

Executors of Mcdonogh Vs. Murdoch

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Appellant : Executors of Mcdonogh

Respondent : Murdoch

Judgement :

Executors of McDonogh v. Murdoch - 56 U.S. 367 (1854)

U.S. Supreme Court Executors of McDonogh v. Murdoch, 56 U.S. 15 How. 367 367 (1854)

Executors of McDonogh v. Murdoch

56 U.S. (15 How.) 367

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

McDonogh, a citizen of Louisiana, made a will in which, after bequeathing certain legacies not involved in the present controversy, he gave, willed, and bequeathed

all the rest, residue, and remainder of his property to the corporations of the Cities of New Orleans and Baltimore forever, one-half to each, for the education of the poor in those cities.

The estate was to be converted into real property and managed by six agents, three to be appointed by each city.

No alienation of this general estate was ever to take place, under penalty of forfeiture, when the States of Maryland and Louisiana were to become his residuary devisees for the purpose of educating the poor of those states.

Although there is a complexity in the plan by which the testator proposed to effect his purpose, yet his intention is clear to make the cities his legatees, and his directions about the agency are merely subsidiary to the general objects of his will, and whether legal and practicable or otherwise, can exert no influence over the question of its validity.

The City of New Orleans, being a corporation established by law, has a right to receive a legacy for the purpose of exercising the powers which have been granted to it, and amongst these powers and duties is that of establishing public schools for gratuitous education.

The civil and English law upon this point compared

The dispositions of the property in this will are not "substitutions, or *fidei commissa*, " which are forbidden by the Louisiana code.

The meaning of those terms explained and defined.

The testator was authorized to define the use and destination of his legacy.

The conditions annexed to this legacy, the prohibition to alienate or to divide the estate, or to separate in its management the interest of the cities or their care and control, or to deviate from the testator's scheme, do not invalidate the bequest, because the Louisiana Code provides that

"in all dispositions *inter vivos* and *mortis causa*, impossible conditions, those which are contrary to the laws or to morals are reputed not written."

The difference between the civil and common law upon this point examined.

The City of Baltimore is entitled and empowered to receive this legacy under the laws of Maryland, and the laws of Louisiana do not forbid it. The article in the code of the latter state, which says that "Donations may be made in favor of a stranger when the laws of his country do not prohibit similar dispositions in favor of a citizen of this state," does not most probably apply to the citizens or corporations of the states of the Union. Moreover, the laws of Maryland do not prohibit similar dispositions in favor of a citizen of Louisiana.

The destination of the legacy to public uses in the City of Baltimore, does not affect the valid operation of the bequest in Louisiana.

The Cities of New Orleans and Baltimore, having the annuities charged upon their legacies, would be benefited by the invalidity of these legacies. Upon the question of their validity this Court expresses no opinion. But the parties to this suit, *viz.*, the heirs at law, could not claim them.

In case of the failure of the devise to the cities, the limitation over to the States of Maryland and Louisiana would have been operative.

The bill was filed by the appellees, as the heirs at law of John McDonogh, to set aside his will.

The will itself is too long to be inserted in this report of the case; it would, of itself, occupy more than thirty printed pages. The reporter adopts the following statement of it, made out by

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the following French jurists, whose opinion was requested upon the whole case, *viz.*: Coin-Delisle, Advocate, late of the Council of the Order of Advocates of Paris; Delangle, late Bastonier of the Order of Advocates of Paris; Giraud, LL.D., a

member of the national Institute; Duranton, Pere, Advocate, Professor in the Law Faculty of Paris; Marcade, Advocate, late Advocate in the Court of Cassation.

Statement of the facts of the case

John McDonogh, a native of Baltimore, an inhabitant of McDonoghville, State of Louisiana, made his olographic will at McDonoghville aforesaid, on the 29th of December, 1838, according to the forms prescribed by the local law.

No question is raised about the form of the instrument; nor could it be otherwise. The Civil Code of Louisiana gives every man the right of making an olographic will. Such a will, in Louisiana, as in France, is one written by the testator himself; and, in order to be valid, it must be entirely written, dated, and signed by the testator's own hand. (Art. 1581.) This kind of will is subject to no other form, and may be made anywhere, even out of the state. (Same art.) These are the same rules as those contained in arts. 970 and 999 of the French Civil Code.

John McDonogh died in October, 1850. His will was proved in due form of law.

This will has been printed at New Orleans, at full length, with the testator's instructions appended, under the title of "The last Will and Testament of John McDonogh, late of McDonoghville, State of Louisiana; also his Memoranda of Instructions to his Executors &c.;" We do not mean to give it here *in extenso*, deeming a synopsis of it quite sufficient for our purpose.

The testator, after having called on the holy name of God, commences by declaring that he was never married, and that he has no heirs living, either in the ascending or the descending line. So that, according to the laws of the state, his power of willing away his property was unlimited. Civil Code of Louisiana, 1483.

He orders that immediately after his death, an inventory shall be made of his property by a notary public, assisted by two or more persons, whom his executors shall appoint, the same to be done on oath.

First comes a devise to the children of his sister Jane, the widow of Mr. Hamet, of Baltimore, of land which he purchased on the 29th of February, 1819, of one John

Payne in Baltimore

county. This lot, containing ten acres, more or less, together with the improvements, goes to his nephews aforesaid, a life estate in the same being, however, reserved to their mother.

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He also bequeaths to his said sister, widow Hamet, six thousand dollars, recommending to her so to place the capital as to make the interest support her in her old age.

He then bequeaths their freedom to certain slaves, fixes a fifteen years' term of service to be performed by certain others on his plantations, and orders the remainder of his black people to be sent to Liberia by the American Colonization Society.

And now, in language expressive of piety towards God, and charity towards mankind, the testator after having made these deductions for his sister, Mrs. Hamet, for the children of his sister, and for the freedom of a certain number of slaves goes on to lay down what may be called emphatically his will.

He gives, wills and bequeaths all the rest, residue, and remainder of his estate, real and personal, present and future, as well that which is now his, as that which may be acquired by him hereafter, at any time previous to his death, and of which he may die possessed, of whatsoever nature it may be, and wheresoever situate, unto the Mayor, Aldermen and Inhabitants of New Orleans, his adopted city, and the Mayor, Aldermen and Inhabitants of Baltimore, his native city, and their successors forever, in equal proportions of one-half to each of the said Cities of New Orleans and Baltimore.

He wills, at the same time, that the entire mass of property thus bequeathed and devised shall remain charged with several annuities or sums of money, to be paid by the devisees of his general estate out of the rents of said estate.

He adds that the legacies to the two cities are for certain purposes of public utility, and especially for the establishment and support of free schools in said cities and their respective suburbs, including the Town of McDonogh, as a suburb of New Orleans, wherein the poor, and the poor only, of both sexes, of all classes and castes of color, shall have admittance, free of expense, for the purpose of being instructed in the knowledge of the Lord, and in reading, writing, arithmetic, history, geography, and singing &c.;

This is the principal object of the testator's bounty, as appears by the words which usher in the general devise:

"And for the more general diffusion of knowledge, and consequent wellbeing of mankind, convinced as I am that I can make no disposition of these worldly goods which the Most High has been pleased so bountifully to place under my stewardship that will be so pleasing to him as that by which the poor will be instructed in wisdom and led into the path of virtue and happiness, I give,"

&c.;

For the execution of his will, and with the unequivocal intent of increasing his real estate after his death, the testator appoints

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executors, to whom he gives the seisin of all his personal estate, corporeal and incorporeal, and clothes them with the most extensive powers, without the interference of judicial or extrajudicial authority.

As relates to his real estate, such as it will be found to be at his death, which estate he has just devised to the Cities of New Orleans and Baltimore, he expressly forbids the Mayor, Aldermen and Inhabitants of each of the cities, and their successors, ever to alienate or sell any part thereof; but the cities shall let the lots improved with houses, to good tenants, by the month or year; they shall let the unimproved lots in New Orleans, its suburbs, Town of McDonogh, or elsewhere, for a term not to exceed twenty-five years at anyone time, the rent payable

monthly or quarterly, and to revert back, at the end of said time, with all the improvements thereon, free of cost, to the lessors; and, as to the lands, wherever situate, in the different parishes of the state, the cities shall lease them in small tracts for a term not to exceed one to ten years, revertible back with their improvements, to be re-leased for a shorter time and at higher rates.

As concerns his personal estate, which, as we have seen in the general bequest above also belongs to the Cities of New Orleans and Baltimore, the testator instructs his testamentary executors to invest his personal estate of all kinds, as well as the amount of all debts owing to him, as fast as they are received, together with the interest and increase, in real estate of a particular description, to-wit: lots of ground, improved and unimproved, lying in the City or suburbs of New Orleans, and to hand over said real estate, with the title deeds, to the commissioners and agents of his general estate, so that by said means the whole of his estate, real and personal, shall become a permanent fund on interest, as it were, *viz.*, a fund in real estate affording rents, no part of which fund shall ever be touched, divided, sold, or alienated, but shall forever remain together as one estate, termed in his will "the general estate," and be managed, as hereinafter directed. The net amount of the revenues collected annually shall be divided equally, half and half, between the two Cities of New Orleans and Baltimore, by the commissioners and agents of the general estate, after paying the several annuities and sums of money hereinafter provided for, and applied forever to the purposes for which it is intended.

The testator, dividing into eight equal portions the revenues of his estate, thus made up of the immovables left at his decease, and of those which shall be acquired by his executors, with the aid of his personalty and the interest accruing on his

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credits, gives and bequeaths the first eighth part of the net yearly revenue of the whole, during forty years, to the American Colonization Society for colonizing the free people of color of the United States, but the society shall not receive or

demand, in any one year, a larger sum than \$25,000.

He gives and bequeaths the second eighth part of the net yearly revenue of the whole to the Mayor, Aldermen, and Inhabitants of the City of New Orleans until said eighth part of the net yearly revenue of rents shall amount to the full and entire sum of \$600,000, and that for the express and sole purpose of establishing an asylum for the poor of both sexes, and of all ages and castes of color.

He gives and bequeaths the third eighth part of the net yearly revenue of the whole to the Society for the Relief of Destitute Orphan Boys of New Orleans, for the express and sole purpose of its being invested in real estate, until the annuity shall amount to the full sum of \$400,000, exclusive of the interest which may have accrued on it.

He gives and bequeaths the fourth eighth part of the net yearly revenue of the entire estate to the Mayor, Aldermen, and Inhabitants of the City of Baltimore for the express and sole purpose of establishing a School Farm, on an extensive scale, for the destitute male children of Baltimore, of every town and village of Maryland, and of the great maritime cities of the United States, until the said eighth part shall amount to the sum of \$3,000,000.

There now remains the revenue of one-half or four eighths of the revenue of what the testator styles his general estate. The two Cities of New Orleans and Baltimore being the principal legatees, it is obvious that they are entitled to the four eighths not bequeathed by a particular title; consequently, it is laid down that until such time as these four annuities, bequeathed under a particular title, shall have been paid off and expire, the Cities of New Orleans and Baltimore shall receive, for the establishment and support of said free schools, one-half only of the net yearly revenue of rents of the general estate, and no more.

Moreover, the total amount to be received by each of the legatees of one eighth of the revenue, until the respective sums of \$25,000, \$600,000, \$400,000, or \$3,000,000 are realized, shows that one of the annuities is to determine before the others are paid off. The testator therefore orders that as soon as any one of the

annuities shall be filled and paid off, the proportions of the net yearly revenue of rents of the general estate, which were payable under the extinct annuity, shall go and be payable to the annuity, bequeathed to the City of Baltimore, for

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the establishment of a School Farm, so that the \$3,000,000 may be made up in as short a space of time as possible. It will not be till the full and entire discharge of the annuities that the two cities will divide between them the net yearly revenue of rents of the general estate.

We will now turn our attention to the means and devices adopted by the testator to improve the condition of his particular legatees.

He forbids the alienation of the real estate which he leaves at his death to the two cities, and points out how the houses shall be let for short terms, the unimproved lots let for twenty-five years, at most, so as to be revertible, together with all improvements, to the mass of his estate, and the lands leased out so as to bring in returns more and more ample.

He also orders his testamentary executors to invest his personalty in houses and building lots in New Orleans and its suburbs.

He has not ordered anything of the kind for the \$25,000 of the Colonization Society (first eighth). The sum is a small one, and can be paid off in a short time.

But as respects the Society for the Relief of Destitute Orphans (third eighth), he gives this third eighth part of the revenues to be first deposited in one or more of the banks in New Orleans which allow interest on deposits, and then, always with the approbation of the Mayor, Aldermen, and Inhabitants of New Orleans, who shall become parties to the deeds, the said society shall invest the money, as good purchases offer, in houses and lots lying in New Orleans and its suburbs, so that such real estate, once acquired, shall be inalienable, and shall forever be retained and held by it and remain its property in order that the revenue of the said real estate may be sufficient for the support of the institution.

With respect to the particular legacy bequeathed to the City of New Orleans for the purpose of establishing an Asylum for the Poor (second eighth), he orders that, annually or semiannually, the amount of the fractions of eighths be invested, as the commissioners receive it, in bank stocks, or other good securities on landed estate, on interest, so that the capital of \$3,000,000, may be thereby augmented up to the time when the last of the annuity shall be received from the general estate; that, after this period (or even earlier, if a favorable opportunity occur), one-third of the whole (not more) be invested in the purchase of landed estate, in the erection of buildings, and the furnishing of necessary articles, and the remainder, or two-thirds at least, invested in the purchase of such houses and building lots in New Orleans and its suburbs, as will probably

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greatly augment in value which real estate, when purchased, shall never be alienated, but a permanent revenue derived therefrom for the support of the institution.

Again, as regards the particular legacy bequeathed to the City of Baltimore for a School Farm (fourth eighth), which legacy is to reach the amount of \$3,000,000, to be taken out of the eighth charged therewith, and out of the other three eighths as soon as the other three legacies are finally paid off, the fund must be increased as it is received, by investing the moneys in bank stocks or other good securities on landed estate on interest, and this capital, with its increase, shall be invested, for one sixth part at the utmost, in the purchase of such land, animals, and agricultural implements as the institution shall need, and the other five-sixths invested in the purchase of houses and building lots situated in the City, suburbs, and vicinage of Baltimore, or of tracts of land in its immediate neighborhood, *viz.*, such lots or lands to be all purchased under fee simple titles as will probably greatly augment in value. And in this instance too, the real estate, when purchased, is never to be sold or alienated, but is to remain forever the property of the institution, to the end that a permanent revenue may be derived therefrom.

We will now examine the measures taken by the testator to prevent the cities from giving the moneys a different destination from that prescribed by the testator.

Not content with appointing testamentary executors, McDonogh, wishing to debar the city corporations from the handling of moneys, has ordered that there be commissioners of his estate, having a principal and central office in the City of New Orleans, where all the muniments and papers relating to his affairs may be kept, as well for the Asylum for the Poor, for the investment of the moneys due to the Orphan Relief Society, for the School Farm of Baltimore, as for the management of the general estate, or fund for the education of the poor. These commissioners are to have the sole management of the general estate, the leasing and renting of its lands and houses, the cultivating of its estates, the collecting of its rents, the paying of the annuities bequeathed as above, and are to do all acts necessary to its full and perfect management.

These commissioners cannot be members of the city councils; but they shall be appointed by the City Councils of New Orleans, as regards the Asylum for the Poor; by the mayor and city councils, as respects the School Farm at Baltimore, with the style of Directors; by the respective City Councils of New Orleans and Baltimore, as to the management of the fund for the education of the poor.

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New appointments shall be made annually, on a day fixed by the will.

The city councils shall have a supervision over their operations; and to them the commissioners are liable for the performance of all their duties, and must annually render an account of their administration.

Besides these commissioners, each city shall have agents on the spot to represent its commissioners; and these agents shall also be appointed by the mayors and city councils.

And, after the payment of the annuities, the respective commissioners, or the agents representing them, shall receive one moiety of the net revenue of the year,

to be disposed of conformably to the will.

As for the purchases to be made, before the full payment of the annuities by the commissioners of the Asylum for the Poor, they must be approved by the Mayor and city Councils of New Orleans. The same rule is laid down for the purchases to be made by the Directors of the School Farm. They must be approved by the Mayor and City Council of Baltimore.

The testator recommends to the commissioners of the Asylum for the Poor to apply to the Legislature of the State of Louisiana for an act of incorporation, subject always, however, to the conditions provided for in the will. He has also recommended, in the same language and under the same conditions, to the Directors of the Farm School, to apply, for the same purpose, to the Legislature of the State of Maryland. He recurs to the same idea, using the same phraseology, and with the intent, no doubt, that his general estate should become a juridical person, he also recommends to the commissioners to sue out an act of incorporation for said general estate, always subject to the conditions laid down in the will.

We omit a variety of minute regulations concerning the publication of the annual accounts, the building and locality of schoolhouses and residences for teachers, the school organization, the immense lands for the Poor Asylum, together with the high-flown disquisitions in which the testator indulges. All this matter appears to be foreign to the controversy. The whole may be reduced to these few words:

"The cities are the devisees, but the administration of the property devised shall be carried on forever by commissioners appointed by the cities, and accountable to them, and it shall be the duty of said commissioners to hand over the moneys to the new public institutions which the testator orders to be created."

The testator goes on to say:

"No compromise shall ever take place between the Mayor, Aldermen, and Inhabitants of

Baltimore and those of New Orleans or their successors in relation to their respective rights to my general estate."

"Neither party shall receive from the other by agreement a certain sum of money annually or otherwise for its respective proportions. Neither party shall sell its respective rights under this will to the general estate, to the other or to others, but said general estate shall forever remain and be managed as I have pointed out, ordered, and directed."

"And should the Mayor and Aldermen of New Orleans and the Mayor and Aldermen of Baltimore combine together and knowingly and willfully violate any of the conditions hereinbefore and hereinafter directed for the management of the general estate and the application of the revenue arising therefrom, then I give and bequeath the rest, residue, remainder, and accumulations of my said general estate, subject always, however, to the payment of the aforementioned annuities, to the States of Louisiana and Maryland in equal proportions, to each of said states, of half and half, for the purpose of educating the poor of said states under such a general system of education as their respective legislatures shall establish by law (always understood and provided, however, that the real estate thus destined by me for said purpose of education shall never be sold or alienated, but shall be kept and managed as they, the said legislatures of said states, shall establish by law as a fund yielding rents forever; the rents only of which general estate shall be taken and expended for said purpose of educating the poor of said respective states, and for no other). And it is furthermore my wish and desire, and I hereby will, that in case there should be a lapse of both the legacies to the Cities of New Orleans and Baltimore, or either of them, wholly or in part, by refusal to accept, or any other cause or means whatsoever, then, both or either of said legacies, wholly or partially lapsed, shall inure, as far as it relates to New Orleans, to the State of Louisiana, and, as far as it relates to Baltimore, to the State of Maryland, that the legislatures of those states respectively may carry out my intentions as set forth in this my will as far and in the manner which will appear to them most proper."

In October, 1852, the judge of the district court, sitting as a circuit judge, passed the following decree, *viz.*:

"That all that part of the olographic will of John McDonogh beginning at the second paragraph with the words 'It is my will and I direct my executors, hereinafter named, immediately after my death, to correspond,' &c.;, on the second page, numbered as the sixth page of the printed copy of the will on file, and ending with the words 'or other ways, and held and owned by said corporations' on the 33d page of the said printed copy

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of said will, being all and every portion of said will relative to the City of New Orleans, the City of Baltimore, the State of Louisiana, and the State of Maryland, the 'general estate,' the Colonization Society, a projected asylum in New Orleans, the Society for the relief of Destitute Orphan Boys, a projected school farm in Maryland, free public schools in New Orleans and Baltimore, and the appointment of various boards of commissioners, agents, directors &c.;, and for the investment and accumulation of the estate, be, and all said provisions are, declared illegal, null, and of no force and effect whatever, and that as to all the estate of said deceased, except such as is disposed of in the first paragraph of said will, the deceased died intestate, and his estate fell, by his death, to his heirs at law. That complainants are heirs at law of the deceased John McDonogh, in the following proportions, to-wit: Maria Louisa Ord, wife of Pacificus Ord, Laura J. Welsh, Thomas Welsh, Frank E. Welsh, and William P. Welsh, minors, represented by their guardian, William F. Murdoch, are heirs of twelve seventieths ($12/70$ ths), one-half of said portion being for the said Maria Louisa, and the other half being equally divided between said minors. Anne Cole, Mary Murdoch, wife of William F. Mordoch, Eliza Hayne, wife of George Hayne, George F. Cole, Louisa Sheffey, wife of Hugh W. Sheffey, and the children of Margaret Cole, the deceased wife of George P. Jenkins, namely, George Jenkins, Mary McDonogh Jenkins, and Conway M. Jenkins, minors, represented by their father George T. Jenkins, are heirs of twelve seventieths of the estate. The said Anna, Mary, Eliza, George F., and Louisa, each to take one sixth part of said portion, and the remaining one sixth

part thereof to be equally divided between said minors. Sarah Day, wife of Nicholas Day, is heir of twelve seventieths of the estate. Jane Beaver, wife of William Beaver, Sarah Beaver, wife of Jacob Beaver, Robert H. Hammett, Jesse Hammett, Anne Maria Snook, wife of Peter Snook, Eliza Anderson, wife of Joseph C. Anderson, and the children of Margaret Hammett, deceased, said children not being parties, are heirs of twelve seventieths of the estate; the said Jane, Sarah, Robert, Jesse, Ann, and Eliza, to take each a seventh part of said portion, and the remaining seventh to be reserved for the children of said Margaret, when they shall make themselves parties, and on due proof. Rosalba P. Lynch, wife of Andrew H. Lynch, is heir of twelve seventieths of the estate, the remaining ten seventieths to be reserved for the heirs of the half-blood, when they shall make themselves parties, and on due proof. That the said complainants recover of the defendants' executors of the will of the deceased all and singular the property, real and personal,

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corporeal and incorporeal, composing the estate of the deceased, and especially all and singular the property of the deceased, in the several parishes of the State of Louisiana, mentioned or comprised in the inventory of the succession, prepared by Thomas Layton and Adolph Mazureau, notaries public, a copy of which is in evidence, and that said complainants have execution and be put in possession of the same in conformity with law and the rules of court. That reference be made to the master in chancery for an account of the administration of the said executors, from the death of the deceased to the execution of this decree, and that said executors account to the said master in the premises, and that said master report to the court, and so much of the said bill as demands said account and the recovery of any moneys in the hands of said executors, is retained for further decree. That any other person or persons, not now parties to the proceedings, claiming title to the estate of the deceased, or any part thereof, be allowed to present their claims respectively before this Court, to make due proofs thereof, and to become parties to the proceedings for the due establishment and adjudication thereof. That the costs of the complainants and of the executors, be

paid out of the succession of said deceased, and the costs of the other parties defendant by themselves respectively."

"Decree rendered 7th October, 1852."

"Signed 26th October, 1852."

"[SEAL] THEO. H. Mc CALEB, *United States Judge* "

From this decree, the executors appealed to this Court.

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MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The appellees are the heirs at law of John McDonogh, a native of the State of Maryland, who died at McDonogh, near New Orleans, in the State of Louisiana, in 1850, leaving there a very large succession. In 1839, the decedent executed, at New Orleans an olographic will for the disposal of the estate he might have at his death. This will is in a legal form, and has been admitted to probate in the District Court of New Orleans. It contains two particular legacies which are not contested, and a single legacy under a universal title. In this bequest the testator declares "that for the more general diffusion of knowledge, and consequent wellbeing of mankind," and "being convinced that he could make no disposition of those goods which the Most High had placed under his stewardship, as by means of which the poor will be instructed in wisdom and led into the path of holiness,"

"he gives, wills, and bequeaths all the rest, residue, and remainder of his estate, real and personal, present and future, as well that which was then his as that which he might acquire at any time before his death, and of which he might die possessed, subject to certain annuities, to the corporations of the Cities of New Orleans and Baltimore forever, one-half to each, . . . to and for the several intents and purposes thereafter declared."

The testator directs his executors to convert his personal estate into real property, whereby

"the whole of his estate will become a permanent fund in real estate, affording rents, no part of which shall ever be touched, divided, sold, or alienated, but shall forever remain together as one estate, and be managed"

as he shall order.

For the management of this estate, thus declared to be inalienable, he directs the two cities each to select annually three agents, whose duty it should be to receive seisin and possession of the estate from his executors, immediately after his death. They are "to lease or rent the lots," "cultivate the plantations," "collect the rents," "pay the annuities," "invest the moneys," and, "in fine, do all acts necessary to its full and perfect management, according to the will;" the will of the testator being

"that no part of the general estate, or revenue from rents arising from said general estate, shall go into the hands of the corporate authorities of the said cities, but that the said authorities should have forever the supervision of it."

The testator designed the joint management of the agents of the cities, and the joint supervision of their authorities over the estate, to be perpetual. He forbids the cities to vary, by agreement or by any compromise the relations he has established between them in regard to it. They must make no sale of their interests; no traffic with their powers of control; no surrender,

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for money or other consideration, of their supervisory care. But should they combine to violate his scheme of management or appropriation, their rights are declared forfeited and "the general estate" is limited over to the States of Louisiana and Maryland, "for the purpose of educating the poor of those states," "under such a general system of education as their legislatures should appoint." He further provides that should there be "a lapse of the legacies from the failure of

the legatees to accept, or any other cause or means whatsoever," the shares should inure for the benefit of the state or states in which the cities are situate;

"that the legislatures of those states respectively may carry his intentions, as expressed and set forth in the will, into effect as far and in the manner which will appear to them most proper."

The testator having provided for the perpetuity of the McDonogh estate, and the destination of its revenues, proceeds to develop a minute and detailed scheme for its management, improvement, and the expenditure of its income. He appropriates one eighth part of its annual revenue for forty years for colonizing the free people of color to the American Colonization Society, the sum not to exceed \$25,000 per annum; one eighth part for the erection, in New Orleans, of an asylum for the poor of all ages, castes, and colors; one eighth part to an incorporated society for the relief of orphan boys in New Orleans; and one eighth part for the establishment of a school farm in Maryland. The money appropriated to the asylum, school farm, and orphan boys he requires to be invested as capital in real estate, and the rents only to be subject to the uses of the donees. The capital of the asylum and school farm is to be entirely collected before any appropriation takes place for their use, and for the one the capital is to be \$3,000,000, and for the other \$600,000. The remaining four eighths of the income of the general estate, for the present, and the whole, after the objects above mentioned are fulfilled, are destined

"for the education of the poor without the cost of a cent to them, in the Cities of New Orleans and Baltimore and their respective suburbs in such a manner that every poor child and youth of every color in those places may receive a common English education -- based, however, be it particularly understood, on a moral and religious one,"

the whole of the general estate "to form a fund in real estate which shall never be sold or alienated, but be held and remain forever sacred."

To carry his purposes into effect, he directs the selection of boards of managers for the different establishments, and suggests that acts of incorporation may

become necessary to facilitate their operations.

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The appellees claim that, as to the property embraced in this bequest to the cities, that John McDonogh died intestate.

Their argument is that although he makes in the commencement of his will a formal gift to the cities; although the cities are designated as his legatees in several clauses of the will, in precise terms; although the property is described as property "willed and bequeathed to the cities," that the testator has sedulously contrived to withdraw from them the seisin and possession of the whole estate, and has committed them to an uncertain and fluctuating board, for the selection of which he has provided; that the dominion and use of this property, insofar as he has permitted either, has been confided to this board of managers, but that this board is held servilely to a code of regulations he has dictated, the aim of which is to hold the "McDonogh estate" together in perpetuity; that by these restrictive regulations, the donations to the cities have become nugatory and unavailing.

This conclusion was adopted by the circuit court, whose decree is under revision, and has been sustained in the argument at the bar of this Court with great power and ability.

We may remark of the will of the testator that it indicates his imagination to have become greatly disturbed by a long and earnest contemplation of plans which he says "had actuated and filled his soul from early boyhood with a desire to acquire a fortune, and which then occupied his whole soul, desires, and affections." In the effort to accomplish these cherished hopes, he has overstepped the limits which the laws have imposed upon the powers of ownership, overlooked the practical difficulties which surround the execution of complex arrangements for the administration of property, greatly exaggerated the value of his estate, and unfolded plans far beyond its resources to effect, and has forgotten that false calculations, mismanagement, or unfaithfulness might occur to postpone or prevent their attainment. Holding and declaring a firm faith in the interposition of

Providence to render his enterprise successful, he apparently abandons himself, without apprehension or misgiving, to the contemplation of the "McDonogh estate," as existing through all time, without any waste or alienation, but improving and enlarging, "extending the blessings of education to the poor through every city, town, and hamlet" of the state where he was born, and the state in which he had lived and was to die; "rescuing from ignorance and idleness, vice and ignominy, millions upon millions of the destitute youth of the cities," and "serving to bind communities and states in the bonds of brotherly love and affection forever."

The exaggeration which is apparent in the scheme he projects

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and the ideas he expresses concerning it afford the ground of the argument for the appellees. It is, however, unfair to look to the parts of the will which relate to the disorders which reign in society, or to his aspirations to furnish a relief for these "during all time," or to the prophetic visions awakened by the exalted and exciting ideas which dictated the conditions of the will, for the rule of its interpretation. We must look to the conveyances he has made in the instrument, the objects they are fitted to accomplish, and the agencies, if any, to be employed, and endeavor to frame these into a consistent and harmonious plan, accordant with his leading and controlling intentions. In reference to his controlling purpose there can be no mistake. He says, "that the first, principal, and chief object" in his view is "the education of the poor" of the two cities. With equal emphasis and precision he has disclaimed the desire of building the fortunes of his natural relations. He says,

"That even to his children, if he had them, as he has not, and a fortune to leave behind him, he would, besides a virtuous education, to effect which nothing should be spared, bequeath to each but a very small amount, merely to excite them to habits of industry and frugality, and no more."

His ruling purpose had no connection with the poor of any one generation. His desire was to establish a foundation to exist for all time -- a perpetuity.

He knew that to attain this purpose, a succession of persons, animated with a corresponding aim, must be obtained, and that the legal capacities of voluntary associations, even if he could hope to find such to enter into his plans, were wholly unfitted for his design; nor did he hope to effectually combine such persons by any power or prayer of his own. Hence, he selected as his devisees bodies corporate, endowed with the faculties of acquiring and holding property, having determinate ends and abiding agencies to be employed in accomplishing them. These were all requisite for the full attainment of the purposes he has declared.

He excludes, it is true, the municipal authorities from the particular management of the estate, or the application of its revenues.

But the municipal officers are not his legatees. They are themselves but agents clothed with a temporary authority; nor do the officers perform their executive duties except by the interposition of agents subordinate to their control and subject to their supervision. Had the testator confined himself to an unconditional donation of the general estate to the cities for the use of public schools, it would scarcely have fallen under the personal management of the corporate authorities. They would

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probably have appointed boards or agencies, to whom powers, more or less general would have been confided and over whose conduct their supervision would have been more or less particular and exact. The knowledge of this probably induced the testator to describe the board which his experience and observation had marked as the most efficient and responsible. He defines their number, the manner of their appointment, the form of their accounts, the modes of their business, and urgently exacts that the great, and to his eyes sacred, interests of his charity should not be blended with the vulgar and debauching concerns of daily corporate management. These directions must be regarded as subsidiary to the general objects of his will, and whether legal and practicable or otherwise, can exert no influence over the question of its validity. Nor do we esteem the facts, that he has given his estate a name, regards it as a distinct entity, and couples with it

language denoting perpetuity, important as evidence that the cities are not his legatees. A gift to a municipal corporation tends to create a perpetuity. Property thus held ceases to be the subject of donation or of devise, of transfer by bankruptcy, or in the order of succession. The property of such a corporation is rarely the subject of sale, and practically it is out of commerce. McDonogh supposed that he could prohibit any alienation or division. We do not perceive, therefore, why he should have sought an incorporation of the general estate; nor do we understand that this forms a prominent portion of his scheme.

The will, through every part, discloses that the cities are the particular objects of his interest and the poor of the cities of his providence and bounty. His will designates the cities by their corporate name as his legatees in definite and legal language. His plan of administration is to be executed through agents, selected by their corporate authorities, and to the end of conveying to the poor of the cities perpetually the fruits of his property. We should violate authoritative rules of legal interpretation were we to disinherit the cities under these circumstances and to substitute for them "an ideal being" called the "general estate," having no legal capacity, nor juridical character, and whose recognition, therefore, could have no result but to overturn the will of the testator. C.C. 1706; 1 Spence, Eq.J. 529, 530; 5 Ann. 557.

Having thus determined that the legacy is to the cities by a universal title, and, having extracted from the will the leading and controlling intention of the testator, the next inquiry is whether a legacy given for such objects is valid.

The Roman jurisprudence, upon which that of Louisiana is founded, seems originally to have denied to cities a capacity to

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inherit, or even to take by donation or legacy. They were treated as composed of uncertain persons, who could not perform the acts of volition and personalty involved in the acceptance of a succession. The disability was removed by the Emperor Adrian in regard to donations and legacies, and soon legacies *ad*

ornatum civitatis and *ad honorem civitatis* became frequent. Legacies for the relief of the poor, aged, and helpless and for the education of children were ranked of the latter class. This capacity was enlarged by the Christian emperors, and after the time of Justinian there was no impediment. Donations for charitable uses were then favored, and this favorable legislation was diffused over Europe by the canon law so that it became the common law of Christendom. When the power of the clergy began to arouse the jealousy of the temporal authority, and it became a policy to check their influence and wealth -- they being, for the most part, the managers of property thus appropriated -- limitations upon the capacity of donors to make such gifts, were first imposed. These commenced in England in the time of Henry III, but the learned authors of the history of the corporations of that realm affirm that cities were not included in them -- "perhaps upon the ground, that the grants were for the public good," and although "the same effect was produced by the grant in perpetuity to the inhabitants," "the same practical inconvenience did not arise for it, nor was it at the time considered a mortmain." Mereweth. & Steph. Hist.Corp. 489, 702.

A century later, there were a direct inhibition upon grants to cities, boroughs, and others which have a perpetual commonalty, and others "which have offices perpetual," and therefore "be as perpetual as people of religion." The English statutes of mortmain forfeit to the King or superior lord the estates granted, which right is to be exerted by entry -- a license therefore from the King severs the forfeiture. The legal history of the Continent on this subject does not materially vary from that of England. The same alternations of favor, encouragement, jealousy, restraint, and prohibition, are discernible. The Code Napoleon, maintaining the spirit of the ordinances of the monarchy, in 1731, 1749, 1762, provides

"That donations, during life or by will, for the benefit of hospitals of the poor of a commune, or of establishments of public utility, shall not take effect except so far as they shall be authorized by an ordinance of the government."

The learned Savigny, writing for Germany, says:

"If modern legislation, for reasons of policy or political economy, has restrained conveyances in mortmain, that those restrictions formed no part of the common law."

The laws of Spain

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contain no material change of the Roman and ecclesiastical laws upon this subject. The reports of the Supreme Court of Louisiana in which state these laws were long in force attest their favor to such donations. *De Pontalba v. New Orleans*, 3 Ann. 660.

This legislation of Europe was directed to check the wealth and influence of juridical persons who had existed for centuries there, some of whom had outlived the necessities which had led to their organization and endowment. Political reasons entered largely into the motives for this legislation -- reasons which never have extended their influence to this continent, and, consequently it has not been introduced into our systems of jurisprudence. 2 Kent's Com. 282, 283; *Whicker v. Hame*, 14 Beav. 509.

The precise result of the legislation is that corporations there, with the capacity of acquiring property, must derive their capacity from the sovereign authority, and the practice is, to limit that general capacity within narrow limits, or to subject each acquisition to the revisal of the sovereign. We have examined the legislation of the European states, so as better to appreciate that of Louisiana. No corporation can exist in Louisiana, have a public character, appear in courts of justice, exercise rights as a political body, except by legislative authority; and each may be dissolved, when deemed necessary or convenient to the public interest. Corporations created by law are permitted to possess an estate, receive donations and legacies, make valid obligations and contracts, and manage their own business. Civil Code, tit. 10, c. 1, 2, 3, art. 418, *et seq.*

The privileges which thus belong to corporations legally existing, have been granted to the inhabitants of New Orleans in various legislative acts. The

authorities of the city have, besides, received powers of government extending to all subjects affecting their order, tranquility, and improvement. It is agreed that these powers are limited to the objects for which they are granted, and cannot be employed for ends foreign to the corporation. 1 Paige 214; 15 N.H. 317; 4 S. & S.C. 156; 3 Ann. 294.

But there can be no question as to the degree of appreciation in which the subject of education is held in Louisiana. The constitution of the state imposes upon the legislature the duty of providing public schools for gratuitous education; and various acts attest the zeal of that department in performing that public duty. Among these, there is one which authorizes and requires the corporate authorities of the City of New Orleans to establish them in that city, and to enact ordinances for their organization, government, and discipline; they are likewise

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charged with the instruction, education, and reformation of juvenile delinquents and vagrants. These acts are from a sovereign authority, and endue the city with the powers of acquiring, retaining, and disposing of property, without limitation as to value, and assign to it, as one of its municipal functions, the charge of popular education. No Parliamentary grant or royal license in Great Britain -- no government ordinance in France -- could remove more effectually a disability, if one existed, or create a capacity, if one were wanting, to the corporations of those countries. Rev.Stat. La. 41, 111, 116, 117, 144, 239; 2 Rob. 244, 491.

We shall now examine the devise to the cities, in connection with the various conditions annexed to it. The appellees insist it is a disposition reprobated by law, for that it contains "substitutions and *fidei commissa*, " which are prohibited by article 1507 of the code, and which annul the donation in which they are found.

We shall not inquire whether the prohibition extends to donations in favor of corporations, and for objects of public utility, though this seems to have been a question in France. Lefeb. des Don. Pieuses 31, 33.

We shall limit the inquiry to the nature of the prohibited estates, to determine whether they exist in this legacy. The terms are of Roman origin, and were applied to modes of donation by will, common during its empire, and from thence were transferred to the derivative systems of law in use upon the continent of Europe. The substitute was a person appointed by the testator to take the inheritance, in case of the incapacity or refusal of the instituted heir. A pater familias was authorized to make the will of his son during his nonage, or lunacy, or other incapacity to perform the act; and in the case of his death, under such circumstances, the appointee took the succession. This was a mode of substitution.

The *fidei commissum* originated in a prayer, petition, or request, of a testator upon his instituted heir, to deliver the inheritance, or some portion of it, to a designated person. Every testament being originally a law of succession, proposed by the testator, and consented to by the Roman people, the language of legislation, that is, of mandate and authority, was essential to its validity. Precatory words were insufficient to raise an obligation upon the heir, or to vest property in the donee. This was afterwards changed, and words of request then imposed a charge upon the heir, to maintain the faith in which the testator had confided. Afterwards, the distinctions between words of mandate and of request became obsolete, and both were considered with reference to their significance of the intentions of

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the testator. The notion of a *fidei commissum* thus became limited, implying no more than an estate in possession, encumbered with the charge to surrender it to another. This might be pure and simple -- that is, the duty to surrender might be immediate, or it might be on a condition, or after the expiration of a term even extending to the life of the gravatus. The substitute originally came in the place of another; the idea was modified to include those who came after another under certain circumstances.

The conjunction of the *fidei commissum* with the substitution would then become a natural mode of settlement of property. The instituted heir might be charged to hold and enjoy the succession for his life, and at his death that it should go to another, his heir, and that heir might in turn become a gravatus, for the benefit of another successor, and so from generation to generation.

Such a substitution might be properly called a "*substitution fidei commissaire*," or an "oblique substitution." This mode of limiting estates from degree to degree, and generation to generation, was much employed on the continent of Europe, and served to accumulate wealth in a few families at the expense of the interests of the community. The vices of the system were freely exposed by the political writers of the last century, and a general antipathy awakened against it. Substitutions having this object were prohibited during the revolution in France, and that prohibition was continued in the Code Napoleon, whose authors have exposed with masterly ability the evils which accompanied them. *Motifs et Dis.* 375.

This prohibition was transferred to the code of Louisiana, with the addition of the *fidei commissum*. These terms imply a disposition of property through a succession of donees. The substitution of the article 1507 of the code being an estate for life, to be followed by a continuing estate in another by the appointment of the testator.

The *fidei commissum* of the Louisiana Code are estates of a similar nature, implying a limitation over from one to another. They are the *fidei commissum* of the Spanish and French laws, insofar as those estates are not tolerated by other articles of the code. We shall not attempt to define them from an examination of the code and the reports of the supreme court of that state. It is not necessary for the decision of this case. We are unable to perceive anything in the code to justify the supposition that the English system of trusts, whether in its limited signification as applied in conveyancing, or in its broad and comprehensive import, as applied by the courts of chancery, were within the purview of the authors of this code in framing

this prohibition. The terms "substitution" "*and fidei commissa*" are words foreign to the English law. They are applied to no legal relation which exists in it, and describe nothing which forms a part of it. The technical words, of "charged to preserve and to render," in article 1507, which embrace so much to a continental lawyer, only provoke inquires in the mind of one accustomed to the language of the common law. The allusion to the "Trebellianic portion" is to a right of which there has never been a counterpart in the English system. The whole article refers exclusively to things of a continental origin. The estates known as "*fidei commissa*" and "substitutions," insofar as regards the order of persons and the duration of their interest, may be created by devise in an English will. This can be done without the interposition of trustees or with them. That is, legal estates or equitable estates can be limited to embody those conditions of the *fidei commissa* and substitution; but the separation of the same estate into parts, legal and equitable, with separate courts in which their respective qualities may be represented, is not of continental origin. We may say of this as Sir William Grant says of another doctrine of equity, "that in its causes, its objects, its provisions, its qualifications, and its exceptions, it is a law wholly English." We find nothing of the *fidei commissa* or substitution in the legacy to the cities. The mischiefs resulting from conveyances in mortmain, and which led to restraints upon them, also existed in the substitutions of the French law, and led to their suppression. The remedies for the mischief, in consequence of the difference of the persons, were essentially variant. In the case of natural persons, the abrogation of the capacity to limit property from successor to successor, and generation to generation, removed the evil of perpetuities. But no statute against estates tail, or of remainder, or reversion, operate upon a corporation. The mischief results from the duration of the corporation and the tenacity with which, from its nature, it holds to property. The fee simple estate to a corporation is that which most effectually promotes the creation of a perpetuity. The remedy in Europe in this case was to restrict the number of corporations, and to reserve an oversight of their acquisitions to the sovereign authority. This precaution was taken, as we have seen, also in Louisiana. If she has granted to her metropolis an unrestricted license to acquire and to hold property, we must conclude there were sufficient motives to justify the act.

Our next inquiry will be, whether the testator is authorized to define the use and destination of his legacy. We have seen that donations to the cities of the Roman empire followed immediately upon the *senatus consultum* which allowed them to

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take, and that the destination of such donations to public uses was declared. Domat says,

"One can bequeath or devise to a city or other corporation whatsoever, ecclesiastical or lay, and appropriate the gift to some lawful and honorable purpose, or for public works, for feeding the poor, or for other objects of piety or benevolence."

Domat, *Lois Civiles*, b. 4, tit. 2, 2.

The City of New Orleans holds its public squares, hospitals, levees, cemeteries, and libraries by such dedications. This Court says, [*New Orleans v. United States*](#), 10 Pet. 662,

"That property may be dedicated to public use, is a well established principle of the common law. It is founded in public convenience, and has been sanctioned by the experience of ages. Indeed, without such a principle, it would be difficult, if not impracticable, for society, in a state of advanced civilization, to enjoy those advantages which belong to its condition, and which are essential to its accommodation."

The Supreme Court of Louisiana, in a number of cases, has applied the principle contained in these citations with confidence. *DePontalba v. New Orleans*, 3 An. 662; *Will of Mary*, 2 Rob. 440; *Duke of Rich. v. Mylne*, 17 La. 312; *Maryland and Louisiana v. Roselius*, MS.

The Code of Louisiana provides that donations made for the benefit of an hospital, of the poor of the community, or of establishments of public utility, shall be accepted by the administrators of such establishments. C.C. 1536. It may be very true this article relates merely to the formal manner by which donations, *inter*

vivos, for such objects may be perfected; but it will be observed that the requirement of the French Code of a government license for the gift is dispensed with in the frame of this article, and a strong implication arises from its terms in favor of the validity of such gifts. An acceptance of such donations in a will is unnecessary. Nor do we see any ground for inferring a prohibition of donations by will, which are lawful, *inter vivos*, in the absence of any prohibitive article in the code. We are of the opinion, therefore, that the testator might declare the uses to which he destined his legacy to the cities; and the destination, being for purposes within the range of the powers and duties of its public authorities, is valid.

We shall now examine the question, whether the conditions annexed to this legacy, the prohibition to alienate or to divide the estate, or to separate in its management the interest of the cities, or their care and control, or to deviate from the testator's scheme, invalidate the bequest.

The appellees contend that the performance of these conditions is impossible; they are contrary to public policy; introduce tenures at variance with the laws; and would result in mischief

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to the state. That the conditions are of the essence of the gift, and the will would not conform to the dispositions of the testator, if they should be erased or disregarded. They insist that the appellees take by virtue of the law, but the devisees claim under a will. That, if they cannot exhibit a clear and valid devise of the property, the legal right of the heir should not be defeated. That this Court cannot, under the guise of judicial construction, sanction an instrument from which the main prescriptions of the testator are obliterated.

The argument on this point against the cities possesses great logical force. It is admitted that illegal or immoral conditions will vitiate a contract, C.C. 2026; but the code provides that, "in all dispositions *inter vivos* and *mortis causa*, impossible conditions, those which are contrary to the laws or to morals, are reputed not written." The authorities cited establish that, under the word "conditions," the

various modes of appropriation, use, and destination attached to this legacy are included. Merlin says,

"Conditions take different names according to their object; they are called in turn charges, destinations, motives, designations, terms. But although the conditions, charges, destinations &c.;, ought to be distinguished, nevertheless the word condition often serves to express them all."

Merlin's Cond. 2.

The signification of this article of the code becomes then an important inquiry. It is found in the Digest of Justinian, and from thence passed into the codes of France and Spain. Touil. 5, No. 255; 1 Escrich.Dic.leg. 565. It was copied from the Code Napoleon into the Code of Louisiana. Savigny furnishes us with the history of the law as found in the Pandects. One of the schools into which the Roman jurisconsults was divided Proculians placed the construction of contracts and testaments, containing illegal or impossible conditions, on the same principle, and insisted that the whole disposition in each should be vitiated by them; another Sabinians changed the rule with reference to the instrument, and, while contracts were vitiated by the illegal or immoral conditions, in wills the conditions only were pronounced nugatory. Justinian adopted the opinion of the latter, which seems to have been preferred in practice before, and his adoption has been regarded as a legislative sanction of their rule in favor of testaments. Great authorities in France oppose this doctrine, and in Prussia it exists, but in a modified form, while it has been wholly rejected in Austria. 5 Toul., No. 247; Saving.Rom.Law, 122-1224.

The common law rule depends upon the fact, whether the performance of the illegal, immoral, or impossible condition is prescribed as precedent or subsequent to the vesting of the estate of the devisee. In the former case, no estate exists till

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the condition is performed, and no right can be claimed through an illegal or immoral act. In the latter case, the estate remains, because it cannot be defeated as a consequence of the fulfillment of an illegal or immoral condition. This,

however, applies only to devises of real estate; for the ecclesiastical and chancery courts, in regard to bequest of personalty, follow the rule of the civil law, as above expressed. 1 Rop.Leg. 754-755; 7 Beav. 437; 1 Eden 140; 2 Spence, Eq.J. 229.

The conditions in the case before us, which impose restraints upon alienation and partition, and exact a particular management through agents of a specified description, are conditions subsequent, and would not, by the rule of the common law, divest the estate, if pronounced to be illegal or immoral. [28 U. S. 3](#) Pet. 377; 1 Sim.N.S. 464; 7 E.L. & Eq. 179; 2 J.C. Scott C.B. 883; 3 Zabriskie 117; 10 Ala. R. 702.

These conditions belong, too, to the class that are reprobated as repugnant to the legal rights which the law attaches to ownership. The common law pronounces such conditions void, in consequence of that repugnancy, and the civil law treats them as recommendations and counsel, not designed to control the will of the donee. 1 Rop.Leg. 785; 4 Kent's Com. 130; Toul. 5, No. 51; U.S. *id.*, No. 405; Dalloz.Dic. tit. Cond. 96; 10 E.L. & E.R. 23.

Our opinion upon the article of the code we have cited is that it does not prescribe a rule of interpretation to aid the understanding of the courts in finding the intention of the testator, but that it is a peremptory enactment of the legislative authority, applicable to the subject matter in all cases, without reference to any declared or presumed intentions of the author of a particular donation. The code treats such conditions in contracts as the wrong of both the parties, and annuls the act. In the case of the testament, while it refuses to allow the condition, it saves to the innocent legatee the disposition in his favor. It may be that this is done on the presumption that, independent of the condition, the legatee is the favorite of the testator, or from a consideration of the legatee alone. Savigny Rom.Law, 122, *et seq.*

We have thus far treated the cities as occupying an equal position, and have considered the case with reference to the City of New Orleans alone.

The City of Baltimore is legally incorporated, and endowed with the powers usually granted to populous and improving cities. The general assembly of Maryland, in 1825, authorized the city to establish public schools, and to collect taxes for their support, and in 1842 it was empowered to receive in trust, and to control for the purposes of the trusts, any property which

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might be bestowed upon it by gift or will for any of its general corporate purposes, or in and of the indigent and poor, or for the general purposes of education or for charitable purposes of any description whatsoever within its limits. The legal capacity of the city, therefore, corresponds with that of the City of New Orleans. Do the laws of Louisiana make a discrimination?

The code declares "that all persons may dispose of or receive by donations, *inter vivos* or *mortis causa* except such as the law declares expressly incapable." C.C. 1456. There is no distinction between corporations and natural persons in the power to receive by donation, nor do we find any discrimination between domestic and foreign corporations, except perhaps in a single article. "Donations may be made in favor of a stranger when the laws of his country do not prohibit similar dispositions in favor of a citizen of this state." C.C. 1477.

We greatly doubt whether this article applies to all the citizens or corporations of the states of the Union. The constitutional relations between the citizens of the different states are those of equality, in reference to the subject of this article. This Court, in the case of [*Bank of Augusta v. Earle*](#), 13 Pet. 520, said,

"that by the law of comity among nations, a corporation created by one sovereignty is permitted to make contracts in another, and to sue in its courts; and that the same law of comity prevails among the several sovereignties of the Union. This comity is presumed from the silent acquiescence of the state. Whenever a state sufficiently indicates that contracts which derive validity from its comity are repugnant to its policy, or are considered as injurious to its interests, the presumption in favor of its adoption can no longer be made."

These principles were applied to a purchase of lands by the corporation of one state in another. [Runyon v. Coster](#), 14 Pet. 122.

The principles of these cases have been adopted in Louisiana. 4 Rob.La. 517; 17 La. 46, 312.

We know of no departure from these principles in Maryland, and do not doubt that the corporations of Louisiana would take in the same manner as those of Maryland in that state.

The question remains to be considered, whether the destination of the legacy to public uses in the City of Baltimore affects the valid operation of the bequest. All the property of a corporation like Baltimore is held for public uses, and when the capacity is conferred or acknowledged to it to hold property, its destination to a public use is necessarily implied. Nor can we perceive why a designation of the particular use, if within the general objects of the corporation, can affect the result; nor is there

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anything in the nature of the uses declared in this will which can withdraw from the legacy a legal protection.

Neither do we concede that the uses, being in a degree foreign to the State of Louisiana, impair the effect of the will. It is well settled that where property is conveyed to a use which would be protected, if to be executed at home, in the absence of a prohibition, the conveyance would be valid if the execution were ordered to take place abroad. This question was considered by Mr. Justice Story in the opinion prepared by him for the case of the *Baptist Association v. Smith*, published in 3 Pet. 486, 500 [not found].

He says,

"there is no statute of Virginia making such bequests void, and therefore, if against her policy, it can only be because it would be against the general policy of all states governed by the common law."

He concludes: "there is no solid objection to the bequest, founded upon the objects being foreign to the State of Virginia." In the late case of *Whicker v. Hume*, 14 Beav. 509, on appeal, 16 Jury. 391, a bequest to trustees, to be appropriated in their absolute and uncontrolled discretion "for the benefit and advancement and propagation of learning in every part of the world as far as circumstances will permit," was pronounced valid. We find nothing in the Code of Louisiana indicating a spirit less comprehensive or catholic; we shall not, therefore, infer the existence of a restriction where none has been declared. We are of the opinion, that the uses for which the testator has devised his estate to the City of Baltimore, are approved alike in the legislation of Louisiana and Maryland, and that the execution of them may be enforced in their courts.

We have considered the legacy without a reference to the annuities which the testator has charged upon it. It is only necessary for us to determine a single question in regard to them. Are the heirs at law interested in the question of their legality?

The Civil Code (C.C. 1697) declares

"that legatees under a universal title, and legatees under a particular title, benefit by the failure of those particular legacies, which they are bound to discharge."

It will be seen that all the annuitants, having a distinct character from the cities, have a claim upon them for their annual allowance. Should these annuities be invalid this charge would be removed, and the cities relieved. Such was the decision of the Supreme Court of Louisiana, *Prevost v. Martel*, 10 Rob. 512, and such the conclusion of the court of Cassation, in *Handier v. Tendon*, the report of whose judgment is appended to one of the briefs of the appellants.

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The annuities created to establish an Asylum for the Poor and a School Farm and of the validity of which grave doubts exist -- are charges upon the legacy of the cities. If the directions of the testator cannot be legally complied with, the charge

will be remitted without defeating the legacy. Sav.Roman Law 120, 129.

We shall not express any decided opinion in reference to either of the annuities, but leave the question of their validity to be settled by the persons interested, or by the tribunals to whose jurisdiction they appropriately belong.

We have considered it to be our duty to examine the several questions which arise upon the record, so that the important interests involved in them may be relieved from further embarrassment and controversy. In our opinion, the failure of the devise to the cities would not have benefited the appellees; for that the limitation over to the states of Maryland and Louisiana would have been operative in that event.

We close our opinion with expressing our acknowledgments for the aid we have received from the able arguments at the bar, and the profound discussions in the supreme court of Louisiana, with whose judgment we have concurred.

The decree of the Circuit Court for the Eastern District of Louisiana is reversed, and the cause remanded to that court, with directions to dismiss the bill of the plaintiffs with costs.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said circuit court in this cause be, and the same is hereby, reversed, with costs; and that this cause be, and the same is hereby, remanded to the said circuit court, with directions to that court to dismiss the bill of the complainants, with costs in that court.