NOTES AND COMMENTS ON RECENT DECISIONS.

DECEDENTS' ESTATES.

Demonstrative or specific legacy.

Questions as to whether a legacy is demonstrative or specific are often very difficult to answer. An illustration of this will be found in the case *In re* Pratt, L. R. (1894) 1 Ch. 491. Testatrix bequeathed to her nephew "800 pounds invested in 2½ consols," she did not have at the date of the will any 2½ consuls, but had 1800 pounds 2¾ consols in the name of her deceased husband and herself.

It was contended that the case was exactly covered by Mytton *v.* Mytton, L. R. 19 Eq. 30, where the words were "the sum of 3000 pounds invested in Indian security," and the legacy was held to be demonstrative. Justice NORTH would not say that this decision was wrong (although rendered by the unlucky Vice Chancellor MALINS) but preferred to find a distinction in the use of the word "sum" in Mytton *v.* Mytton. If, however, the distinction was too fine a one (as it appears to us) the learned judge had ample authority for holding the legacy specific: McClellan *v.* Clark, 50 L. T. (N. S.) 616; Page *v.* Young, L. R. 19 Eq. 501, and others to the same point. Upon the will itself, independent of the authorities, the legacy was clearly specific.

Trust—Gift by will in pursuance of promise.

We read with interest the decision in Hofner's Estate, 161 Pa. 331. Testatrix by last will left a legacy to a church, and died May 26, 1892, two days after the execution of the will. There was a prior will dated December 1, 1892, a codicil to which, executed April 12, 1888, contained an identical gift. It appeared in evidence that testatrix had received a legacy from her sister Elizabeth in 1888, who had intended to leave her property to the church, but changed her mind and left

her property to testatrix, receiving her promise that she would never use it but would dispose of it according to Elizabeth's wishes. The promise was made after the execution of the will.

The Supreme Court found the Orphans' Court of Philadelphia County in error in holding that, as the legacy was identical with that in the codicil, the legacy was not avoided by the Act of April 26, 1855, P. L. 332. The first and last will were entirely inconsistent.

The gift, however, was sustained on the ground that the promise of testatrix to her sister raised a trust in favor of the object, in favor of which the will would have been changed but for that promise. As Justice DEAN would put it upon the principle of the *Golden Rule*, and although there was no fraud on the part of testatrix, there was none the less a trust. Justice MITCHELL, in dissenting, vigorously remarks: "I do not understand that equity, even under the benign administration of the longest footed chancellor, undertakes to enforce moral obligations in the length and breadth of the Golden Rule, and it is important that we should keep its boundaries carefully marked. If it was to be enforced as an obligation, the church should be required to file its bill, prove the consideration, the contract or trust, and the failure to perform as in other cases."

The decision of the court appears to have been a good natured effort to save the gift to the church. But the theory is hardly sustained by the evidence. There is absolutely nothing to show that Elizabeth even intended to alter her will when the promise was made.

Orphans' Court—Religious use.

We are tempted to go back to Knight's Estate, 159 Pa. 500, and note the decided enlargement of the definition of a religious use as understood by the law of Pennsylvania. Testator left $1000 to the Friendship Liberal League, organized under the General Incorporation Act of April 29, 1874, "for the purpose of uniting the persons so to be incorporated socially, for the improvement of their intellectual and moral condition by the dissemination of scientific truths by means of literature,

music, lecture and debate." Its meetings were held on Sunday and it was dependent on the voluntary gifts of members and sympathizers. One witness testified that the League was "opposed to all isms." Another, who had attended a Sunday lecture, said: "It was a lecture against the Christian religion. A discussion followed in the same spirit." A third testified that the object of the League was "the investigation of truth," and this was till the light thrown upon its purposes. It was held to be a charitable use within the meaning of the Act of April 26, 1855, § 11, P. L. 332, by the Orphans' Court of Philadelphia County, 2 Dist. Rep. 523, chiefly because its purpose as set forth in the charter was the dissemination of scientific truth to all who wished to avail themselves of its privileges. Hence, it was a charity in the sense that a public school is a charity: Episcopal Academy *v.* Phila., 150 Pa. 565. The gift therefore failed, the will having been executed within one month of testator's death. The language of the Supreme Court in affirming the decree is not framed with the same caution as was exercised by the learned court below, but would seem to imply that this was a *religious* as well as a charitable gift.

"In its broadest sense religion comprehends all systems of belief in the existence of being superior to and capable of exercising an influence for good or *evil* upon the human race." This is a definition broad enough to cover the worship of his satanic majesty and, indeed, the court cites among its examples the worship of idols and the religion of the North American Indians.

We understand that the court considered itself placed in a dilemna since any other interpretation would have made § 11, of the Act of 1855, discriminate against Christianity. But the exceedingly broad language of the court in this instance may compel them in future cases calling for an application of the *cy pres* doctrine to give effect to gifts anything but religious.

We do not look for such a result, but believe that if such a case arises, the court will distinguish this case upon the same grounds as the Orphans' Court, and that the sound doctrine

in Zeisweiss *v.* James, 63 Pa. 465, where a gift to "The Infidel Society in Philadelphia," hereafter to be incorporated was held void, will not be abandoned.

If a league is to be regarded as "religious" simply because it airs its peculiar views upon the first day of the week, and has some vague moral or immoral purpose which represents its intentions, then surely there can be no use for the word religious in the Act of 1855, since its meaning is hopelessly indefinite.

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EQUITY.

Declaration of trust.

The endorsement of notes and mortgages to one "for the use of" another is sufficient to create a trust and does not pass the legal title to the beneficiary, even though the nature of the trust is not stated: Collins *v.* Phillips et al., 59 N. W. Rep. (Iowa) 40.

Trustee—Statute of Limitations.

The rule that the statute of limitations does not begin to run in favor of a trustee until he has openly repudiated the trust, was recently invoked in the Appellate Court of New York in a suit against a self-constituted liquidating partner, but the court held that this rule applied only to cases of actual, express and subsisting trusts, and was therefore not applicable to the case of a liquidating partner, whose agency is not a direct trust. If any trust had been raised here by implication or construction from wrong-dealing, the statute began to run from the date of the wrong: Gilmore *v.* Ham, 36 N. E. Rep. 826.

He who comes into equity must do so with clean hands.

"No polluted hand shall touch the pure fountains of justice." The principle here embodied is the chief foundation stone of the relief afforded by courts of equity and is called into requisition more often, perhaps, than any other. The Supreme Court of Indiana had occasion to rely upon it recently in the case of Brown *v.* First National Bank of Columbia, reported in 37 N. E. Rep. 158. From the facts it appeared that a justice of the

peace (Brown) before whom an affidavit had been filed charging with larceny a person who had fled the jurisdiction, entered into an agreement with the plaintiff (the bank), that if he secured the fugitive's arrest and the return of the stolen property he should receive a percentage of the latter. He did succeed in arresting the thief and in securing the property, and this suit was brought to compel the bank to pay him the compensation agreed upon. The court decided that the agreement was void as against public policy regardless of the good faith of the parties thereto, and notwithstanding the fact that the affidavit was not copied into the justice's docket, but was in fact taken from his office, and that no warrant was issued by him upon it. "All agreements relating to proceedings in the courts, civil or criminal, which may involve anything inconsistent with the full and impartial course of justice therein are void though there are no open charges of corruption."

The agreement thus being void, the bank was not estopped from setting up such a defence even though it had received the benefits of the transaction.

Whether equity will refuse or grant its aid in such cases seems to depend upon whether or not the *terms* of the agreement must be appealed to and relied upon: See Gray *v.* Oxnard Bros., 59 Hun. 387, and the celebrated case of Sharp *v.* Taylor, 2 Phil. Ch. 801.

Following trust funds.

We are reminded of the well-known case of Farmers' and Mechanics' Bank *v.* King, 57 Pa. 202, by a late decision of the Supreme Court of South Dakota, Kimmel *v.* Dickson, reported in 58 N. W. Rep. 561.

Kimmel had given to a certain bank a sum of money for a purpose which was recited in the receipt it gave him in return, namely, that the bank should pay it over to a designated third person when he presented to it a proper deed, duly executed, conveying to the plaintiff a certain piece of land for which the latter had contracted. Subsequently, and before any part of this plan was carried out, the bank failed and a receiver (Dickson) was appointed. Kimmel now sought to

recover his money, and Dickson denied his right on the ground that the bank had given him credit for the sum as a deposit, and had mingled the money with its own. This, however, had been done without the plaintiff's knowledge, and the court was very clear that it did not change the character of the transaction. The money so deposited, said the court, was plainly a trust fund and did not become assets or pass to the receiver. Being a trust fund Kimmel was entitled to follow it into the receiver's hands. The court, therefore, directed the receiver to pay it over to him.

Fraud—Sufficiency of averments of in the bill.

Upon a demurrer to a bill in which the complainant (a creditor) based his right to recover upon the fraud of the defendant the Supreme Court of Alabama recently gave an opinion upon the sufficiency of allegations in a bill when charging fraud.

The bill alleged that the defendant had conveyed all his property to his minor children to defraud future creditors; that he withheld the deeds from record for nearly a year, concealing their existence from complainant till after the debt was created; that he remained in possession and held himself out to complainant as the owner of the property; that he had given a mortgage on it to one who knew of his failing condition; and finally that he had remained in possession consuming and disposing of the property and thereby defrauding the complainant. The court overruled the demurrer and laid down the rule broadly that general averments of facts from which unexplained a conclusion of fraud arises are sufficient; and stated that the test in such cases was whether the averments of matters essential to the right of recovery were sufficient to notify the defendant that the *bona fides* of the transaction was assailed and to put in issue its validity: Williams *v.* Spragins, 15 So. Rep. 247.

Practice and pleading—Multifariousness.

The rules of practice and pleading in equity are well settled, but occasionally attempts are made to break away from them. In the case of Burnham *v.* Dillon, reported in 59 N. W. Rep.