

3. The appellant's proposition requires this court to assume that office of the Church of Rome which has always been objected to by the Protestant world.

4. It is raising up a standard of morality to be administered by the courts of the State, contrary to a fundamental article of the Constitution, article 1, section 7, which plainly intends that there shall be responsibility for, but no prior prohibition to printing and publishing.

But apart from this, no one will venture to assert that all books disputing the correctness of conventional opinions on religion are necessarily illegal.

And if not illegal, how can the gift be forfeited?

The truth is that the bill inverts the argument. It invokes rules which apply in cases where courts are asked to give their aid to sustain a gift, the result of which is evil. But no aid is now asked by the devisees. They have the legal title, and the court is asked to avoid it, because of the purposes to which it *may* be applied. No authority can be found for the proposition that where the legal title has passed, the estate can be forfeited, because there is a discretionary power to do what is illegal. It is the legal purpose which vitiates, and only to the extent that the property must be so applied.

Girard's case illustrates this. The exclusion of clergymen was a fundamental article. If that meant the education of children in atheism, the scheme as a whole must have failed. If it meant merely a prohibition of certain teachers, the scheme was not affected.

In truth, the argument confounds directions to do or not to do, in merely incidental matters, with directions to found institutions for illegal purposes.

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