624; *Wood* v. *Draycott*, 2 N. R. 55; *Macdermott* v. *Wallace*, 5 Beav. 142; *Bryan* v. *Twigg*, 16 W. R. 298, L. R. 3 Ch. 183; *Pearce* v. *Edmeades*, 3 Y. & C. 246; *Doe* v. *Abey*, 1 M. & S. 432; *Abrey* v. *Newman*, 1 W. R. 156, 16 Beav. 431; *Congreve* v. *Palmer*, 1 W. R. 156, 16 Beav. 435; *Alt* v. *Gregory*, 4 W. R. 436; 8 De G. M. & G. 221.

Nalder, for the children of James Howard and Lucy North, was not called upon.

Malins, V C., said that on this will there were two questions—one was whether the brothers and sister took as joint tenants, so that the survivor was entitled to the rents, and the other was whether the children took *per stirpes* or *per capita*. The Court found out the intention of a testator from what he had expressed in the will. No doubt what the testator here intended was that each of the brothers and the sister should take an equal share, and that their children should take their shares after their death. Had he said enough to give effect to such an intention? The word "respective" was here a very important word. During their respective lives each took a life interest in one-third, and after their deaths their shares went over. The authorities were not in a satisfactory position. It was absurd to suppose the testator meant to prefer a surviving uncle or aunt to the children. The gift was to the parents for life, and at their respective deaths, and subject thereto, to their respective children. The children took the share of their deceased parents *per stirpes*. His conclusion was that the brothers and sister took each a life interest in one-third. His or her children succeeded immediately on his or her death. It necessarily followed that the children took *per stirpes*. The children of the deceased brother and sister took their one-third.

Peek v. Peek.

Settlement—Charitable trust—Perpetuity.

Certain property was conveyed by deed to trustees upon trust to permit any person or persons who should be eligible as in the deed mentioned, in the discretion of the trustees, being a lineal descendant or lineal descendants of the settlor, with his or their families, to occupy the house and part of the property for three calendar months only in each year, and if there should be no such lineal descendant to be approved by the trustees, then upon the trusts thereinafter declared concerning the residue; and upon further trust to let the remaining part of the property, except the mansion house, to any person or persons being such descendant or descendants as aforesaid for any term not exceeding seven years: and upon further trust out of the rents and profits to allow the trustees the costs of managing and maintaining the property and certain other outgoings, and to apply the residue for the support or benefit of any poor or aged persons being such descendants as aforesaid as the trustees should think fit; and as to so much of the residue as should not be so applied to apply the same towards the maintenance or relief of any sick or aged poor person living within six miles of the dwelling-house, and to apply so much as should not be so appropriated towards the support and extension of religious instruction or religious or general education or any other benevolent objects, subject to the restrictions therein mentioned.

Held, that the whole of the trusts were invalid, and that the heir-at-law was entitled to the property.

[V. C. M., 17 W. R. 1059.]

Richard Peek by a deed dated 10th November, 1825, conveyed a mansion house and hereditaments to trustees and their heirs upon trust that they should from time to time permit any person or persons being the lineal descendant or descendants of John Peek, deceased, to occupy the said messuage or dwelling-house with the appurtenances, comprising twenty acres or thereabouts, free from rent or taxes, so that each such person with his or her family should occupy the said hereditaments for three calendar months only in each year. And upon the further trust to let the remaining part of the said hereditaments to any person or persons being a lineal descendant of the said John Peek for any term not exceeding seven years at a fair average rent from which at the time of payment a deduction of 20 per cent. should be allowed to the tenant, and upon further trust out of the rents to maintain and keep in good repair the said capital dwelling-house, with the appurtenances and grounds, and to apply the residue for the benefit or advantage of any poor or aged person or persons being lineal descendants of the said John Peek, and as to so much of the residue as should not be so applied upon trust to apply the same in or towards the maintenance or relief of any sick or aged poor person living within six miles of the said capital dwelling-house, and so far as the same should not be so appropriated, upon trust to apply the rents and profits towards the support and extension of religious instruction or religious or general education, or any other benevolent objects, being wholly disconnected with the patronage or control of the state, and within the county of Devon, but giving preference to objects within the six miles aforesaid.

The plaintiff and the other trustees of the settlement except the defendant James Peek were ignorant of the existence of the settlement until Richard Peek's death, which happened on the 7th of March, 1867. James Peek had executed the settlement at the request of his brother, Richard Peek.

Shortly after the said Richard Peek's death the plaintiff and the defendants other than the Attorney-General executed the settlement at the request of James Peek, with the intention of accepting the trusts.

The plaintiff, who was heir-at-law of the said Richard Peek, filed this bill to set aside the settlement.

Pearson, Q. C., for the plaintiff.

Cotton, Q. C., and *Freeling*, for the defendants, the trustees, admitted that they could not carry out the trusts as to keeping up the mansion-house, but they considered that the deed contained a good general trust for charitable purposes: *Liley* v. *Hey*, 1 Hare, 580; *Attorney General* v. *Catherine Hall*, Jac. 381; *Fisk* v. *Attorney General*, 15 W. R. 1200, L. R. 4 Eq. 521.

Wickens, for the Attorney General, contended that it was a good gift for charitable purposes, the same as similar gifts to almshouses, though it was not made in regular form. There was no objection to almshouses being maintained for ever. The gift was good at law as a charitable gift, except as to the rents of the mansion-house: *Christ's Hospital* v. *Granger*, 1 M. & G. 460; *Bernal* v. *Bernal*, 3 My. & Cr. 559; *Martin* v. *Margham*, 14 Sim. 230; *Attorney General* v. *Greenhill*, 12 W. R. 188, 33 Beav. 193.

Pearson, Q. C., in reply. *Forster* v. *Attorney General*, 10 Ves. 335; *Chapman* v. *Brown*, 6 Ves. 404.