their successors in office in trust, to apply the proceeds thereof and to limit its use to the relief and assistance of the poor of the Church, and to the building and repair of convenient and necessary places of worship for its members. It appears from the evidence before us that this fund was very largely applied to these two objects by the First Presidency prior to the time it was taken from their possession and control. But we are also authorized to infer that at the time this case was tried in 1888 and prior thereto the teachers of the Church and its missionaries taught of by its authority that the practice polygamy was right, and that the Church in that way propagated it and that a portion of the property in dispute was used to aid and support such teachers and missionaries and in that way was applied to an immoral and unlawful end. The scheme under consideration, however, would forbid the use of this fund for any such purpose; it requires it to be used for the benefit of needy members and to be applied to the erection of houses of worship for the Latter-day Saints. The relief of the needy and distressed of whatever faith cannot be immoral or unlawful.

Nor can we say that the expenditure of money for the erection and repair of convenient and necessary houses of worship for the Mormon people is devoted to an immoral or unlawful purpose.

In the legislation of Congress with respect to polygamy, houses of worship, parsonages and burial grounds are reserved to the Church and the decision remanding this case affirms so much of the decree of the trial court as set such property apart to the Church.

We now come to another question—Can this court in the exercise of its ordinary chancery jurisdiction vest this fund in the First Presidency to be applied to the two purposes that we have seen are lawful? This property as the evidence shows was given to the church authorities named, to be applied to church purposes in their discretion. Assuming that a portion of it was so expended by such authorities as to propagate polygamy can the court now limit the proceeds of the entire fund to the relief of the poor and