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HANDBOOK  
OF THE  
LAW OF TRUSTS

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ST. PAUL, MINN.  
WEST PUBLISHING CO.  
1921

## CHAPTER IX

## THE SUBJECT-MATTER.

## 73. The Subject-Matter of the Trust.

## THE SUBJECT-MATTER OF THE TRUST

73. Every trust must have some property as its subject-matter. This property may be of any kind recognized as valuable by a court of equity. It may be legal or equitable, real or personal. The subject-matter of the trust must be certain, in order that the trust be enforceable.

A trust without subject-matter is inconceivable. It could not exist, any more than a trust without a trustee or a beneficiary.<sup>1</sup> Some property must be fixed as the res, to be held by the trustee for the beneficiary. In a few cases efforts have been made to prove that a trust existed where no property could be found as the subject-matter. Thus, in several cases a testator has requested that a certain person be employed by the executors as solicitor or attorney or clerk. It has been held in these cases that the testator's direction did not create a trust, because of the lack of subject-matter.<sup>2</sup> No sum was left in trust to employ the person named. And so, also, the proceeds of property not in existence cannot be made the subject-matter of a trust;<sup>3</sup> nor does any trust arise from a request that the testator's wife and sister should live together.<sup>4</sup>

"In general, any right, interest, or thing which may be the subject of property may be granted in trust. Every kind of vested right which the law recognizes as valuable may be transferred in trust."<sup>5</sup> This property may be land, money, a patent right,<sup>6</sup> grow-

<sup>1</sup> "In order that there may be a trust of any kind, there must be a trust fund." *Koehler v. Koehler* (Ind. App.) 121 N. E. 450, 455.

<sup>2</sup> *Foster v. Elsley*, 19 Ch. Div. 518; *Jewell v. Barnes' Adm'r*, 110 Ky. 329, 61 S. W. 360, 53 L. R. A. 377; *In re Thistlethwaite* (Sur.) 104 N. Y. Supp. 264; *Matter of Wallach*, 164 App. Div. 600, 150 N. Y. Supp. 302.

<sup>3</sup> *Mitchell v. Bilderback*, 159 Mich. 483, 124 N. W. 557. In *Fidelity Title & Trust Co. v. Graham*, 262 Pa. 273, 105 Atl. 295, it was held that the beneficiary of a life insurance policy might declare a trust of the right to the proceeds, although such right was contingent on the failure of the insured to change the beneficiary.

<sup>4</sup> *Graves v. Graves*, 13 Ir. Ch. 182.

<sup>5</sup> *Dunn, J.*, in *Burke v. Burke*, 259 Ill. 262, 268, 102 N. E. 293, 295. See, also, *Haulman v. Haulman*, 164 Iowa, 471, 145 N. W. 930, 933.

<sup>6</sup> *In re Russell's Patent*, 2 De G. & Jon. 130.

ing crops,<sup>7</sup> a promissory note,<sup>8</sup> a claim against a bank,<sup>9</sup> an equitable interest,<sup>10</sup> a ship in construction,<sup>11</sup> or unaccrued rents and profits.<sup>12</sup>

It is obvious that the subject-matter of the trust must be certain, if a court of equity is to enforce it. An uncertain trust res is as fatal to the trust as no subject-matter whatever. Thus, where a testator provided that after a certain date the trustees might give such portions of the estate as they thought proper to any of the testator's brothers and sisters who might stand in need of the aid, and that the trustees should devote the remainder of the property to the advancement of the cause of temperance or in aid of a manual training school, it was held that the gift in trust for the cause of temperance or the school was void for uncertainty, since there was no assurance that there would be any of the property of the testator left after his brothers and sisters were provided for.<sup>13</sup> On the other hand, a legacy in trust of a sufficient sum of money to produce \$50 per annum is not void for uncertainty of the subject-matter.<sup>14</sup>

<sup>7</sup> *Mauldin v. Armistead*, 14 Ala. 702.

<sup>8</sup> *Broughton v. West*, 8 Ga. 248; *Duly v. Duly*, 2 Ohio Dec. 425.

<sup>9</sup> *McCarthy v. Provident Institution for Savings*, 159 Mass. 527, 34 N. E. 1073.

<sup>10</sup> *Tarbox v. Grant*, 56 N. J. Eq. 199, 39 Atl. 378. In *Clark v. Frazier*, (Okla.) 177 Pac. 589, it was held that a school land certificate entitling its holder to a preferential right to buy the land was an equitable interest, which could be the subject-matter of a trust.

<sup>11</sup> *Starbuck v. Farmers' Loan & Trust Co.*, 28 App. Div. 272, 51 N. Y. Supp. 58.

<sup>12</sup> *Gisborn v. Charter Oak Life Ins. Co.*, 142 U. S. 326, 12 Sup. Ct. 277, 35 L. Ed. 1029.

<sup>13</sup> *Wilce v. Van Anden*, 248 Ill. 358, 94 N. E. 42, 140 Am. St. Rep. 212, 21 Ann. Cas. 153. Property expected to be received under the will of a relative may not be made the subject-matter of a trust. In *re Lynde's Estate* (Sur.) 175 N. Y. Supp. 289.

<sup>14</sup> *Crawford v. Mound Grove Cemetery Ass'n*, 218 Ill. 399, 75 N. E. 998. For other cases, in which doubt has been raised as to the certainty of the subject-matter, but the trusts have been sustained, see *Speer v. Colbert*, 200 U. S. 130, 26 Sup. Ct. 201, 50 L. Ed. 403; *French v. Calkins*, 252 Ill. 243, 96 N. E. 877; *Haynes v. Carr*, 70 N. H. 463, 49 Atl. 638; *Beurhaus v. Cole*, 94 Wis. 617, 69 N. W. 986.