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compare the forgery and thus is in no position to make a reasonable examination for genuineness. When this is not so, as in the famous Prudential case wherein the depositor did have a genuine signature on file, the Court of Appeals held that it was a question of fact for the jury whether or not the depositor was negligent in omitting to compare the signatures with those on the cancelled checks. The depositor when receiving a cancelled check has a right to rely upon the bank's inquiry and warranty of genuineness. It is no defense to the bank that it relied upon the inspection and investigation of agents or associate banks or on clearing houses; if it chooses to pay away the depositors' funds relying on the investigation of another, then it must hazard the consequences, for the legal liability between the drawer and drawee will remain the same as if no funds were paid out. Neither will the depositor be precluded from enforcing its rights on any theory of agency because the forging officer is not acting within the scope of his authority. Estoppel will never lie to bar a recovery unless the negligent act of the depositor was relied upon by the bank and it was the substantial factor of the wrongful payment.

C. S.

Testamentary Trust—Cy Pres Doctrine—Construction of Will—Frances Paget Price, a widow, died having no descendants. In her will and the two codicils thereto she left her farm and personal property in trust for the maintenance of a home where retired Presbyterian ministers and their wives might live. The testatrix made alternative dispositions should her intent "because of illegality fail, or become impossible of realization"; thus, in the second codicil to the testament she designated Elmira College her contingent legatee. Mrs. Price's Alma Mater petitioned the Surrogate for a construction of the instrument, and asserting that the improvements demanded by

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12 American Surety Co. of N. Y. v. Empire Trust Co., cited note 2 supra.
the Department of Welfare would render realization impossible, the College asked that the trust be voided for insufficiency of funds. The Appellate Division affirmed the lower court's decision, holding that since such an inadequacy would not affect the trust's validity, and since the Board of Welfare could exercise no control over financial affairs in private homes, the intention of the decedent must be given effect. In re Price's Will, 264 App. Div. 29, 35 N. Y. S. (2d) 111 (1942).

Because our courts recognize a person's right to dispose of property in accordance with his own election, they will effectuate testamentary intentions which do no violence to existing legal principles. Charitable gifts and trusts are especial favorites of the law and enjoy a nation-wide popularity. In their behalf presumptions are indulged and liberal rules applied, so that from two possible constructions of a will, Chancery may adopt that one which operates to sustain such a trust.

A doctrine called "Cy Pres" has often been applied in beneficial cases so that a donor's purpose may be given effect as near as possible where that cannot be literally accomplished. New York courts construe this principle with latitude and resort to it for all charitable cases although some states, for example Connecticut, have restricted statutory recognition to such trusts as are created in deeds. The force of the rule is prescinded, however, when a testator himself
makes alternative dispositions, and as Mrs. Price had provided for a gift over of the property should her first desire be defeated, "cy pres" could not be applied here. Since inadequacy of resources could not affect the validity of the trust in the case we are discussing, the plan which the testatrix prescribed should be carried out to the extent of the available funds. It is true that the Welfare Board must approve the organization of homes supported by private subscriptions; still, as that body lacks jurisdiction in the monetary affairs of these projects, it cannot justify a refusal of its consent for any financial reasons. Equity is adverse to defeat gifts to charity which are not impossible to be realized. When a decedent's intent is clearly evidenced, the law will substitute no different use which an outside intelligence might dictate.

H. G. S.