

therefore vested at the death and effective in law, though the particular application of the gift may be in suspense for twenty-five years or may never take effect at all—in which contingency there is a valid transfer to another charity at the end of the twenty-five years. *Chamberlayne v. Brockett*, L. R. 8 Ch. 210, lays down the general principle, and there is a particular application of it in *In re Swain*, [1905] 1 Ch. 669, which is much in point as to the scheme of this will.

The disposition of the lands to the first charity (the Synod) being valid, the provision for the transfer in certain events to the second charity (the College) is also a valid charitable bequest: *Christ's Hospital v. Grainger*, 16 Sim. 83, affirmed 1 Macn. & G. 460.

The testator had fifty Hudson Bay shares of considerable value, which are held by the executors in trust for the payment of debts as aforesaid. I have considerable doubt as to their future disposal. They are mentioned specifically in connection with the endowment of the new Bishopric and the lands intended therefor. The will reads: "If the yearly income, together with any other official income from whatever source, be insufficient to produce a salary of \$2,000 a year for a Suffragan Bishop . . . then, in such case, the income of my Hudson Bay shares or such part of the income as may be requisite shall be applied towards the same object:" paragraph 12. "But if it be unnecessary so to apply the income of the said Hudson Bay shares . . . then I bequeath these shares to the University of Bishop's College, and constitute such corporation my residuary legatees so far as said shares are concerned, upon the following trusts and conditions" (i.e., to found a Mission Fellowship, etc.)

I incline to think that the shares, after debts satisfied, are to be held by the Synod of the Diocese to accumulate the income for the purposes of the expected endowment of the new Bishopric, and, if and when that is established within the twenty-five years, to apply the accumulated as well as the yearly accruing income in payment of the salary named. If there is a surplus, or the Bishopric is not created within the period, then that surplus or the shares themselves are to be transferred to Bishop's College. That is to say, the final beneficiary takes in subordination to the prior beneficiary, and only so much as can be called "residue" after the just claims for the endowment are satisfied. This construction is warranted, I think, by the exceptional rule which obtains in favour of charities, viz., that it is preferable to give effect to the general intention of the testator, though the detail be incomplete, than to declare an intestacy. The testator means