Charities -- Gifts to Enforce Prohibition Laws

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versity of Minnesota, has for the past thirteen years been engaged in the practice of law in Minneapolis and in the part-time teaching of Business Law at the University of Minnesota.

Miss Margaret E. Hall, Assistant Law Librarian, has resigned to become a member of the library staff at the Columbia University Law School. She has been succeeded for this year by Mrs. Ben Gray Lumpkin, Law Librarian of the University of Mississippi.

Associate Professor Frank W. Hanft has been promoted to a full professorship.

Visiting professors during the summer session of 1937 included: Professors Charles T. McCormick, of Northwestern University; Walter Wheeler Cook, of Northwestern University; James H. Chadbourn, of the University of Pennsylvania; and Wesley A. Sturges, of Yale University.

NOTES AND COMMENTS

Charities—Gifts to Enforce Prohibition Laws.

Testator in 1933 left a will providing: "$1,000 to any organization which may be organized for the purpose of enforcing the prohibition laws in Gaston County." After testator's death plaintiff corporation was organized for the above specified purpose with the express power to receive bequests. In an action against the executors the bequest was held void whether considered as a gift or as a charitable trust.¹

Gifts to aid in prohibiting or minimizing the manufacture, sale, or use of intoxicating liquors, or to teach the evils of liquor, have been held to constitute charitable trusts.² It is no objection to their validity that the state may have the responsibility for doing what the trustee is directed to do.³ They further either an educational purpose or one beneficial to the welfare of the community.⁴

³ Humphrey v. Board of Trustees, 203 N. C. 201, 165 S. E. 547 (1932), (1933) 11 N. C. L. Rev. 179.
⁴ "A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or restraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature." Jackson v. Phillips, 14 Allen 539, 556 (Mass. 1867). Quoted with approval in Barden v. Atlantic Coast Line Ry., 152 N. C. 318, 327, 67 S. E. 971, 975 (1910).
A charitable trust is not defective because the gift is made to a corporation not in existence at the time of the testator’s death, if such corporation is actually created within a reasonable time thereafter.\(^5\) There are two classes of gifts falling into this category. One is a gift to an organization not even informally in existence at the date of the will. Thus, where there was a bequest to the German Red Cross Society for the relief, use, and benefit of widows, orphans, and invalids, and no such organization was functioning at the testator’s death, the bequest was held to create a valid charitable gift to such an organization when it was created two years later.\(^6\) The other is a gift to an unincorporated association which is later incorporated,\(^7\) e.g., to the Denver Foundation for the benefit of the needy people of Denver,\(^8\) or to the Council at Narragansett Pier, Rhode Island, of the Boy Scouts of America to aid in carrying on its work.\(^9\) In both types of instances the courts have endeavored to carry out the intent of the testator.

A trust will not be allowed to fail for lack of a trustee,\(^10\) or for failure to use technical language expressing a trust purpose,\(^11\) if it is otherwise clear that a trust was intended.\(^12\) This intent will be found where the object as expressed is not opposed to the provisions or the policy of the law,\(^13\) would be valuable educationally, would reasonably tend to promote the general welfare of the community, and could be best administered through the trust device. In such instances a charitable

\(^5\) Keith v. Scales, 124 N. C. 497, 32 S. E. 809 (1899) (to the Moravian church of Salem for a church and school); \(\text{In re}\) Durham’s Estate, 203 Iowa 497, 211 N. W. 358 (1926) (to the Original Chapter of the Salvation Army located in Council Bluffs, Iowa); \(\text{In re}\) Rahn’s Estate, 316 Mo. 492, 291 S. W. 120, 51 A. L. R. 877 (1927) (German Red Cross case discussed in text); \textit{Restatement, Trusts} (1935) \$401, comment \(k\); \textit{Zollman, American Law of Charities} (1924) \$\$345, 346.

\(^6\) \(\text{In re}\) Rahn’s Estate, 316 Mo. 492, 291 S. W. 120 (1927).

\(^7\) \textit{Zollman, American Law of Charities} (1924) \$347.


\(^10\) N. C. Code Ann. (Michie, 1935) \$84023, 4035(a); \textit{State v. Gerard}, 37 N. C. 210 (1842); \textit{Goodrum v. Goodrum}, 43 N. C. 313 (1852); \textit{Keith v. Scales}, 124 N. C. 497, 32 S. E. 809 (1899); \textit{Church v. Trustees}, 158 N. C. 119, 73 S. E. 810 (1912); \textit{Benevolent Society v. Orrell}, 195 N. C. 405, 142 S. E. 493 (1928) (a trustee may be appointed either by virtue of the statute or by the superior court in the exercise of its equitable jurisdiction); \textit{Restatement, Trusts} (1935) \$397 (will not fail for want of trustee unless settlor manifests an intention that trust shall not arise unless person named acts as trustee); \textit{2 Bogert, Trusts and Trustees} (1935) \$328, n. 21; \textit{Zollman, American Law of Charities} (1924) \$459, n. 17; \textit{Note} (1920) 5 A. L. R. 315.

\(^11\) \textit{Benevolent Society v. Orrell}, 195 N. C. 405, 142 S. E. 493 (1928); \textit{Restatement, Trusts} (1935) \$351, comment \(b\); \textit{Zollman, American Law of Charities} (1924) \$452.

\(^12\) \textit{Restatement, Trusts} (1935) \$351; \textit{2 Bogert, Trusts and Trustees} (1935) \$324.

\(^13\) \textit{Trust Co. v. Ogburn}, 181 N. C. 324, 107 S. E. 238 (1921), (1922) 1 N. C. L. Rev. 41.
trust would seem more nearly to comply with the testator’s intention than an absolute gift.\textsuperscript{14}

It is axiomatic that the beneficiaries of a charitable trust must be incapable of definite ascertainmment.\textsuperscript{15} The objects and purposes, however, must be sufficiently concrete to enable the court to frame a decree and to supervise the trust.\textsuperscript{16} That is not to say, however, that the trustee may not be given discretion to choose the methods and persons through which the charitable purpose or object is to be effectuated.\textsuperscript{17} Decisions to the contrary\textsuperscript{18} in North Carolina have been in effect overruled by the statute\textsuperscript{19} enacted in 1925. This statute also extends the area within which the trustee may be given the choice, from one marked by the word “charitable” used as a technical word of art, to one which shall include “benevolent uses.”\textsuperscript{20} And it establishes a public policy in favor of the liberal construction of “religious, educational, charitable or benevolent uses,” by providing that “no gift, grant, bequest or devise, whether in trust or otherwise,” to such uses, “shall be invalid by reason of any indefiniteness or uncertainty of the object or beneficiaries of such trust, or because said instrument confers upon the trustee . . . discretionary powers in the selection and designation of the objects or beneficiaries . . . or in carrying out the purpose thereof.”\textsuperscript{21}
In the principal case the view that a gift and not a trust was intended is perhaps justified by the fact that if a trust were intended only the income on the $1,000 would be available for the use specified, and such income would be a negligible amount; whereas if a gift were intended, the full $1,000 would be available. However, the court discusses at length the validity of the bequest as a trust, and indicates that it is void as such. In so doing in the light of the considerations mentioned in the foregoing discussion, the court unnecessarily confuses the law of charitable trusts in North Carolina. The statute of 1925 and its effects upon the earlier decisions relied on are not mentioned. The opinion gives the impression that it is still legally impossible for the trustee of an otherwise valid charitable trust in this state to be given discretionary powers to select the particular objects and individuals to be benefitted. And it betrays unawareness of the extent to which the courts may, upon contests such as that in the principal case, or upon a petition for instructions, or at the suit of the Attorney General, supervise the administration by the charitable trustee.22

Wm. R. Dawes.

Criminal Law—Evidence—Admissibility of Evidence of a Collateral Offense of Defendant to Prove the Offense Charged.

D was indicted with state's witness for conspiracy to rob by means of assault with firearms or other dangerous weapons, and for robbery in pursuance of the conspiracy. As proof of the conspiracy the lower court admitted in evidence testimony that a week after the alleged robbery state's witness and D conspired to burn, and did burn, an automobile to defraud an insurance company. This evidence was admitted to show identity and guilty knowledge,1 and the Supreme Court affirmed the lower court ruling.2

It is the general rule that a particular crime cannot be proved by evidence of a distinct, substantive, unconnected collateral offense.8 The strict application of this rule is obviously desirable. Not only does evidence of other crimes committed by D tend to prejudice and mislead the jury, but also D might be taken by surprise and be unprepared to answer the accusation, if innocent, or, if guilty, be unable to mitigate its effect upon the outcome of the trial for the offense charged in the

1 Record on Appeal, pp. 57, 351, State v. Flowers, 211 N. C. 721, 192 S. E. 110 (1937).