

"My house and furniture, silver plate, fixtures, and everything, to be sold, if there should not be enough from my husband's estate for a monument. I wish to have my money expended for a monument of granite, with four pillars like one in the grove, only larger, if there should be money enough left from my husband's estate. I want a memento of Hope, Faith and Charity, the expenses to be taken from my own estate, and his name cut on the steps, the remainder left I wish to be kept in trust to beautify and keep the it in good order. I wish this to be carried strictly through." The court declined to allow the poor woman's wishes to be carried out, holding that the repair of a private monumental structure is a matter strictly individual and personal; that the fund constituted by the testatrix was to be expended for her own gratification upon an object in which the public had no interest, and which had no proper similitude to a charity; that the provision constituting the fund for the preservation, embellishment and repair of the monument or memento erected by her was therefore void, as seeking to create a perpetuity for a use not charitable. The right to sell even could not be exercised (*Bates v. Bates*, 134 Mass., 110; S.C. 45, Am. Rep.; see also *Piper v. Moulton*, 72 Me., 155; S.C. 39, Am. Rep. 748). In fact, it has been repeatedly held that a bequest to provide a fund for the permanent care of a private tomb or burial place cannot be treated as a private charity and thus made perpetual, but that such bequest is void (*Giles v. Boston Fatherless and Widows' Society*, 10 Allen, 355; *Doe v. Pitcher*, 6 Taunt., 370; *Lloyd v. Lloyd*, 2 Sim. (N.S.), 264).

Where a man bequeathed £500 in trust to apply such part of the income thereof as might be necessary in keeping in repair a family vault, and the residue in keeping up his brother's tomb and the parish churchyard, it was held that the gift to repair the churchyard was good, as a charitable gift for a public object, although the other gifts were void. North, J., said, "To put it shortly, I do not see any difference between a gift to keep in repair what is called 'God's house,' and a gift to keep in repair the churchyard round it, which is often called 'God's acre.' A testator providing for the repair of a family tomb is only ministering to his own private feeling or pride, or it may be to a feeling of affection that he has for his own relations, and it is not for the benefit of the parish at large that a particular tomb should be kept in repair. But in respect of the repair of the churchyard as a whole, it is for their benefit" (*Re Vaughan: Vaughan v. Thomas*, 33 Chy.D., 187; *Richard v. Robson*, 31 Beav., 244). A direction to a widow and another annuitant under a will to keep the testator's tomb in repair out of their life interests has been held good, and they were said to be under an obligation out of their annuities to do so according to the directions of the will (*Lloyd v. Lloyd*, *supra*). A man gave his executors £600 to invest, and directed them to apply the income in keeping in good repair his monument and all the tombstones and headstones of his relatives in a certain graveyard; and the surplus, if any, after annually defraying these expenses, was to be given to the poor and pious members of the Methodist Society at G. above the age of two score years and ten. The court held that the trust to keep in repair was honorary only, and that the old Methodists were entitled to the whole benefit of the money, to the utter