

chase of the necessities of life for the support of a woman, and also the principal, "if urgent necessity should require;" the woman was in indigent circumstances, became insane, and was committed to the State hospital, and the trustees having refused to apply the funds to her support, this court said:—

"The first object of the testatrix's bounty was this unfortunate woman, and the will must be so interpreted. Had she remained of sound mind, and a case of urgent necessity arisen to which the interest of the bequest would have been inadequate, no one can doubt but that her interest in it would have been such as to entitle her to call on the trustee for the application of a portion or the whole of the legacy, as the case may require. \* \* \* *The objection that this dispenses with the discretion of the trustee has no merit.* This discretion is but a legal one, and whenever the law determines that a proper case has arisen in which the trustee's discretion should have been exercised in a particular way, he will be constrained to act in accordance therewith."

2. A court will prevent an *improper* exercise of a discretion.

In *McFarland's Appeal*, 1 Wright, 205, the court, speaking of a discretionary power of sale, said, "If it had been a matter of discretion, still an unreasonable exercise of it could be corrected by the supervision of the court."

So in *Pulfress vs. African Church*, 12 Wright, 210, already cited by appellants, Strong, J., said, "If it were manifest that their honest discretion is not exercised, it might become the duty of the court to interfere."

The subject is too trite to be followed further. The text books are full of it, and perhaps the best illustration will be found in a class of cases not very usual here, viz., where the consent of a trustee is necessary to a marriage; and when the trustee either declines to exercise any discretion at all, or refuses his assent from motives of personal pique or resentment, the court exercises its supervision according to the course and practice of chancery, by a reference to a master, to inquire and report whether the marriage be a proper one.\*

---

\* In *Hill on Trustees*, \* 494 to 502, most of the cases on the subject of controlling the improper exercise of a power are collected.