THE ATTORNEY-GENERAL, at the relation of the Master, Fellows, and Scholars of TRINITY COLLEGE, CAMBRIDGE, and of the Rev. THOMAS YOUNG; and the said Master Fellows, &c. (By Information and Bill),

Against

JOSEPH MUNBY, Defendant.

(1816) 1 Merville 327

The following is the substance of the Minutes of Decree, as settled by the Counsel on each side:

ADeclare, that the Deed or Indenture of the 15*th* of *July*, 1811, is a good and valid grant of the premises thereby granted and assigned; and that, under and by virtue thereof, the Relators and Plaintiffs are entitled to the dwelling-house, garden, and premises, lately occupied by *John Pigott*, the grantor, and also to all and singular the household goods, furniture, &c. in and about the

dwelling-houses and premises of him the said *John Pigott*, at *Oswaldkirk*, and in the Minster-yard at *York*; and that the said Relators and Plaintiffs are also entitled, under and by virtue of the Will of the said *John Pigott*, to a legacy or sum of ,3000. And let the Information and Bill, so far as it seeks to establish the Indenture dated the 4*th* of *October* 1811, stand dismissed out of this Court, without costs."Possession of the prebendal-house, garden, and premises, in the Minster-yard at *York*, and of all the household goods and furniture, &c. in the two houses, to be delivered up to the said Relators and Plaintiffs, together with the deeds and writings relating thereto, and to all the premises granted and assigned by the Indenture of the 15*th* of *July,* 1811. All Title-deeds, Documents, Evidences and Writings, relating to the Advowson of the rectory of *Gilling*, which, in pursuance of an Order, dated the 9*th* of *July*, 1814, were deposited in the Master=s office to be delivered to the Relators and Plaintiffs, the Master and Fellows of *Trinity College, Cambridge*. AAnd let the Defendant, out of the assets of

the said Testator, pay to the said Relators and Plaintiffs the said legacy of ,3000, with interest at 4*1*. *per cent*. from the end of one year after the death of the said Testator.@

Grant, by indenture executed more than twelve months before the grantor's death, and duly enrolled, of a house and premises held under a church-lease, to *T. C. Cambridge*, in trust for the rector of *G.* valid, under the statute of mortmain and not affected by the circumstance of the grantor being himself rector of *G.* at the time of the grant, and retaining the deed in his own possession.

Assignment of mortgage-premises, and of the principal sum due thereon, to the same college, upon the like trust, void, as being executed within a twelvemonth before the death of the donor, not to be set up by reference to a will made afterwards, giving the advowson of the living beneficially to the college.

Bequest of money to be laid out in building upon land already in mortmain, good.

Recital in a will of property given by deed, which fails, not by any defect in the instrument itself, but by the grantor not having lived to the period prescribed by the statute for rendering the deed effectual, does not operate as a confirmation, or by way of relation, so as to pass the property thereby assigned.

Grant of land to a college, not beneficially, but in trust for other objects, not within the exception of the statute, in favour of the Universities &c.

THE Reverend *John Pigott*, rector of *Gilling East*, by indenture, dated the 15th of *July*, 1811, made between him the said *John Pigott*, of the first part; *Carter*, (a trustee for him of the premises thereby conveyed,) of the second part; and the Master, Fellows,

and Scholars of *Trinity College, Cambridge*, of the third part ; after reciting (among other things) that he was desirous of augmenting the revenues of *Trinity College*, and of rendering the succession to the fellowships therein more quick, assigned a certain leasehold messuage or dwelling-house, situate in the Close of the cathedral of *York*, (to which he was then entitled for a term of years, with benefit of renewal,) to the said Master, Fellows, and Scholars, and their successors, Ain trust, to permit the rector for the time being of the said rectory of *Gilling East*, to hold, use, and occupy the same, during his incumbency, or otherwise to receive and take the issues and profits thereof, to and for his own use and benefit,@ paying the reserved rent and fines for renewal, &c. And he thereby bargained, sold, and transferred to the said Master, &c. all and singular the household goods, furniture, plate, and all other moveable effects (money excepted) in and about his dwelling-house at *Oswaldkirk*, and in the Minster-yard at York Ain trust for the sole use and benefit of the rector for the time being of *Gilling East* aforesaid.@

Afterwards, by another indenture, dated the 4th of *October*, 1811, made between him the said *John Pigott*, of the one part, and the said Master, Fellows, and Scholars, of the other part, he the said *John Pigott* assigned to the said Master, Fellows, and Scholars, certain premises held by him under three several indentures of mortgage, subject to redemption by *Charles Gregory Fairfax*, and the several sums of money (making together ,3000,) thereby secured, together with a bond for re-payment of the same, in trust to receive the interest when due, and pay the same to the rector for the time being of *Gilling East* aforesaid, for his own use and

benefit, and to receive the said principal sums when the same should become due and payable, and again to invest the same, or else to suffer the same to remain so invested as aforesaid, Ain order that the interest of the same might for ever thereafter be paid to, and received by, the rector for the time being of *Gilling East* aforesaid, to and for his own use and benefit.@

Both indentures were, after their respective execution, duly enrolled in the Court of Chancery.

The said *John Pigott* afterwards made his will, dated the 9th of *May*, 1812, whereby he gave to the said Master, Fellows, and Scholars, the perpetual advowson of the said rectory of *Gilling East*, under a restriction, that the same should not be held by any college preacher, but that in all cases the Fellow presented to it should vacate his fellowship; desiring that be might take his degree of Doctor of Divinity the commencement following, or as soon after as might be, and that every successor might do the same, as he, the testator, had been at great expence towards making it a complete residence for them, and had, by deeds of gift, (as would be therein seen) given his interest in the lease of his said dwelling-house, &c. to be received by them for the benefit of each other, and all his furniture and moveable effects, both at the *York* house and *Oswaldkirk*, so that *Gilling* rectory-house would be completely furnished, and ready for every successor at little or no expence; and had further given, by deed of gift, to the said society, in trust ,6000, as a further endowment, therefore requiring them to see that the interest arising therefrom might be immediately

employed by his successor and successors, according to the deed of gift, in building two rooms on the south side of the said rectory-house of the dimensions therein mentioned; the two rooms below to be completed according to the directions thereby given; with a *nota bene*, that when the above rooms were finished, the interest arising from the ,6000 was to be paid to the incumbent for the time being, half yearly. The testator then enjoined his executor to look upon it as part of his trust, and, as he would be nearer the spot, to communicate with the college, and give his assistance to see that the above rooms be finished accordingly; directing the builders employed to obey the directions of his said executor;" and took notice by another *nota bene,* that as Mr. *Hailstone*, (who was himself a fellow of the college,) had had the trouble of negociating the above business with him in behalf of the college, he wished him to have his option (before any other member) of the next avoidance. The testator, then gave to his immediate successors at *Gilling* and *Oswaldkirk* ,100 each, Ain trust to pay the interest to the respective parish clerks whom they should nominate;@ and, after giving some other legacies, appointed his Afaithful friend, *Joseph Munby*, attorney at law, in *York,@* (the defendant) his sole executor, giving him ,3000 for his trouble, together with what residue there might be after discharging his said annuities; and concluded with the following words:-" N. B. at present, I have only transferred ,3000, part of the above-mentioned ,6000, for the benefit of the rector of *Gilling*. Now, if I should die before I transfer the remaining ,3000, I do, in such event, give the Master, Fellows, and Scholars of *Trinity College*, the sum of ,3000 sterling, upon the same trusts and for the same purposes as I have already given and assigned to them the sum of ,3000 due to me from *Charles Gregory Fairfax*, Esq."

The Testator died on the 19th of *August*, 1812, without having transferred the remaining £3000; and his will was proved by the defendant *Joseph Munby*, his executor, who took possession of his personal estate, and, among other things, of the said leasehold premises, household goods, and furniture, and of the title-deeds relating to both the Testator's houses, and the said indentures of mortgage.

The Information and Bill stating these facts, went on to state-That by the Testator's death, the rectory of *Gilling* became vacant, and thereupon the relators, the said Master, Fellows, and Scholars, became desirous of presenting the Rev. *John Hailstone*, one of the fellows, to the said rectory; but that, in consequence of an intimation from the Defendant of his intention to dispute the validity of the said deeds and instruments, or some of them, no member of the college was presented, but the right of collating became vested, by lapse, in the archbishop, who accordingly collated the Plaintiff *Thomas Young*, another fellow of the college, to the said rectory, with the consent of the said relators.

The Information and Bill then charged that the Testator, in his life-time, frequently expressed his intention to the Defendant and others, and consulted and advised with him, the Defendant, respecting the most effectual way of granting and assuring the said leasehold premises, goods, monies, and effects, and that the Defendant was the attorney employed by the Testator in all his

affairs, and particularly in the aforesaid transactions, and who actually advised and prepared the deeds of July and October, 1811, and the will to which he was also one of the attesting witnesses:

That the Master, Fellows, and Scholars of *Trinity College* have, by their charter and the statutes of their foundation, licence to take in mortmain to a certain extent, and had also obtained his Majesty's special licence to take in mortmain the premises comprised in the said indentures and will respectively:

Therefore praying that the two deeds might be declared valid, and the legacies of £3000 and £100, to have passed by the Testator's will; and that the Defendant might be decreed to deliver up to the relators, the Master, Fellows, and Scholars aforesaid, in trust for the Plaintiff *Young*, and his successors, or to the said Plaintiff, the possession of the said leasehold premises, together with the title-deeds relating thereto, and the said household goods and furniture, &c. and the three several indentures of mortgage, together with *Fairfax*'s bond, to account for the rents and profits of the said leasehold premises, and interest upon the said mortgages, and to pay the said legacies of £3000 and £100, to them the said relators ; and for an inventory of, and injunction from selling and disposing of, the said household goods and furniture.

The Defendant, by his answer, admitted the deed of *July* 15, 1811, and its enrolment; but stated that the Testator kept the said deed in

his possession until the time of his death, and gave some part of the furniture mentioned therein to his servants, after he had executed the same. He also admitted the second deed and the will; that he was the attorney employed by the Testator on most occasions, and prepared both the deeds by the Testator's directions, but not the will, which was prepared wholly by the Testator himself; but he denied that he advised the Testator to make such disposition of his property by the said deeds; and said that, on the contrary, he endeavoured to convince him that such disposition was illegal; insisting that the deed of *July* 15, 1811, was void altogether, both as it respected the dwelling-house and premises therein mentioned, and also the household goods, furniture, and other effects therein mentioned to be enjoyed with the same, and that the other deed was also void; submitting, as to the devise of the advowson, of *Gilling*, whether the same was a legal and valid devise.

The Answer further stated, that the Testator considerably reduced his personal estate by giving ,12,000 to the college in his life-time, and within twelve months preceding his decease; and that, as the Defendant believed, the Testator did not, according to the rule of the Court for apportioning the funds in cases of this sort, leave sufficient assets for the full payment of the legacies of ,3000 and ,100.

The Relators and Plaintiffs replied, but no witnesses were examined on either side, and the cause came on this day on the facts of the case as admitted by the Answer.

Sir *S. Romilly*, *Ainslie*, *Bell*, and *Heys*, for the Attorney-General and the Relators and Plaintiffs.

There can be no objection to the validity of the first of these instruments, which is an assignment of property held under a church lease, executed more than twelve months before the Testator's death, and duly enrolled, to the Master and Fellows of *Trinity* college, not beneficially, but merely as trustees for the incumbent, for the time being, of this rectory, and containing no reservation of any interest to the grantor, or those claiming under him [See Stat. 9 *Geo*. 2. c.36. s.1.]; unless the circumstance of his being himself the incumbent at the time of making the grant in question should be construed as operating such a reservation within the provision of the statute. But that means a personal reservation ; and cannot apply where the interest reserved is merely incidental to the grantor's situation in another capacity. Nor can any more solid objection be raised from the fact of his having retained the deed in his own possession. The interest had actually passed by the acts of sealing and delivery. If he had cancelled or destroyed the deed, it would not have effected the actual transfer. But, were it otherwise, the question could not arise upon a deed enrolled, the Act of Enrolment having put the instrument itself entirely out of the power and controul of the grantor. In *Moss v. Miles* [6 East, 144.], which was a case on the Registry Act, Mr. J. *Laurence* is represented as having said, AThere is no doubt that if an estate vest in a person by deed, the cancelling of the deed, though it may create a difficulty of proving the title, yet cannot devest the estate;@ and Lord *Ellenborough*, in the same case, refers to *Woodward v. Aston* [1 Ventr. 296.], as determining that point. So *Roe* dem. *Lord Berkley v The*

Archbishop of York [6 East, 86.], and see *Leech v. Leech* [2 Cha. Rep. l00. See also *Sluysken v. Hunter*, ante, p. 40.].

The second deed was executed and enrolled in like manner with the preceding; but the grantor did not live to the full period of twelve months after the execution., It is, therefore, out of the protection of the statute; and, taken by itself, would be void as to the mortgaged premises. But the question is, whether it must not be taken to be so connected with the will, in which it is subsequently recited, as for the same construction to run through both, that construction being a general intention in favour of the College, the property assigned by the deed being in augmentation of the living which is given by the will to the College; and then, the proviso in the statute [Sect. 4.], *viz.* AThat it shall not extend to make void the disposition of any lands, &c., to or in trust for either of the two Universities, or any of the colleges within the same,@ will apply so as to render it valid. The will recites the gift as complete; and a recital in a will that the testator has done what be has omitted formally to do, will operate to supply the defect of his former disposition.

Then, as to the will, the gift of the advowson is clearly within the exception of the statute, a gift to the fellows of a college being a gift to the college itself [*Attorney-General v. Tancred*, Amb. 351. Bridgman=s Duke's Char. Uses, 403.]. And the legacy given to the college for the purpose of enlarging the rectory-house, is effectual; it having been decided in many cases [*Glubb v.Attorney-General*, Amb. 373.; and *Attorney-General v. Parsons*, 8 Ves. 186, where

the cases on this subject are collected.], that such a bequest is valid to the extent of any application upon land already in Mortmain. As to the ,3000 originally given by the will, there cannot therefore exist the smallest doubt, any more than with regard to the legacies of ,100 to the Testator's successors in the livings of *Gilling* and *Oswaldkirk*, those legacies being merely pecuniary.

Hart, *Leach*, and *Heald*, for the Defendant.

The Court can pay no attention to the views which actuated the Grantor, nor to the question whether his object was, or was not, a meritorious object. The single question is, Whether the dispositions he has made are according to law; in other words, whether the institutions which he had in his contemplation can be supported.

The objection to the first deed is, that it is not executed in compliance with the requisites of the Act. Has the Grantor made his gift to take effect in possession, Awithout any reservation, trust, condition, or limitation whatever, for the benefit of the donor, or of any person or persons claiming under him?@ If he has not done this, the gift is absolutely void; and, in order to establish it, it is incumbent on those claiming under it, to shew that he has actually, and *bona fide*, done that which the legislature has laid down as essential to the validity of such a gift. But then it is

attempted to cure this defect, by saying that the gift is in favour of a college, and therefore within the exception of the fourth section; and upon this the question arises, To whose benefit is the property actually given? If the college are the beneficial devisees, we will admit that the question is at an end, because the college is within the exception ; and, (having obtained the King's licence), is therefore competent to take. But this is not the case. The college are merely trustees, and the beneficial interest is limited to a particular charitable use. The gift, therefore, falls to the ground, as already stated, because the requisites of the Act have not been fulfilled. The policy of the law is, to discourage what the statute calls improvident alienations, and, with this object, it provides that the Grantor shall absolutely divest himself of all interest whatever in the subject of his donation. The Grantor, in the present instance, did nothing like this; he did not deliver the deed, but kept it in his own possession. In that deed, his own description of himself is as rector of *Gilling East*, and the gift is to the college, as trustees for the rector of *Gilling East*. Can it be said, then, that, either immediately on the execution of the deed, or ever at any time in the whole course of his life, he parted with the property purporting to be transferred by it? His retaining the deed is evidence of his intention to elude the statute, this case being entirely different from those in which the mere execution of the deed having altered the possession of the property, its being retained by the Grantor, and even afterwards cancelled, has been held not to affect the transaction. Under the circumstances of this case, the Act of Enrollment, twelve months before the death of the Grantor, is nothing to the purpose. If this could be supported, there would be no use in the Statute of Mortmain, which might be evaded upon every occasion.

With regard to the gift of the furniture, being of personal property, if it stood alone it could not be impeached; but, as it now stands, it is incorporated with the former grant, and must fall to the ground together with it. It is to be enjoyed with the house: the rector of *Gilling* is to have the use of it only as resident there. Yet a gift of personal property to a corporation sole cannot pass to the successors; it vests absolutely in the first taker. In this instance the Grantor is himself the first taker, so that it is a gift merely in trust for himself, and passes, at his death, to his executor.

Then, as to the second deed, it is admitted that, taken by itself, it would be void; but it is said to be established, and made available, by the will which recites and follows it. But, suppose it were the case in fact, as they contend it must be inferred to have been, that the disposition by the will was made previous to, or was inchoate at the time of, the execution of the deed, this would have made no difference in the case; for the will is an instrument, whatever its date, which can have no effect till the death of the Testator. Consequently, the object for which, according to this supposition, the property on mortgage was to be applied did not exist. It falls to the ground altogether; and, although the late cases have decided that, where a general charitable intent is manifested, although not sufficiently specified, the Court will effectuate that intent [See the case of *Mills v. Farmer*; ante, p.55.], yet, where there is a particular purpose, and that purpose fails altogether, the Court cannot substitute any other.

As to the devise of the Advowson, no Decree can be made respecting it, the heir at law not being before the Court; but, being expressly given to the College, we apprehend that this devise must be considered as valid; and, if they bad been the owners of the advowson at the time of the execution of the deed, being *cestuis que trust* as well as trustees, it might have, been fairly enough contended that the exception would operate in their favour so as to give them the beneficial interest in what it was attempted to pass, by the deed. But this was not the case; and the accidental circumstance of their afterwards acquiring the Advowson, cannot alter their situation with respect to the operation of that previous instrument.

As matters then stood, the rector of *Gilling* had no necessary connection whatever with the Master and Fellows of *Trinity College*. Nay, the Grantor himself, who was the rector for the time being, does not appear to have had any connection with that society. The argument, if to be maintained at all, would hold equally good in case any other person, and not the Testator, had been the grantor. Suppose Mr. *Pigott* to have given the property by deed, and then died, and that the college, having no interest in the advowson at the time of his death, had taken by grant of some other person, being the patron, at a subsequent period; could this possibly have been contended to make the prior gift valid? Suppose *Trinity College* to have *purchased* the advowson for the purpose of giving effect to the deed; would that purpose have been answered by their so doing?

Sir S. *Romilly,* in reply.

The deed of *July*, 1811, was executed strictly according to the provisions of the statute. The personal chattels passed by it of course, for to them the statute does not apply. With respect to the leasehold messuage, the Act requires immediate possession and delivery.

It has been said that the College had no intimation of the grant, but that is unsupported in fact: the Answer only alleges that the deed was retained by the Grantor in his own possession. And it appears also that it was executed in concert with Mr. *Hailstone*, one of the fellows of the college; but whether it was or not does not signify, for the enrolment, which was made within six months after the execution of the deed, according to the express direction of the Statute, afforded sufficient notoriety; and there could be no actual delivery of possession, owing to the Grantor being himself the rector for the time being.

Neither does this circumstance, of the Grantor being rector, at all affect the validity of the grant, as causing a reservation of interest within the meaning of the Statute. Is there any thing in that Statute to prohibit a rector from endowing his own rectory? The meaning of the Act is only that the deed shall *bona fide* take effect immediately; and the present deed does so take effect. From the

moment of its execution he retains possession, not by virtue of his former title, but as rector of the parish of *Gilling*, under his own grant. As such rector, he has no power to revoke that grant; and the enrolment, by rendering it a public act, has effectually placed it out of his reach in his former capacity. No doubt he is entitled to the use of the property during the period of his incumbency: but this is, as incumbent; it is by virtue of the grant itself, and not by virtue of any reservation out of it.

As to the next deed, we admit that, standing alone it cannot be supported under the Statute, because not executed till within a year before the death of the Grantor. The only view in which it can be taken to have effect, is, by considering the advowson as already given, and this provision as an augmentation. There can be no question about the validity of the gift of the advowson, under the exception in the Act in favour of the universities. Now it is evident by the will, that the Testator himself considered the gift of the advowson as with relation to both the deeds. He recites that he had, by deed of gift, given all his furniture, &c. at *York* house and at *Oswaldkirk*, Aso that *Gilling* rectory-house would be completely furnished and ready for every successor.@ But there is nothing of this in the deed of *July* 1811. So also, in the deed of *October* following, he has said nothing about the building of the two rooms at the rectory-house; but in his will he recites that deed as if he had thereby directed the interest of the ,6000 to be laid out for that purpose. The ,3000, which was in fact given by that deed, was on mortgage; and, therefore, if it stood alone, not to be supported because given within the period prescribed by the Statute. But the gift being thus recognized, and its object denoted

by the will, it must be taken as if actually made by the will; consequently, subsequent to the gift of the advowson, and in augmentation of it: and, even if there were any thing to prevent the money from being applied to the purpose directed, that is, to the building the two rooms on the south side of the rectory-house, yet the gift would be, nevertheless, effectual, as a residuary bequest to the college for the benefit of the rector.

The MASTER *of the* ROLLS.

The questions in this cause arise out of two deeds and a will, executed by Mr. *Pigott*, the late rector of *Gilling East*. By the first of the deeds, he has assigned certain leasehold premises, and the furniture, &c. in two houses, to the Master and Fellows of *Trinity College*, *Cambridge*, upon trust to permit the rector of *Gilling*, for the time being, to occupy the premises, and enjoy the use of the furniture, so long as he shall remain rector. By the second deed, he has assigned to the said Master and Fellows, mortgages to the amount of ,3000, upon trust to permit the same rector of *Gilling* to receive the interest of the money so long as it shall remain on these mortgages; and after it shall have been called in and invested on other securities.

By his will be gives the advowson of the rectory of *Gilling* to the said Master and Fellows absolutely; then, reciting that he had, by deed of gift, given to the said society in trust the sum of ,6000, directs the interest of that sum to be applied, in the first place, in

building an addition to the rectory-house, and afterwards to the use of the incumbent for the time being; and, lastly, noticing that he had as yet only transferred ,3000, of that ,6000, gives the remaining ,3000, in case he should die before it is transferred, to the said Master and Fellows, upon the trusts of the former ,3000.

The first deed was duly executed and enrolled, according to the requisitions of the statute of Mortmain, and the execution took place more than a twelvemonth before the Testator's death. The second was also executed and enrolled; but the Testator did not live to the full period of a twelvemonth after its execution.

Upon the first, the only question is, Whether the gift be affected by the circumstance that the Grantor, as being himself rector of *Gilling*, derived a benefit from his own grant; and it is said that, according to the true import and construction of the statute of Mortmain, the Grantor must part absolutely with the subject of his donation, Aimmediately from the making thereof,@ without any benefit or reservation whatever. Now, in answer to this, it is observable, that the grant itself does not contain any such reservation; that the gift does take effect immediately in possession; that there is no power of revocation, no trust, express or implied, from which the Grantor, in his individual capacity, can derive any benefit; and, although it is said that, on the face of the deed, the Grantor is rector, and his gift is a gift for the benefit of the rector, yet it must, on the other hand, be acknowledged that this is a case for which the Statute makes no provision; which is entirely out of its contemplation; that the gift itself is absolute and

irrevocable; the benefit which the Grantor enjoys under it only accidental; his enjoyment of the property no longer an enjoyment as owner, but as attached to the situation in which he happens to be placed. The moment he quits that situation, he loses all enjoyment of the property, and that may be by circumstances over which he has no manner of controul; by deprivation, or appointment to a higher benefice, perhaps at the very time when he is executing the instrument. The legislature had no intention or thought of precluding this sort of incidental advantage; and to construe the Statute otherwise would be to prohibit a rector from bestowing any endowment on his own living. Then, with regard to the furniture, and other personal chattels it is said that the limitation is void at law; or, in other words, that the benefit cannot be taken by the successor, but must vest absolutely in the rector, and pass to his executors. But it is not recollected that this is a trust; that the entire legal interest passes to the college: there is no objection to the legal interest so passing, and I know of no objection to the college taking, subject to such a trust.

Upon the second deed, it is not disputed that the death of the Grantor within the twelvemonth must invalidate it, unless it can be set up again by the operation of the will; and, in order to support this view of its effect, it is contended that, the will having given the advowson of this rectory to *Trinity College*, the deed assigning property in augmentation of that advowson is, in fact, a deed for the benefit of the College, and therefore within the exception of the Statute. But it seems to me impossible to connect together the will and the deed, so as to make the one operate upon the other, by way of relation. They must be taken as they stand, singly; and then the deed, being a gift not beneficially to the College, but to the

College in trust for another object, which is not within the exception of the Statute, it must necessarily fall to the ground, by the circumstance of the Grantor not having lived to the completion of the period assigned by the Statute for giving full effect to such a donation.

Then, as to the Will, it is contended that the whole ,6000 is given; viz. the ,3000 on mortgage, by virtue of the recital of the prior intended grant, and the other ,3000 by direct disposition. It is said, the Testator has sufficiently indicated his intention that the whole ,6000 should so pass; and that, being for a charitable purpose, the Court will give effect to that intention. But we must examine the will as to this, in order to see how the Testator himself understood it. He did not consider, in making this will, that he was thereby giving the sum in question: on the contrary, he apprehends that he has already given it, and that he has given it by virtue of a grant, which, by the operation of law, is essentially invalid. There is no mistake or misapprehension in this. The point does not arise upon which the Court, in other cases, have construed a recital in a will as equivalent to an express gift. He recites that he has given by a certain deed. He had so given; and the failure of the gift is not from any defect in the frame or execution of that instrument, but arises from an event wholly unconnected with it, and over which he had no controul, the death of the Grantor within the time prescribed by law for giving effect to it. The will, therefore, is good, as a gift of the ,3000 originally bestowed by it; but it has no effect upon the former gift, which must fail for the reasons before given.

One more objection requires to be noticed, which is not to the gift itself, but to the purpose for which it is to be applied; *viz*. the building two additional rooms to the rectory-house. But it is clear, on the authority of the cases, that such a purpose is consistent with law, no additional land being to be put into Mortmain; and it was accordingly so decided in the case of the *Attorney-General v Parsons* [8 *Ves*. 186.], where, though the bequest was equivocal, because it might have signified an addition to the land as well as to the buildings already erected; yet the Court held that, so far as it applied to the latter object merely, it was effectual. Here there is no allegation that the buildings are to be erected on any land but that already devised to the College.
