books, but I made extracts in order to direct the attention of the committee, if they feel disposed to investigate this subject, and give some prominent authorities, for the books are full of them, although this is a question that does not often come up.

In the case of Jackson against Phillips, 14 Allen, 574, Judge Gray says:

> By the law of the commonwealth and by the law of England gifts to charitable uses were highly favored and will be most liberally construed in order to accomplish the intent and purposes of the donor, and trusts which can not be upheld in ordinary cases for various reasons will be established and carried into effect when created to support a gift to a charitable use.

He says further:

> You can make them inalienable and perpetual, which cannot be done by means of a private trust without regard to the rule against perpetuities.

Judge Story, in his work on Equity Jurisprudence, says, section 1176:

> But this sensible distinction now prevails that the courts will not decree the execution of the trusts of a charity in a manner different from that intended, except so far as it is seen that the intention can not be literally executed. In that case another mode will be adopted consistent with the general intention to execute it, although not in the mode yet in substance.

In the case of the Attorney-General against Bulbec, 2 Vesey, Jr., the master of the Rolls said, quoting with approval a former decision of the court:

> A testator directed bread to be distributed to the poor persons attending divine service and chanting his version of the psalms.

These psalms were unauthorized by law, so this part of the bequest must fail, but the distribution of bread was decreed to be carried out.

> The general object is not to be effected if it can in any other way be attained.

In the case of Jackson against Phillips, to which I have referred, the court says, referring to a number of authorities on this point:

> The court of equity in the exercise of its jurisdiction applies the trust as near to the testator's particular directions as possible to carry out his general charitable intent.

There is one of the cases of St. Louis. Under the Mullanphy will there was a bequest for the benefit of poor immigrants. The Supreme Court held it was a trust fund, that it was a charitable use, and that the court should find out who were the poor immigrants to which this fund must be devoted.

And in regard to the doctrine of *parens patriæ*, which has been invoked here, "the power of the king as *parens patriæ* to dispose of property by his sign manual when the objects are illegal or indefinite," Judge Gray says:

> It is difficult to see how it could be held to exist in a republic in which charitable bequests have never been forfeited to the use or submitted to disposition by the Government because they are superstitious or illegal.

Because they are illegal they do not belong to the Government, but the Government takes possession of them as trustee for some other charitable purpose which is legal.

In the case of Howard against the Peace Society 49 Maine, page 288, the court says:

> The general provisions of the statutes of 43d Elizabeth are in force in this State and incorporated into our chancery jurisprudence. Extrinsic evidence is admissible to aid in giving construction to devices or bequests and, to show what property was intended to be devised and what person was intended to take. (Page 303.)

Now that is what we see here. There was no evidence before the Supreme Court in regard to these other charities; all that was before the court was that the property was devoted to some charitable uses. It was given to the Church and was disposed of in that way. The Church organization as a corporation has been dissolved and it cannot hold it under that decision of the court. The Government takes possession of it as trustee; then it is the duty of the Government, we say, to devote it to the charitable purposes for which it was intended, and we may introduce outside testimony for the purpose of showing what that was. It was not done in this case, but I will say to the court what I propose to do. This question is left open with the Supreme Court. I propose to apply to the Supreme Court at the next session for an order upon the supreme court of the Territory of Utah to permit these persons to file a bill of review by which they can set out the facts and have them adjudicated.

Now, I take it, the Supreme Court would not entertain a bill of review, and in fact it has been decided that the Supreme Court will not entertain a bill of review. It will order an inferior court, if it thinks proper, if a proper showing is made before the Supreme Court, to entertain a bill of review for the purpose of taking testimony. A bill of review does not raise any question of law at all; it is something like a motion for a new trial in an action of law, except it raises no question of law. It does not attack the validity of the judgment made by the court upon a question of law, but for some equitable reason, or upon the discovery of new testimony, it will authorize a bill of review to permit the party to come in and show what he avers to be true. I have no idea the Supreme Court will entertain a bill of review, but I do not doubt for a moment that they would entertain an application for an order, and would make an order upon the supreme court of the Territory of Utah, which has original jurisdiction in this case, and permit these parties to file a bill of review and set out these facts so as to show the charitable objects to which this fund was intended to be devoted. It has been practically devoted for years and years to these purposes, and it will therefore be carrying out the charitable purposes for which these gifts were made, irrespective of the Church, for them to be put into the hands of trustees to be appointed by the court, but trustees who are not hostile trustees, to be managed for the charitable purposes for which it was intended, by persons friendly to the association and to the object and purposes of the donation.

Now it cannot be supposed for a moment that members of the Mormon Church, when they paid their tithes from time to time, that they intended that the proceeds of these tithes should be devoted to the general purposes of education all over the Territory.

The Chairman—Were these tithes paid according to the law of the Territory; did the law provide for the payment of these tithes?

Mr. Broadhead—No, sir; there was no law on the subject.

Mr. Culberson—I had an idea these tithes were paid under a law requiring them.

Mr. Broadhead—On the part of the Territory? I know of no such law.

Mr. Stewart—What do you consider the effect of this exception: "except so far as it shall appear in respect thereto that there is a lawful private right to the contrary?"

Mr. Broadhead—That does not amount to anything. If this fund had been in fact devoted to charitable uses, no private right can intervene; it belongs to the public, not to private individuals. It may be that some man's property may have been taken; a horse may be claimed by one man which belongs to another, and it might have been taken and given as a tithe to the Church, and the man goes home and brings suit for his horse. It does not need any act of Congress to authorize a man to sue for his property if some one else has it. The common law prevails in the Territory, so the court says in this case. No, sir; the clause in the bill to which you refer about "private rights" looks plausible, but there is nothing in it, and it is only calculated to mislead, though doubtless not so intended.

Mr. Stewart—I suppose that you will admit that the devotion of this fund to the general purpose of education would be perhaps on the whole beneficial to the people of the Territory?

Mr. Broadhead—It would be; so it would be beneficial if any one should give my property to a poor man. That would be very beneficial to the poor man.

Mr. Stewart—That would be a mere private matter, but this, you see, would be a public matter. However, I understand your point.

Mr. Broadhead—The poor Indians and the poor Mexicans, and the poor "Mormons," and the poor "Gentiles" (although I do not know they are poor), so far as the worthy poor are concerned, have an interest in this fund, and charity is personated in that respect.

Mr. Stewart—I did not understand that you claimed, so far as anything whatever is applied to educational purposes, that it should be confined to that one sect of Mormons, did you?

Mr. Broadhead—Yes, sir; oh, yes, certainly. The intention of the donor is to be carried out; that is what I claim. I do not deny that education is a charitable purpose, but this was intended for the education of the Mormon children and not the other children in the Territory of Utah, and providing for the wants of such poor persons as the members of the Mormon Church through proper trustees might direct.

Mr. Stewart—Suppose it should