

MAINE STATE LEGISLATURE

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May 1, 1943

To Harry V. Gilson, Commissioner of Education
Re: Bequest to Closed Normal School by Amy W. Pinkham

The above named testatrix died on November 8, 1941, leaving a will which was duly admitted to Probate in the County of Cumberland and State of Maine, and allowed.

The following provision appeared in her will, "I give and bequeath to the Eastern State Normal School of Maine one thousand dollars."

The Department of Education of the State of Maine has records showing that this school was in operation with classes in attendance on November 8, 1941, and continued until June 8, 1942. At that time the Trustees of the State Normal Schools executed a lease of the premises occupied by the Eastern State Normal School to the Maine Maritime Academy pursuant to an Act of the Legislature authorizing the same. Here is the question: Is the legacy under the will of the late Amy W. Pinkham properly payable to the Trustees of the Eastern State Normal School in view of the fact that the school, as such, was discontinued indefinitely after July 8, 1942? The answer is in the affirmative.

Although the several normal schools in the State are not chartered separately as individual institutions, they have been designated by the State Legislature and the administration of their affairs is by a Board of Trustees. The property, in the sense of the physical property, in these schools is held by the State. The several normal schools exist and are designated by name to differentiate one from the other.

Chief Justice Shaw, in the case of Burbank vs. Whitney, 24 Pickering 146, used the following language:

"A bequest for charitable uses, to an unincorporated society, may be enforced by the statute of 43 Elizabeth, Chapter 4 which has been regarded as a part of the common law of this country, even though it could not be made effectual without that statute. The better opinion of the most eminent jurists in England and in this country, is, that a donation to charitable or educational and religious uses could be carried into effect, in chancery, without the aid of the statute of Elizabeth."

"Even the want of a trustee will be supplied."

Kingsbury vs. Gould, Executor
9 Metcalf 280

"A devise or bequest for educational purposes is sufficiently certain and valid if the language used designates with certainty the objects of the devise or bequest, and this rule applies where the devise or bequest is for specific educational institutions although they are misnamed or inaccurately described."

69 C.J., 229, Para. 1259;
Preachers' Aid Society,
45 Me. 552.

Our Law Court has specifically ruled, in the case of Lynch, Trustee, v. Congregational Parish, 109 Me. 32 at 35 as follows:

"In the case of common personal bequests, if the legatee, not a relative of the testator, dies before the decease of the testator, the legacy lapses. And this principle applies to charitable bequests, institutions or organizations. If the institution or organization becomes extinct in the lifetime of the testator, the legacy lapses. This rule, however, does not apply if the institution comes to an end after the testator's death, but before the legacy is payable."

There is a presumption that the Trustees accepted this legacy. Where the donees had an opportunity to reject a gift but failed to do so within a reasonable time, the presumption of acceptance has been said to become conclusive. Howes Estate, 112 N.J. Equity 17, Atlantic 234.

As for the use and disposition of the fund so received, reference is to the case of Lynch, Trustee, v. Congregational Parish, 109 Me. 32, for the application of the doctrine of cy pres.

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