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

of appointment, the exercise of which has been unsuccessful, have distinguished cases where the appointment was direct to the appointee and cases where the appointee was made the beneficiary of a trust. As to the former, it is said that it is solely a matter of determining the intent of the donee. If he intended to take the property out of the instrument conferring the power for only the limited purpose specified, he has not considered himself the owner of the property for all purposes, and hence it passes to the heirs or administrator of the donor as if in default of appointment. *Easum v. Appleford*, 5 My. & C. 56 (1840); *Laing v. Cowan*, 24 Bea. 112 (1857); *In re Boyd*, [1897] 2 Ch. 232. If the donee has shown an intent, by his attempt to appoint or otherwise, to control the property for all purposes he will, in effect, be regarded as having appointed to himself and the property will pass by intestacy to his next of kin. *In re Davies' Trusts*, 13 Eq. 163 (1871); *Coxan v. Rowland*, [1894] 1 Ch. 406; *In re Vander Byl*, [1931] 1 Ch. 216.

Where, however, the power is attempted to be exercised through the creation of a trust, it is said that it is no longer a question of intention, but merely one of resulting trust which here would be in favor of the donee or his next of kin, since he was the creator of the trust. *In re Van Hagan*, 16 Ch. D. 18 (1887); *Chamberlain v. Hutchinson*, 22 Bea. 444 (1856); *Lefence v. Freeland*, 24 Bea. 403 (1857); *In re Pinede's Settlement*, 12 Ch. D. 667 (1879); *In re Scott*, [1891] 1 Ch. 298; *in re Marten*, [1902] 1 Ch. 314; see also 2 Jarman, Wills, (7th ed. 1931), 792–4; Gray, Rule against Perpetuities (3d ed. 1915), 443, § 504a. Though the Massachusetts court in the present case held that the property should pass to the next of kin of the donee of the power and cited English cases of the group last referred to, it placed its decision not merely on the ground that a trust had been used in the exercise of the power, but that the donee had manifested the intent to make the property his own. See *Dunbar v. Hammond*, 234 Mass. 554, 125 N.E. 686 (1920); *Bundy v. United States Trust Co.*, 257 Mass. 72, 153 N.E. 337 (1926).

Wills—Joint and Mutual—Secret Revocation—[Illinois].—H and W executed a joint and mutually reciprocal will. Later H, without notice to W, executed another will with different provisions. In a suit in equity brought after the revoking will was admitted to probate *held*, one justice dissenting, the decree requiring a distribution according to the joint will be affirmed. *Curry v. Cotton*, 356 Ill. 538, 151 N.E. 307 (1934).

A joint will is a single instrument constituting the will of two persons. If the testator has the power to revoke then the revoking instrument will be probated but because of a contract he may have lost the privilege of revoking; a bill in equity will lie to enforce the contract. *Allen v. Bromberg*, 163 Ala. 621, 50 So. 884 (1909); *Estate of Rolls*, 193 Cal. 594, 226 Pac. 608 (1924). The mere physical form of the instrument is often made the basis of presumption or even of absolute rules of law as to the existence of a contract not to revoke. Thus it is often said that a joint will is sufficient evidence of the existence of a contract while separate wills, though similar and mutual and executed simultaneously, are not. *Edson v. Parsons*, 155 N.Y. 555, 50 N.E. 265 (1898); *Kenney v. Kenney*, 45 Oh. App. 249, 186 N.E. 853; see *Frazier v. Patterson*, 243 Ill. 80, 90 N.E. 216 (1909); *Wagon Blast v. Whitney*, 12 Ore. 83, 6 Pac. 399 (1895); *Gray v. Perpetual Trustee Co.* [1928] A.C. 391. Some courts, perhaps assuming the existence of a contract, have then proceeded to treat joint and mutual wills as if they were inherently different from ordinary wills with "revocation" of them effective only if made with notice while both parties are alive, or perhaps unless the survivor accepts no benefits