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ESQ., IN THE CASE OF VIDAL V.
THE CITY OF PHILADELPHIA, IN
THE SUPREME COURT OF THE
UNITED STATES, FEBRUARY, 1844**

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Argument of Horace Binney, Esq., in the Case of Vidal v. the City of Philadelphia, in the Supreme Court of the United States, February, 1844 by Horace Binney

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OF

HORACE BINNEY, ESQ.,

IN THE CASE OF

VIDAL *v.* THE CITY OF PHILADELPHIA,

IN THE

SUPREME COURT OF THE UNITED STATES.

FEBRUARY, 1844.

PHILADELPHIA:

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1844.

THE general importance of the main question in *Vidal v. The City of Philadelphia*, may account for the fulness of the arguments of all the counsel who were heard upon the re-argument, and especially of that of the opening counsel for the City, which follows. The interests at stake in the State of Pennsylvania, in various trusts for charitable uses, can hardly be considered as secondary in magnitude, and they certainly are not in importance, to the trust under Mr. Girard's Will; and to extricate the latter from the objections made against it, upon any narrow ground, without defending, upon more comprehensive principles, the whole body of trusts for religious, charitable, and literary purposes, the blessing, honour, and glory of any people, might have involved a lasting evil to the community. It is known that a leading decision by the Supreme Court of the United States, in the year 1819, had led to the almost total overthrow of charitable uses in the States of Maryland and Virginia. It was worthy of any labour to counteract the further influence of that decision, by showing that in a great degree it proceeded from imperfect information, and the inaccurate *dictum* of an English chancellor, in regard to the original jurisdiction of Chancery over the subject of charitable uses. A like mistake as to the design of an Act of Assembly of Pennsylvania in 1731, menaced this State with similar consequences. To correct both the errors, which were historical in their character, required a history of the law both in Pennsylvania and in England; and this, if performed in a slight or perfunctory manner, was not likely to be of any decisive influence. The authorities were therefore stated to the Court much more copiously than is in general necessary; and they are repeated in the same way in this pamphlet, for professional reference. Until the close of the opening argument for the defendants, the case of the *Incorporated Society*

v. *Richards* in *1 Drury & Warren*, was unknown to the defendants' counsel. Mr. Justice Story was then so obliging as to obtain the volume from the law library of Harvard College, and to allow them the opportunity of reading the case. Though an earlier knowledge of it, would have abridged the labour of preparation, it was highly satisfactory to perceive, that as far as the course of research in the two cases had been coincident, the argument for the defendants had the entire sanction of Lord Chancellor Sugden.

MR. BINNEY'S ARGUMENT

IN THE CASE OF

VIDAL ET AL. v. THE CITY OF PHILADELPHIA.

MAY IT PLEASE THE COURT,

With a perfect disposition to respect the recent injunction of the Court to the Bar, I shall proceed to the argument for the defendants, without any preliminary remarks. The great accumulation of business upon the calendar, is an unquestionable motive for the recommendation, so forcibly addressed to counsel a few days since by the presiding Judge, to study economy of time, and to aim at all practicable condensation and brevity in their arguments. I shall not be inattentive to the suggestion. But a very liberal expenditure is at times demanded by the wisest economy; and if it shall be found, as I fear it may, from the influence of a former decision of this Court—from the immense magnitude of the interests at stake—and from the almost elementary manner in which, to meet all exigencies, the questions must be discussed, that my own outlay offends against the letter of the recommendation, I hope it will also be found that it is in harmony with its spirit.

The proposition of the complainants is, that the trusts of Mr. Girard's will for the erection and endowment of the College for Orphans, are absolutely void; and they claim the benefit of resulting trusts to the heirs and next of kin, of all that is so devoted, as a necessary consequence of the invalidity of the trusts declared. The consequence is drawn too hastily. I shall endeavour to prove that they do not promote their claim in the slightest degree, by establishing the nullity of the trusts for the College. I shall of course endeavour also to show, that the trusts for the College are perfectly valid both in law and equity; and the support of these two positions will be the object of my argument, namely, 1. That if the trusts for the Orphan College are void, the legal result from other clauses in Mr. Girard's will, is, that the property,

real and personal, devoted to the College, enures to the exclusive use of the city of Philadelphia, for city purposes. 2. That the charitable uses declared in his will for the education and maintenance of poor white male Orphans, are perfectly valid in all respects. Under either aspect the bill was properly dismissed by the Circuit Court.

I. If the Trusts for the Orphan College are void, the legal result from other clauses in Mr. Girard's Will, is that the property, real and personal, devoted to the college, enures to the exclusive use of the City of Philadelphia for city purposes.

It becomes necessary to the argument on this point, to consider briefly the structure of the Will.

This instrument is divided into twenty-six sections, or clauses, distinguished by Roman numerals from I. to XXVI. The first eighteen sections contain the testator's bequests to local corporations, associations, or trustees, for charitable purposes,—to his relations, friends and dependents,—to all, it may be said, who had either the slightest claim upon his justice, or the feeblest expectation of his bounty. He was a widower and childless. He had devoted himself through a long life, principally to what is called business,—to the engrossing concerns of commerce, navigation, building, and banking. He must needs have so devoted himself, to have amassed his princely fortune. The influence of such a life upon a solitary man, might have ended at last, without surprising us, in the death of all the social affections, and in a sullen intestacy, distinguishing nothing by his remembrance, from loving nothing that he left behind him. There were not wanting persons, of that large class who are liberal with other men's money, and equally liberal of their censures to such as will not permit them to dispose of it, who thought proper to think and speak of him while he lived, as of a man in whom the love of money had deadened all the kindly affections. They did not know him. There were many proofs to the contrary during his life. His death has published an irrefragable proof to the contrary in his will. To the Pennsylvania Hospital—the Institution of the Deaf and Dumb—the Orphan Asylum—the Comptrollers of the Public Schools—the poor housekeepers and roomkeepers in the city, whose provision for fuel in the winter is the severest tax upon their small resources—his brethren of the Society of Free Masons—the poor children in the township in which his country seat was situated—the captains of his ships—his apprentices—his housekeepers—the members of their family—his old negro slave—all are remembered, and remembered in such a way, as to show the acuteness of his mind, as well as the strength of his feelings, in the kind of provision he makes for them. It is a striking, and to myself personally a most grateful evidence of the tenacity of his regard to those who deserved

well of him, that he gives a liberal annuity for life to the venerable widow of his faithful counsellor and friend my honoured master Mr. Ingersoll, who had departed many years before him. A memory so retentive of good offices, could not have been the companion of an insensible heart. The amount of these legacies, including the value of life annuities, does not fall short of one hundred and seventy thousand dollars, all of them tokens of regard, and of the most provident concern for the welfare of the legatees.

Among the complainants, and certain of the defendants, who comprehend all his heirs and next of kin that survived him, there is not one whom he has forgotten, nor one in whom he ever raised an expectation, that he has not more than answered. He distributed among them, in addition to his real estate in France, the sum of one hundred and forty thousand dollars in money, a munificent gift, if relation be had to any thing but that which was no merit of theirs, his own larger acquisitions. To one of three daughters of a brother, he gives sixty thousand dollars, to another and her child thirty, to another ten—estimating their several claims, and making distinctions between them, as he had an unquestionable right to do. All these legacies were paid, as the record shows, even before they were payable by law; and the complainants have taken, by the judgment of the law, a further sum of sixty thousand dollars, in the testator's after purchased lands, of which by accident or intention he died intestate.

Having thus received and enjoyed all that the Will gives them, and all that the testator did not take away from them by a republication of his Will, the complainants now claim the decree of this court, to defeat the great purpose of his life, and by an assault upon the very principles of charity, most fitly accompanied by an assault upon the character of their benefactor, to frustrate the two nearest and dearest wishes of his heart, and the two noblest objects upon earth, that living or dying, can fill the heart of any man, the instruction and succour of the fatherless poor, and the security, comfort and embellishment of a great city. It is a high moral as well as professional gratification, to assist in frustrating such a design.

After providing by the gift of more than three hundred thousand dollars for all private claims and expectations, the testator regards himself as free in every sense to indulge his preference of the two great public objects referred to. By the 19th section, he gives part of his Louisiana estates to the City of New Orleans, for the use of its inhabitants, and directs the remaining part to be converted into money, and to be applied to the same uses afterwards declared of the residue of his personal estate; and he then introduces the disposition of the residue, both real and personal, with the following recital:

“XX. And, whereas, I have been for a long time impressed with the importance of educating the poor, and of placing them,

by the early cultivation of their minds, and the developement of their moral principles, above the many temptations, to which, through poverty and ignorance, they are exposed; and I am particularly desirous to provide for such a number of poor male white orphan children, as can be trained in one institution, a better education, as well as a more comfortable maintenance, than they usually receive from the application of the public funds: and whereas, together with the object just adverted to, I have sincerely at heart the welfare of the city of Philadelphia, and, as a part of it, am desirous to improve the neighbourhood of the river Delaware, so that the health of the citizens may be promoted and preserved, and that the eastern part of the city may be made to correspond better with the interior: Now, I do give, devise and bequeath all the residue and remainder of my real and personal estate, of every sort and kind, wheresoever situate, (the real estate in Pennsylvania charged with certain annuities,) unto 'The Mayor, Aldermen, and Citizens of Philadelphia,' their successors and assigns, in trust, to and for the several uses, intents and purposes, hereinafter mentioned and declared of and concerning the same, that is to say: so far as regards my real estate in Pennsylvania, in trust, that no part thereof shall ever be sold or alienated by the said Mayor, Aldermen, and Citizens of Philadelphia, or their successors, but the same shall forever thereafter be let from time to time, to good tenants, at yearly or other rents, and upon leases in possession not exceeding five years from the commencement thereof, and that the rents, issues, and profits, arising therefrom, shall be applied toward keeping that part of the said real estate situate in the city and liberties of Philadelphia, constantly in good repair, (parts elsewhere situate to be kept in repair by the tenants thereof respectively,) and towards improving the same, whenever necessary, by erecting new buildings; and that the nett residue (after paying the several annuities hereinbefore provided for,) be applied to the same uses and purposes as are herein declared of and concerning the residue of my personal estate. And so far as regards my real estate in Kentucky, now under the care of Messrs. Triplett and Brumley, in trust, to sell and dispose of the same, whenever it may be expedient to do so, and to apply the proceeds of such sale to the same uses and purposes as are herein declared of and concerning the residue of my personal estate."

The testator distinctly declares by this section, that he has sincerely at heart, the welfare of the city of Philadelphia, *together* with the maintenance and education of the poor orphan. They are *together* the now remaining objects of his affection and bounty. He has already provided for all others that he meant to provide for, and excludes them by the clearest intendment from any thing more; and beginning with the residue of his real