than the jury's verdict, applies equally to the plaintiff who receives a judgment more favorable than the verdict.

The trial court had large, though perhaps not unlimited, discretion to compel the plaintiff to take judgment for the inadequate amount assessed by the jury as the ruling of a federal court on a motion for a new trial seems ordinarily non-reviewable. *Railroad Co. v. Fraloff*, 100 U.S. 24, 31 (1879); *Fairmount Glass Works v. Cub Fork Coal Co.*, 287 U.S. 474 (1933); see Hinton, Power of Federal Appellate Court To Review Ruling on Motion for New Trial, 1 Univ. Chi. L. Rev. 111 (1933). The plaintiff, therefore, should not be able to complain if he receives more favorable treatment. The court might well have regarded the practice of remittitur and the order made in this case as essentially similar so that the sanction of one practice would be the sanction of the other.

While the power of a federal court is limited by the seventh amendment, this limitation does not necessitate the retention of old forms of practice and procedure nor prohibit the introduction of new devices better adapted to the efficient administration of justice. *Walker v. New Mexico & Southern Pacific R. R. Co.*, 165 U.S. 593 (1897); *Grand Trunk Western Ry. v. Lindsay*, 201 Fed. 836 (C.C.A. 7th 1912). Hence, considering the conceded propriety of the remittitur, the lack of substantial distinction between it and the order in this case, and the saving of expense and time the new practice could entail, while accomplishing substantial justice, it is regretted that the circuit court of appeals did not sanction the order made by the trial court. See *Geoffrey v. Illingsworth*, 90 N.J.L. 490, 101 Atl. 243 (1913), holding that this practice was permissible under the Supreme Court Rules of New Jersey.

Trusts—Charities—Divisibility of Trust Partially Invalid.—[New York].—A testamentary trust provided for the payment of $1,000 annually out of income to the person making the greatest advance toward a cure for cancer, the remainder of the income to go to a hospital for the relief of cancer patients; when a cure had been perfected to the satisfaction of the trustees, the principal was to be divided equally between the hospital and the person or persons who had discovered and perfected the cure. In proceedings for an accounting of the settlor's estate, it was *held*, the entire trust was invalid since it was private in part, providing for gifts to individuals for their own use, and was of indefinite duration. *In re Judd's Estate*, 272 N.Y.S. 674 (1934).

Trusts which are in aid of, and tend to advance, learning are considered valid public or charitable trusts and the charitable purpose may be accomplished by the gifts of scholarships, prizes, and awards even though the recipients are not in financial need and may dispose of the benefits as they wish. *Ashmore v. Newman*, 350 Ill. 64, 183 N.E. 1 (1932); *Coleman v. O'Leary's Executor*, 114 Ky. 388, 70 S.W. 1068 (1902); *In re Bartlett*, 163 Mass. 509, 40 N.E. 899 (1895). See Bogert, Trusts (1921), § 58; Zollman, Charities (1924), § 300. Where the prizes tend to promote patriotism, the trust is charitable. *Thorp v. Lund*, 227 Mass. 474, 116 N.E. 946 (1917). A trust which encourages the fine arts by means of annual awards benefits mankind in general sufficiently to be considered a charity. *Almy v. Jones*, 17 R.I. 265, 21 Atl. 616 (1891). The promotion of an important science or industry through the use of prizes and awards may properly be the object of a charitable trust. *Ashmore v. Newman*, 350 Ill. 64, 183 N.E. 1 (1932); *American Academy of Arts and Sciences v. Harvard College*, 12 Gray (Mass.) 582 (1832); *Palmer v. Union Bank*, 17 R.I. 627, 24 Atl. 109 (1892). Seemingly the court in the principal case should have had no difficulty in considering as charitable a trust de-

signed to make more likely the discovery of a cure for cancer by awards to individuals for meritorious work.

But, accepting the court's holding that part of the trust was non-charitable, it would not necessarily follow that the entire trust was invalid. Where a trust has both charitable and non-charitable objects and the non-charitable portion is for some reason invalid, the charitable portion will generally be sustained if violence is not thereby done to the settlor's apparent intent. Bogert, Trusts (1921), § 68. If the trustee may devote the entire property to either the charity or the non-charity alone, the entire trust is void for uncertainty. *Minot v. Attorney General*, 189 Mass. 176, 75 N.E. 149 (1905); *Morice v. The Bishop of Durham*, 9 Ves. Jr. 399 (1804), affd. 10 Ves. Jr. 521 (1805). But if the trustee must give something to charity, though the amount be in his discretion, a court will divide the sum equally if the trustee fails to apportion. *Salusbury v. Denton*, 3 Kay & J. 529 (1857). See also *In re Wright's Estate*, 284 Pa. 334, 131 Atl. 188 (1925). Where the amounts given to the charity and non-charity are specified and separable, the courts are generally able to sustain the charity without departing from the settlor's scheme of distribution. *Bristol v. Bristol*, 53 Conn. 242, 5 Atl. 687 (1885); *Reasoner v. Herman*, 191 Ind. 642, 134 N.E. 276 (1922); *Lewis v. Lusk*, 35 Miss. 401 (1858); *Todd v. St. Mary's Church*, 45 R.I. 282, 120 Atl. 577 (1923). In the present case divisibility is complicated by the fact that although the amounts to go to the charity and non-charity are definite, the income and principal are apportioned differently. But dividing the principal into two equal parts, one part falling into the residue and the other part being sustained as a valid charity, thus permitting the charity to receive a greater proportion of income than was intended, might well have been preferable to striking down the entire trust.

Wills—Construction of Power of Appointment—Devolution on Invalid Execution of Power—[Massachusetts].—The principal of a trust created by a testator was to go to such use as her brother by will or other writing should appoint. The brother in his own will disposed of his own property and then attempted to dispose of the property over which he had the general power of appointment by the creation of three trusts. The cestui of one trust could not take because of a lapse and the other two could not take because of the rule against perpetuities. The trustee under the will of the original testator asked instruction as to the disposition of the fund. *Held*, that the fund should pass to the administrator of the estate of the brother-donee of the power, and not to the heirs or administrator of the donor as in default of appointment. *Talbot v. Riggs*, 191 N.E. 360 (Mass. 1934).

Because the donee of the power of appointment may properly appoint to himself, his executors or administrators (Farwell, Powers, (3d ed. 1916)), some courts have considered him as the owner of the property subject to the power. *Wright v. Wright*, 41 N.J. Eq. 382, 4 Atl. 855 (1886); *Comm. v. Williams' Executors*, 13 Pa. 29 (1849); *Appeal of Appleton*, 136 Pa. 354, 20 Atl. 521 (1890); *Roach v. Wadham*, 6 East 289 (1805). Under such a view, should the donee fail to exercise properly the power, the property would, of course, pass by intestacy to the heirs or next of kin of the donee. *Little v. Ennis*, 207 Ala. 111, 92 So. 167 (1922); *Collins v. Collins*, 126 Ind. 559, 25 N.E. 704, 28 N.E. 190 (1890); *Clark v. Cammann*, 160 N.Y. 315, 54 N.E. 709 (1899); see also 2 Page, Wills (2d ed. 1926), 2084–94, §§ 1254–1260.

English courts, in determining the devolution of property subject to a general power