RECENT CASES

CORPORATIONS—DIVIDENDS—RIGHT TO DIVIDENDS AS BETWEEN PLEDGOR AND PLEDGEE OF STOCK—A borrower pledged shares of stock as collaterial security for a loan. The certificates were endorsed in blank by the pledgor, but the stock was not transferred to the pledgee upon the books of the corporation. There was no agreement between the parties relating to dividends. Dividends thereafter declared were paid by the corporation to the pledgor as record owner. Insolvency proceedings were instituted against both pledgor and pledgee, and the receiver of the pledgee petitoned the Court of Chancery for an order directing the receiver of the pledgor to pay the said dividends to him The Court of Chancery entered a decree for the defendant, and the plaintiff appealed. *Held,* that as between pledgor and pledgee, the latter is entitled to dividends declared thereon during the period of the pledge, despite the failure to transfer the stock to the pledgee upon the books of the corporation. Decree reversed. *Mandel* v. *North Hudson Investment Co.,* 114 N.J. Eq. 336, 168 Atl. 432 (E.&A. 1933).

It has been declared by the courts in New Jersey that a pledgee has only a special interest in the property, the pledgor still remaining the general owner. See *Security Trust Co.* v. *Edwards,* 90 N.J.L. 558, 561, 101 Atl. 384 (E.&A. 1917); *Donnell* v. *Wyckoff,* 49 N.J.L. 48, (Sup.Ct 1886). However, the Supreme Court has stated *obiter* that a pledgee to protect his special property is entitled "to collect the interest, dividends and income accruing on the collateral assigned". *McCrea* v. *Yule,* 68 N.J.L. 465, 467, 53 Atl. 210, 211 (Sup. Ct. 1902); *Donnell v. Wyckoff,* 49 N.J L. 48, 51 (Sup. Ct. 1886). The holding in the instant case, embodying the prevailing American view, may be deemed merely a logical application of the earlier *dicta.* The failure to record the transfer of the stock upon the books of the corporation does not affect the rights of the pledgee to the dividends, and bears solely upon the power of the corporation to pay them to the record owner without being held accountable therefor to the transferee. See *Donnell* v. *Wyckoff, supra.* Thus a corporation is not liable for dividends paid to the pledgor before notice of the hypothecation. *Merchants' & Mechanics' Bank* v. *Boyd Co.,* 143 Ga. 755, 85 S.E. 914 (1915); *Fourth Nat. Bank* v. *Manchester Real Estate & Mfg. Co.,* 77 N.H. 481, 93 Atl. 661 (1915); *Donnally* v *Hearndon,* 41 W. Va. 579, 23 S.E. 646 (1895). Conversely, dividends so paid with notice of the pledge renders the corporation liable to the pledgee. *Gemmell v. Davis,* 75 Md. 546, 23 Atl. 1032 (1892) (actual notice; no transfer on books); *Central Nebraska Nat. Bank* v. *Wilder,* 32 Neb. 454, 49 N.W. 369 (1891) (same); *Boyd* v. *Conshohocken Worsted Mills,* 149 Pa. 363, 24 Atl. 287 (1892) (transfer on books). The dividends received by the pledgee must of course be applied by him to the reduction or payment of the debt, the pledgee being held account-

able to the pledgor for such increment. *Brightson* v. *Claflin,* 225 N.Y. 469, 122 N.E. 458 (1919); see *McCrea v. Yule, supra; cf. Gaty* v. *Holliday,* 8 Mo. App. 118 (1879); 2 MERCER BEASLEY L. REV. 214 (1933). The rule established in the instant case avoids the anomaly of a pledgor receving the fruits of his pledge before the debt which it secures has been satisfied. *Cf. National Bank of Commerce* v. *Equitable Trust Co., 227* Fed. 526, 536 (C.C.A. 8, 1915).

EVIDENCE—DIVORCE—COMPETENCY OF SPOUSE TO TESTIFY AS TO NON-ACCESS—In a suit for divorce, by the husband, on the grounds of adultery, both husband and wife testified that they had not seen each other between November, 1928, and June, 1929. On December 9, 1929, the wife gave birth to a nine-pound child, which according to the testimony of expert obstetricians, was conceived in March, 1929, at which time the husband was in New Jersey and the wife in Chicago. *Held,* that the rule of law, known as the *Lord Mansfield Rule,* which prohibits either spouse from testifying against the other as to non-access, is not a rule of evidence in New Jersey. Also, that, under Sect. 5 of the Evidence Act, either spouse is competent though not compellable to give testimony for or against the other to prove adultery. *Loudon v. Loudon,* 114 N.J.Eq. 242 (E.&A. 1933).

In 1777 in *Goodright v. Moss,* 2 Comp. 591, Lord Mansfield stated that for reason of "decency, morality and policy" the father or mother shall not be permitted to say after marriage that they had no intercourse at the time of conception and thus bastardize the child. This authority has had tremendous weight and has been followed by many courts in the United States. *Martin v. Stillie,* 129 Kan. 18 (1929); *Abington v. Duxbury,* 105 Mass. 287 (1870); *Egbert v. Greenwalt,* 44 Mich. 245 (1880); *Chamberlain v. People,* 23 N.Y. 85 (1861); *Boykin v.Boykin,* 70 N.C. 262 (1874); *Dennison v. Page,* 29 Pa. St. 420 (1857); *Mink v. State,* 60 Wis. 584 (1884); *Palmer v. Palmer,* 79 N.J.Eq. 496 (Ch. 1912). Some courts have relaxed the Lord Mansfield Rule. In *Melvin v. Melvin,* 58 N.H. 569 (1879), the testimony of a married woman, as to non-access of her husband, was held competent in a divorce proceeding not involving legitimacy of issue. Other courts, though following the rule, have criticized the doctrine. In the opinion of *Boykin v. Boykin, supra,* it was pointed out that an examination of the principles of evidence would expose the fallaciousness of the rule. It being admitted that a wife may establish legitimacy by showing access, she can by cross-examination be made to prove non-access, as it is a universal principle that when a witness is introduced to prove a fact in issue he may be cross-examined as to the fact so as to disprove it. This tends to make inefficacious the proposition that a witness may not testify as to non-access. In New Jersey, in a divorce suit on the grounds of adultery, the Vice Chan-

cellor admitted the testimony that the husband did not have access to his wife, although in granting the decree it was not necessary to determine the question of the admissibility of the husband's evidence. *Wallace v. Wallace,* 73 N.J.Eq. 403 (E.&A. 1907). In an oral opinion in another New Jersey case, not officially reported, the husband's testimony as to non-access was taken. *Kohlenberg v. Kohlenberg,* 74 Atl. 432 (Ch. 1909). When the instant case went to the Court of Errors and Appeals it became necessary to face the question squarely as a question of evidence. Our Evidence Act fails expressly to state that a spouse is incompetent in testifying for or against the other to prove adultery. In Section 5 it is declared that a spouse shall be *incompetent* and *not compellable* to give evidence for or against the other in any action for criminal conversation, or any criminal action except to prove the fact of marriage; and *not compellable* in any action or proceeding for divorce on account of adultery to give evidence for the other except to prove the fact of marriage. The legislature excludes any words of competency in relation to the divorce proceedings. Dean Wigmore in his treatise on evidence (Vol. 4, Sects. 2063, 2064) attacks the *Lord Mansfield Rule* at its very inception showing the artificiality of the reasons for which it was invoked. He points out that it is inconsistent that a husband or wife may testify to adultery, illicit intercourse, *Commonwealth v. Stricker,* 1 Br., App. 47 (Pa.), may bastardize the child in other ways by showing no marriage, *Allen v. Hall,* 2 Nott. and McC. 114 (S.C. 1819) or that one party was already married to a third person, and exclude testimony of non-access as being indecent, immoral and opposed to public policy. The reasons, heretofore, for adopting the *Lord Mansfield Rule* have been primarily traditional and precedential. The American courts are not bound by a decision such as *Goodright v. Moss* expounded in 1777 subsequent to the Revolution and our separation from England. However sound were the reasons for the decision of that case in 1777 they are now out-moded because of changed social conditions. When the invocation of an ancient doctrine with an artificial basis creates such a barrier that truth is suppressed and justice defeated it should be ignored.

MARRIAGE—INSANE PERSONS—POWER OF GUARDIAN TO PETITION FOR ANNULMENT OF MARRIAGE. — The guardian of an adjudged lunatic filed a petition to annul the marriage of his ward, alleging insanity at the time of the marriage. The defendant by motion to strike out the petition challenged the right of a guardian to bring such a suit. *Held,* that a suit for the annulment of marriage on the ground of insanity may be brought by the guardian of a lunatic in the name of his ward. Motion denied. *Naylor* v. *Naylor,* 113 N. J. Eq. 126, 165 Atl. 875 (Ch. 1933).

As a general rule persons other than the parties to the marriage may not sue for its annulment. *Niland* v. *Niland,* 96 N. J. Eq. 438, 126 Atl. 530 (Ch. 1924); *Ridgley* v. *Ridgley,* 79 Md. 298, 29 Atl. 597 (1894). *Contra*: *Ray* v. *Sherwood,* 1 Curt. Ecc. 173, 193 (English rule); *Faremouth* v. *Watson,* 1 Phillim 355 (same). In some jurisdictions this rule is relaxed in the case of marriages voidable for nonage, and parents or guardians are permitted to maintain the suit. *Kuykendall* v. *Kuykendall,* 112 Misc. 12, 182 N. Y. Supp. 308 (1920) (by statute). *Ross* v. *Bryant,* 90 Okl. 300, 217 Pac. 364 (1923). *Contra*: *Niland* v. *Niland, supra.* Since marriages are usually voidable for nonage only if the parents' consent is not obtained, it may be argued that such parents have been given an interest assertable in their own right. These principles would seem to be inapplicable to marriages void for lunacy, since the defect in such instances is based upon a total incapacity to contract. To deny to the guardian of a lunatic the power to sue for a declaration of nullity would entrust an exclusive privilege to avoid the marriage to the sane spouse, the exercise of which might be selfishly motivated without regard for the interests of the incompetent. Indeed, Chancellor Walker has stated *obiter* that the marriage of a lunatic may be avoided in a suit brought by his next friend. *Olson* v. *Piazza,* 92 N. J. Eq. 475, 477, 114 Atl. 330 (Ch. 1921). The decision in the instant case is in accord with the rule prevailing in most jurisdictions. *Mackey* v. *Peters,* 22 App. D. C. 341 (suit by next friend); *Winslow* v. *Troy,* 97 Me. 130, 53 Atl. 1008 (1902) (suit by guardian); *Kemmelick* v. *Kemmelick,* 114 Misc. 198, 186 N. Y. Supp. 3 (1921) (suit by next friend); *Crump* v. *Morgan,* 38 N. C. 91 (1843) (suit by guardian); *Waymire* v. *Jetmore,* 22 Oh. St. 271 (1872) (same). In *Kern* v. *Kern,* 51 N. J. Eq. 574, 26 Atl. 837 (Ch. 1893), a bill to annul a marriage on the ground of insanity was instituted by the next friend of the lunatic, but the right to institute such a suit was not challenged.

MORTGAGES—EVIDENCE—PAROL ASSUMPTION OF MORTGAGES BY GRANTEE OF REAL PROPERTY—Suit was brought to foreclose a mortgage, and a decree entered fixing the amount due. Thereafter, the mortgagor, by deed, conveyed a portion of the land, "subject to mortgages," in return for "one dollar and other valuable consideration". The complainant then sued to establish the liability of the grantee upon an oral promise, given as part of the consideraton for the conveyance, to assume payment of the amount due on the decree. The defendant appealed from a decree establishing his liability on the promise. *Held,* that a parol agreement by the grantee to assume a mortgage indebtedness upon the land conveyed, as part of the consideration for the transfer, was valid and enforceable. Decree affirmed. *Dieckman* v. *Walser,* 114 N.J. Eq. 383, 168 Atl. 582 (E.&A. 1933).

The delivery and acceptance of a deed conveying land is generally treated as an integration of prior written or oral agreements relating to the subject matter of the conveyance. *Blum* v. *Parson Manufacturing Co.*, 80 N.J.L. 390, 78 Atl. 174 (E.&A. 1910); *Davis v. Clark*, 47 N.J.L. 338, 1 Atl. 239 (E.&A. 1885); *Long v. Hartwell*, 34 N.J.L. 116 (Sup. Ct. 1870); *Brownback* v. *Spangler*, 101 N.J. Eq. 388, 139 Atl. 524 (Ch. 1927); *Hawthorne* v. *Odenson*, 94 N. J. Eq. 588, 120 Atl. 797 (Ch. 1923); *Waddell v. Beach*, 9 N.J.Eq. 793 (E.&A. 1852). In *Smith v. Colonial Woodworking Co., Inc.*, the Court of Errors and Appeals, in apparent reliance upon this rule, stated that a parol promise by a grantee to assume existing encumbrances would not be enforced. See 110 N.J. Eq. 418, 423, 160 Atl. 351, 353 (1932). This statement was expressly rejected in the instant case on the ground that the true consideration for a conveyance may be established by parol even though it involves contradiction of the recitals contained in the deed. *Andrews* v. *Westaway*, 99 N.J.L. 220, 122 Atl. 729 (E.&A. 1923). Insofar as this rule would admit parol evidence of an executory promise in conflict with the provisions of a written agreement, solely on the ground that such promise was part of the consideration, the parol evidence rule would be virtually abandoned. It may be conceded, however, that parol agreements which do not conflict with the writing, are outside the rule. See *Naumberg* v. *Young*, 44 N.J.L. 331 (Sup. Ct. 1882). And the court in the instant case relied on the fact that the term "other valuable consideration" was clarified, rather than contradicted, by evidence of an oral promise to assume payment of incumbrances. Yet this blanket clause, encountered in every conveyance and contract, has lost meaning as an expression of the intention or understanding of the parties. Moreover, the term "subject to mortgages," contained in the deed here in question, a phrase commonly held to negative the assumption of the mortgage indebtedness, would seem to be contradicted by a parol agreement to discharge encumbrances. As an additional ground for its decision the court reasoned that the deed embodied only the obligations of the grantor and was not intended to integrate the reciprocal promises of the grantee. Here the decision rests on well settled doctrine. *Long v. Hartwell, supra.*

PROCESS—DISTRICT COURTS—SERVICE UPON COMMISSIONER OF BANKING AND INSURANCE—Plaintiff sued defendant, a foreign insurance company with offices in this state, in the District Court of Orange. Process issued out of that court was served upon the commissioner of banking and insurance at Trenton as provided by 2 Comp. St. p. 2855 sec. 59 (3). *Held,* the jurisdiction of the District Court of Orange being limited to the confines of Essex County, its process was ineffective at Trenton in the county of Mercer. *Valentine v. Franklin*

Surety Co., Inc., 11 N.J.Misc. 822, 168 Atl. 35 (Sup. Ct. 1933).

By its decision in the principal case, the court has apparently overruled *Gabriel v. Mason Art, Inc.,* 2 N.J.Misc. 50, 125 Atl. 125 (Sup. Ct. 1924). In the *Gabriel* case process issued out of the Hudson County District Court, was served upon the Secretary of State at Trenton as provided by Sec. 43a of the Corporation Act. The court held that process may be served upon the Secretary of State regardless of the territorial limits of the jurisdiction of the court out of which process issues. *Standard Accident Ins. Co. v. Russo,* 10 N.J.Misc. 787, 160 Atl. 821 (Sup. Ct. 1932), involved the same situation. The court, however, refused to determine the question of the validity of process, but held that the defendant had submitted to the jurisdiction by asking relief on the merits. The federal rule seems to be in accord with the *Gabriel* case. See *Mutual Reserve Fund v. Tuchfield,* 159 Fed. 833 (C.C.A. 6, 1908). Other cases in point are, *People ex rel. Firemen's Ins. Co. v. Justices of the City Court of New York,* 255 Abb. N. C. (N. Y.) 403, 11 N. Y. S. 773 (1890), and *McKeever v. Supreme Court I. O. F.,* 106 N. Y. S. 1041 (1907). Both of these latter cases are in accord with the *Gabriel* case. We are confronted with two conflicting, though totally unrelated, statutes. The one (2 Comp. St., p. 1962, §29) limits the jurisdiction of a district court to the county wherein it is situated. The other (2 Comp. St., p. 2855, §59 [3]) provides for suits against foreign insurance companies by service upon the commissioner of banking and insurance at Trenton, in Mercer County. The reasoning of the principal case, is equally applicable to a case begun in a circuit court (1 Comp. St., p. XLIII, Article VI §5, Const. of N. J.) or in a common pleas court, (1 Comp. St., p. XLIII, Article VI, §6 [1], Const. of N. J.). Thus we would practically confine all such suits to the Supreme Court, since that court alone has state-wide jurisdiction. The purpose of the legislature in establishing inferior courts was to remove the burden of too numerous suits of small financial consequence from the Supreme Court. The result of the principal case, it is submitted, therefore places a construction upon the two acts that is not only contrary to the legislative intent, and is both practically and economically unsound, but is also opposed to the weight of authority.

PUBLIC FUNDS—RELATIONSHIP BETWEEN DEPOSITOR AND BANK —Plaintiff township borrowed money from defendant bank and gave its note as security. Plaintiff failed to meet the note and defendant charged the amount against plaintiff's general account. *Held,* that the general deposit of municipal funds is a trust fund and may not be seized in satisfaction of a debt. *Piscataway Township v. Bank of Dunellen,* 111 N.J.L. 412, 168 Atl. 757 (E.&A. 1933).

It is well settled that a general deposit creates the relationship of debtor and creditor between the bank and the depositor, and the

bank may set-off a debt due from a depositor against his general account. *Tufts v. People's Bank & Trust Co.,* 59 N.J.L. 380, 35 Atl. 792 (Sup. Ct. 1896); *Campbell, Receiver v. Watson,* 62 N.J.Eq. 396 (Ch. 1901); *Roseville Trust Co. v. Barney,* 89 N.J.L. 550, 99 Atl. 343 (E.&A. 1916); *Marmon Fanning Co. v. People's National Bank of Elizabeth,* 106 N.J.Eq. 170, 150 Atl. 402 (E.&A 1929); *Manhattan Co. v. Blake,* 148 U.S. 412 (1893); *Appeal of Philadelphia Finance Co.,* 22 Atl. 831 (Pa. 1891). This may be done without first demanding payment of the debt when due. *First National Bank v. Kelsey,* 54 Ill. App. 660 (1894). A special deposit, however, creates a trust relationship; and may be either a deposit for safe-keeping to be returned on demand, or a deposit with the distinct understanding that the money is to be held by the bank for a special purpose. *Titlow v. Sundquist,* 234 Fed. 613 (C.C.A. 1916); *Union Trust & Savings Bank v. Southern Traction Co.,* 283 Fed. 50, 57 A.L.R. 386 (C.C.A. 1922); *Mutual Account Association v. Jacobs,* 141 Ill. 261, 31 N.E. 414 (1892); *In re Security Savings Bank,* 217 N.W. 831, 60 A.L.R. 336 (Ia. 1928); *Phillips v. Gillis,* 98 Kan. 383, L.R.A. 1917A 680 (1916); *Fogg v. Tyler,* 109 Me. 109, 82 Atl. 1008 (1912). See also 3 R.C.L. 518; L.R.A. 1918A 65; 24 A.L.R. 1111; 31 A.L.R. 472; 39 A.L.R. 930. Apart from evidence indicative of a different relationship, a deposit in a bank is presumed to be a general deposit. *Maryville v. Windisch-Muhlhauser Brewing Co.,* 50 Oh. St. 151, 33 N.E. 1054 (1893); and see 31 A.L.R. 472. The character of the depositor has no bearing upon the creation of a debtor-creditor or trust relationship. *Central National Bank of Baltimore v. Connecticut Mutual Life Ins. Co.,* 104 U.S. 54, 26 L.ed. 693 (1881); *Officer v. Officer,* 120 Ia. 389, 94 N.W. 947 (1903); *Duckett v. National Mechanics' Bank,* 86 Md. 400, 38 Atl. 983 (1897); *Kendall v. Fidelity Trust Co.,* 230 Mass. 238 (1918); *Paul v. Draper,* 158 Mo. 197, 59 S.W. 77 (1900); *Pittsburgh v. First National Bank,* 230 Pa. 176, 79 Atl. 406 (1910). Accordingly, a deposit of public funds, in the absence of a stipulation to the contrary, establishes the relationship of debtor and creditor between the bank and the depositor. *In re Nichols,* 166 Fed. 603 (Dist. Ct. N. D. N. Y. 1909); *Runyan v. Farmer's Bank of Liberty Center,* 230 N.W. 418 (Ia. 1930); *Board of Education v. Union Trust Co.,* 136 Mich. 454 (1904); *Deal v. Bank of Smithville,* 52 S.W. (2d) 201 (Mo. 1932); *City of Sturgis v. Meade County Bank,* 38 S.D. 317 (1917). The majority opinion of the court, in the principal case relies strongly upon *Lyon v. City of Elizabeth,* 43 N.J.L. 158 (Sup. Ct. 1881). That case did not involve a deposit of public funds, but an execution upon municipal land. It was held that to allow property necessary for public purposes to be taken under execution would be to hamstring a municipality in its governmental functions. *Meriwether v. Garret,* 102 U.S. 472 (1880); *Monagham v. Philadelphia,* 28 Pa. St. 207 (1857). It is submitted that the result in the principal case will tend to do just that which it was designed to avoid. With the usual right of set-off extin-

guished, banks will be less likely to advance money to municipalities. In view of these facts, and in view of the many authorities to the contrary, it is submitted that the principal case was erroneously decided.

RULE AGAINST PERPETUITIES—GIFT UPON CHARITABLE TRUSTS TO A CORPORATION TO BE FORMED.—During his lifetime T conveyed securities to a trust company, upon trust to accumulate the net income therefrom during the lives of six named infants, and for twenty-one years after the death of the survivor. The deed of trust directed that "upon the termination of the trust * * * the trustees shall turn over the fund to a corporation to be organized" for charitable purposes. It further provided that "after the expiration of twenty-one years from the death of the survivor of the said persons, said trustee shall proceed to form the corporation * * *." Thereafter T died, leaving a will which incorporated the prior trust deed by reference, and bequeathed the bulk of his estate upon the same trusts, cutting off his widow and children with a pittance. An executor under the will filed a bill for instructions in the Court of Chancery. From a decree declaring the trust valid, an appeal was taken. *Held,* that the trust violated the rule against perpetuities, since title to the fund might not vest within the period required by the rule. Decree reversed. *First Camden Nat. Bank & Trust Co. v. Collins,* 114 N.J.Eq. 59, 168 Atl. 275 (E.&A. 1933).

A gift preceded by an accumulation of income is valid if it must take effect within or immediately following lives in being plus twenty-one years and the gestative period. *Van Riper v. Hilton,* 78 N.J.Eq. 371, 78 Atl. 1055 (Ch. 1911); *McGill v. Trust Co.,* 94 N.J.Eq. 657, 121 Atl. 760 (Ch. 1923); *In re Helme,* 95 N.J.Eq. 197, 123 Atl. 43 (Prerog. Ct. 1923); *Thelluson v. Woodford,* 4 Ves. Jr. 227 (1799) affirmed 11 Ves. Jr. 112 (1805). That such a gift is to a charity will ordinarily not except it from the operation of the above rule, if the charitable bequest is preceded by a gift to an individual, or if the accumulation is expressly made a condition precedent to the vesting of the charitable gift. *Girard Trust Co. v. Russell,* 179 Fed. 446 (C.C.A. 3d, 1910); see *Hopkins v. Grimshaw,* 165 U.S. 342, 355 (1897); *Jansen v. Godair,* 292 Ill. 364, 374, 127 N.E. 97 (1920). Since in the instant case the donee corporation might not come into existence until after the period of directed accumulation, the legal title to the fund conceivably might not vest in such corporate trustee until a time more remote than that required by the rule. But in most jurisdictions, a well-settled exception to the above principles has been engrafted in cases involving charitable bequests to a corporation to be organized, where such bequest is not preceded by a gift to an individual. Such gifts have consistently been upheld even though the time for the formation of the corporation was not restricted to the

period set by the rule. *Ould v. Washington Hospital,* 95 U.S. 303 (1877); *Russell v. Allen,* 107 U.S. 163 (1883); *Brigham v. Peter Bent Brigham Hospital,* 134 Fed. 513 (C.C.A. 1st, 1904); *In re Potts' Will,* 205 App. Div. 147, 199 N.Y. Supp. 880 (1923), affirmed 236 N.Y. 658, 142 N.E. 323 (1923); *Attorney General v. Bowyer,* 3 Ves. Jr. 714 (1798); PERRY, TRUSTS AND TRUSTEES (7th ed. 1929) §736; *cf. Young Men's Christian Association v. Appleby,* 97 N.J.Eq. 95, 101, 127 Atl. 25 (Ch. 1924). The reason commonly advanced for such decisions is that the charitable bequest, since not preceded by a gift to another, is immediately vested, so that the duration of the antecedent accumulation for the benefit of the charity is wholly immaterial. *Brigham v. Peter Bent Brigham Hospital,* 126 Fed. 796, 799 (C.C.D. Mass. 1903), affirmed 134 Fed. 513 (C.C.A. 1st, 1904); see *In re Potts' Will,* 199 N.Y. Supp. at 886; GRAY, PERPETUITIES (3d ed.) §678; *cf. Handley v. Palmer,* 103 Fed. 39, 46 (C.C.A. 3d, 1900). The gift in the instant case may well fall within this established principle. Since the accumulation is for the benefit of the donee alone, the equitable interest in the trust may be deemed to vest in the charity as the sole beneficiary at the testator's death. *Cf. Canda v. Canda,* 92 N.J.Eq. 423, 426, 112 Atl. 727 (E.&A. 1921); *Codman v. Brigham,* 187 Mass. 309, 72 N.E. 1008 (1905); *In re Potts' Will, supra.* Even if the timely vesting of the legal title is the controlling consideration in the validity of a charitable trust, the principle that equity will not permit a trust to fail for want of a trustee may perhaps justify a conditional appointment of a trustee to execute the trusts in the event that the designated corporation is not created at the appropriate time. *Smith v. Washington Casualty Ins. Co.,* 110 N.J.Eq. 122, 159 Atl. 510 (Ch. 1932); *cf. Duggan v. Slocum,* 92 Fed. 806, 808 (C.C.A. 2d, 1899); *Brigham v. Peter Bent Brigham Hospital, supra* (equity may order the organization of the corporation within the required time); *St. Paul's Church v. Attorney General,* 164 Mass. 188, 41 N.E. 231 (1895); GRAY, PERPETUITIES (3d ed.) §607. If the present decision is based upon the undeniable policy against a charitable trust preceded by a protracted accumulation and excluding living generations from participation, it may be regarded as a salutary judicial embodiment of the "Thelluson" legislation limiting accumulations. Cf. Act 39 & 40 Geo. III, c. 98; Act 3 & 4 Wm. IV, No. 27. The extended discussion of policy by the court in the principal case may perhaps justify so restricting the implications of the decision, thus leaving room for the later adoption of the prevailing view in cases involving a less obnoxious trust.