tion to be sold, and the proceeds applied, one-half to the making of a highway from the town in which the lands were, one-fourth to the repair of a church in that town, and the other fourth to the priest of the church to say prayers for the souls of the donor and others. The Lord Keeper decreed the establishment of the use for making the highway and repairing the church, and directed the remaining fourth (which could not, by reason of the change in religion, be applied as directed by the donor) to be divided between the poor of the same town and the poor of the town where the donor inhabited.

In the case of Baliol College, which came before the Court of Chancery from time to time for over a century and a half, the same principle was asserted, of directing a charity fund to a different, though analogous use, where the use originally declared had become contrary to the policy of the law. There, a testator in 1679, when episcopacy was established by law in Scotland, gave lands in trust to apply the income to the education of Scotchmen at Oxford, with a view to their taking Episcopal orders and settling in Scotland. Presbyterianism being re-established in Scotland after the revolution of 1688, the object of the bequest could not be carried into effect; and the Court of Chancery, by successive decrees of Lord Somers and Lord Hardwicke, directed the income of the estate to be applied to the education of a certain number of Scotch students at Baliol College, without the condition of taking orders; and, in consideration of this privilege, directed the surplus of the income to be applied to the college library. (See the cases of Atty. Gen. v. Guise, 2 Vern. 160; Atty. Gen. v. Baliol College, 9 Mod. 407; Atty. Gen. v. Glasgow College, 2 Collyer, 665; S. C. 1 H. L. Cas. 800. And see abridgment of the above cases in 14 Allen, 581, 582.)

Lord Chief Justice Wilmot, in his opinion in Atty. Gen. v. Lady Downing (Wilmot's Notes and Op. 1, 32), looking at the case on the supposition that the trusts of the will (which were for instituting a college) were illegal and void, or of such a nature as not fit to be carried into execution, said: "This court has long made a distinction between superstitious uses and mistaken charitable uses. By mistaken, I mean such as are repugnant to that sound constitutional policy which controls the interest, wills, and wishes of individuals, when they clash with the interest and safety of the whole community. Property, destined to superstitious uses, is given by law of parliament to the king, to dispose of as he pleases; and it falls properly under the cognizance of a court of revenue. But where property is given to mistaken charitable uses, this court distinguishes between the charity and the use; and seeing the charitable bequest in the intention of the testator, they execute the intention, varying the use, as the king, who is the curator of all charities, and the constitutional trustee for the performance of them, pleases to direct and appoint." "This doctrine is now so fully settled that it cannot be departed from." (Ib.)

In Moggridge vs. Thackwell (7 Ves. 36, 69), Lord Eldon said: "I have no doubt that cases much older than I shall cite may be found; all of which appear to prove that if the testator has manifested a general intention to give to charity, the failure of the particular mode in which the charity is to be effectuated shall not destroy the charity, but if the substantial intention is charity, the law will substitute another mode of devoting the property to charitable purposes, though the formal intention as to the mode cannot be accomplished." In Hill on Trustees, page 450, after citing this observation of Lord Eldon, it is added: "In accordance with these principles, it has frequently been decided that where a testator has sufficiently expressed his intention to dispose of his estate in trust for charitable purposes generally, the general purpose will be enforced by the court to the exclusion of any claim of the next of kin to take under a resulting trust; although the particular purpose or mode of application is not declared at all by the testator. And the same rule prevails although the testator refers to some past or intended declaration of the particular charity, which declaration is not made or cannot be discovered; and although the selection of the objects of the charity and the mode of application are left to the discretion of the trustees. And it is immaterial that the trustees refuse the gift, or die, or that their appointment is revoked in the lifetime of the testator, causing a lapse of the bequest at law. The same construction will also be adopted where a particular charitable purpose is declared by the testator which does not exhaust the whole value of the estate; or where the particular trust cannot be carried into effect, either for its uncertainty or its illegality, or for want of proper objects. And in all these cases the general intention of the testator in favor of charity will be effectuated by the court through a *cy-pres* application of the fund." The same propositions are laid down by Mr. Justice Story in his Equity Jurisprudence, sections 1167 *et seq.* But it is unnecessary to make further quotations.

These authorities are cited (and many more might be adduced) for the purpose of showing that where property has been devoted to a public or charitable use which cannot be carried out on account of some illegality in, or failure of the object, is does not, according to the general law of charities, revert to the donor or his heirs, or other representatives, but is applied under the direction of the courts, or of the supreme power in the State, to other charitable objects, lawful in their character, but corresponding, as near as may be, to the original intention of the donor.

They also show that the authority thus exercised arises, in part, from the ordinary power of the court of chancery over trusts, and, in part, from the right of the government, or sovereign, as *parens patriæ*, to supervise the acts of public and charitable institutions in the interest of those to be benefited by their establishment; and, if their funds become *bona vacantia*, or left without lawful charge, or appropriated to illegal purposes, to cause them to be applied in such lawful manner as justice and equity may require.

If it should be conceded that a case like the present transcends the ordinary jurisdiction of the court of chancery, and requires for its determination the interposition of the *parens patriæ* of the State, it may then be contended that, in this country, there is no royal person to act as *parens patriæ*, and to give direction for the application of charities which cannot be administered by the court. It is true we have no such chief magistrate. But, here, the legislature is the *parens patriæ*, and, unless restrained by constitutional limitations, possesses all the powers in this regard which the sovereign possesses in England. Chief Justice Marshall, in the Dartmouth College case, said: "By the revolution, the duties, as well as the powers, of government devolved on the people. . . . It is admitted that among the latter was comprehended the transcendant power of parliament, as well as that of the executive department." (4 Wheat. 651.) And Mr. Justice Baldwin, in McGill vs. Brown (Brightley's Rep. 346, 373), a case arising on Sarah Zane's will, referring to this declaration of Chief Justice Marshall, said: "The revolution devolved on the State all the transcendant power of parliament, and the prerogative of the crown, and gave their acts the same force and effect."

Chancellor Kent says: "In this country, the legislature or government of the State, as *parens patriæ*, has the right to enforce all charities of a public nature, by virtue of its general superintending authority over the public interests, where no other person is intrusted with it." (4 Kent Com. 508, note.)

In Fontain vs. Ravenel, (17 How. 369, 584,) Mr. Justice McLean, delivering the opinion of this court in a charity case, said: "When this country achieved its independence, the prerogatives of the crown devolved upon the people of the States. And this power still remains with them except so far as they have delegated a portion of it to the federal government. The sovereign will is made known to us by legislative enactment. The State, as a sovereign, is the *parens patriæ*."

This prerogative of *parens patriæ* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarchs to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interest of humanity, and for the prevention of injury to those who cannot protect themselves. Lord Chancellor Somers, in Cary