CHAPTER 15

Trusts and Charities

A. REMOTENESS OF VESTING

It will be recalled that the indestructibility of equitable contingent remainders was one of the reasons for the development of the Rule Against Perpetuities. The interests of private beneficiaries of trusts and the interests of private persons following trusts are subject to the Rule to the same extent as any other future interests. One aspect of this is the familiar rule of the law of trusts that a trust beneficiary must be certain to be ascertainable within the period of the Rule.

There are two principal methods of devoting property to charity. One is by transferring it to a charitable corporation for all or some of the purposes permitted by the corporate charter. A transfer of property to a perpetual charitable corporation, as mediaeval lawyers well

386 Part Two, notes 27, 28, 37, supra.

388 TRUSTS RESTATEMENT, §112 (1935).
knew, creates a perpetuity. Hence such transfers have been restricted in England and some American states by what are known as mortmain statutes, and the permissible transferees have been limited by statutes restricting the creation, powers, and purposes of charitable corporations. In the absence of applicable statutory restrictions, the only perpetuity problem involved in a transfer of property to a charitable corporation is whether the interest of the corporation is certain to vest within the period of the Rule Against Perpetuities. If the prior interests are non-charitable, a limitation of property to a charitable corporation is subject to the Rule to the same extent as a like limitation to a private person. If Andrew Baker devises land to John Stiles in fee simple “but if John’s descendants ever become extinct, to the Baker Home for the Aged Poor, Inc.,” the shifting executory interest limited to the Home is void under the Rule. Under the English and most American decisions, however, if the prior interests are charitable, such a shifting interest to a charity is excepted from the Rule Against Perpetuities. If Andrew Baker devises land to the So-

390 Attorney-General v. Gill, 2 P. Wms. 369, 24 Eng. Rep. 770 (1726); Gray, Rule Against Perpetuities, 3rd ed., §594 (1915); 2 Simes, Law of Future Interests, §543 (1936); Trusts Restatement, §401, Comment i. (1935); Property Restatement, §396 (1944); Leach & Tudor, “The Common Law Rule Against Perpetuities,” 6 American Law of Property, §24.38 (1952). The same is true if there is no preceding interest, i.e., if a springing executory interest is limited by a private person to a charitable corporation.
391 Christ’s Hospital v. Grainger, 16 Sim. 83, 30 Eng. Rep. 804 (1847); aff’d., 1 Mac. & G. 460, 41 Eng. Rep. 1343 (1848); Gray, Rule Against Perpetuities, 3rd ed., §§597-603d (1915); 2 Simes, Law of Future Interests, §542 (1936); Trusts Restatement, §401, Comment f. (1935); Property Restatement, §397 (1944); Leach & Tudor, “The Common Law Rule Against Perpetuities,” 6 American Law of Property, §24.40 (1952). The same is true if there is no preceding interest and the transferee is itself a charity, i.e., if a springing executory interest is limited by a charitable corporation to another charitable corporation.
ciety for the Prevention of Cruelty to Animals, Inc., "so long as it maintains at least forty free drinking fountains for horses in the City of Boston and when and if it shall cease to do so to the Baker Home for the Aged Poor, Inc.," the shifting executory interest limited to the Home is, under these decisions, valid, although it is not certain to vest within the period of the Rule Against Perpetuities.

The other principal method of devoting property to charity is by the creation of a trust. This, too, has been restricted by statutes of various types.\textsuperscript{392} In the absence of applicable statutory restrictions, several perpetuities problems arise incident to the creation of a charitable trust because determination of the validity of a trust under the Rule Against Perpetuities involves not only the vesting of the legal estate of the trustee but also that of the equitable interests of the beneficiaries. The problem of the legal estate of the trustee is and is treated the same as that of a limitation to a charitable corporation. If the prior interests are non-charitable, a limitation to a trustee for charitable purposes must be certain to vest, if at all, within the period of the Rule.\textsuperscript{393} If Andrew Baker devises land to John Stiles in fee simple "but if John's descendants ever become extinct to James Thorpe and his heirs upon trust to erect and maintain forever a free home for the aged poor," the shifting executory interest limited to James is void under the Rule. Under the English and most American decisions, however, if the prior interests are charitable, such a shifting interest to a charitable trust is excepted from the Rule Against Perpetuities.\textsuperscript{394} If Andrew Baker devises land to the

\textsuperscript{392} Part Two, note 389 supra.
\textsuperscript{393} Part Two, note 390 supra.
\textsuperscript{394} Part Two, note 391 supra. The problem here involved can arise in several situations. (1) Limitation to one charitable corporation,
Society for the Prevention of Cruelty to Animals, Inc., "so long as it maintains at least forty free drinking fountains for horses in the City of Boston and when and if it shall cease to do so to James Thorpe and his heirs upon trust to erect and maintain forever a free home for the aged poor," the shifting executory interest limited to James is, under these decisions, valid, although it is not certain to vest within the period of the Rule Against Perpetuities. The interests of the beneficiaries of a charitable trust are, under the English and most American decisions, excepted from the Rule Against Perpetuities. Thus a trust to erect and maintain forever a free home for the aged poor is valid, although many of the aged poor who will become beneficiaries will not be ascertainable, and their interests will not vest, for centuries.

Michigan has always recognized the validity of limitations of vested interests in property to charitable corporations. Thus a bequest to an incorporated missionary society, church, college, school board, or city then to another; (2) limitation to a trustee for charity, then to a charitable corporation; (3) limitation to a charitable corporation, then to a trustee for charity; (4) limitation to a trustee for one charity, then to another trustee for another charity; (5) limitation to a trustee to hold forever, first for one charity, then for another; (6) limitation by a charitable corporation to another charitable corporation without a preceding interest; (7) limitation by a charitable corporation to a trustee for charity without a preceding interest. In all these situations it would seem that the interest of the second charity is exempt from the Rule. That is, a particular charitable purpose is treated as an entity for the purpose at hand.

395 Trusts Restatement, §§112, Comment h., 364, 365 (1935). It is sometimes said that the beneficiaries of a charitable trust have no property interest at all and hence there is no equitable interest which could vest at a time beyond the period of the Rule. Gray, Rule Against Perpetuities, 3rd ed., §590 (1915); 3 Scott, Law of Trusts, §364 (1939).

for all or some of its corporate purposes has always been good. As an unincorporated society cannot hold title to land, a devise to an unincorporated charitable organization is bad, but a direct bequest of personalty to such an organization is good. As the reported cases involved limitations which were not contingent, we lack authority


399 Maynard v. Woodard, 36 Mich. 423 (1877). (Bequest of residue to district school board to hold forever in trust, to use the annual interest for a school library with books "suitable for people of all ages and classes within the said district.") Such a bequest does not create a true trust. Part One, note 221 supra.

400 Hatheway v. Sackett, 32 Mich. 97 (1875); Hathaway v. Village of New Baltimore, 48 Mich. 251, 12 N.W. 186 (1882) (bequest to village to erect a high school); Fitzgerald v. City of Big Rapids, 123 Mich. 281, 82 N.W. 56 (1900) (devise of land and bequest of money to a city for library); Hosner v. City of Detroit, 175 Mich. 267, 141 N. W. 657 (1913) (devise of land worth $357,000 and personalty worth $44,000 to a city to erect a fountain in a public park); Greenman v. Phillips, 241 Mich. 464, 217 N.W. 1 (1928) (devise of residue to city to provide park; the Court, unnecessarily, relied on charity statutes cited in Part Two, note 421 infra). Cf. Penny v. Croul, 76 Mich. 471, 48 N.W. 649, 5 L.R.A. 858 (1889) (bequest to trustee to devote the income to maintenance of the library and grounds of the Detroit Water Works). Act 380, P.A. 1913, Comp. Laws (1915) §3301; Comp. Laws (1929) §2746; Mich. Stat. Ann., §5.3421; Comp. Laws (1948) §123.871, provides that grants, devises, and bequests to municipal corporations for public parks, grounds, cemeteries, buildings, or other public purposes, whether made directly or in trust and whether made before or after the enactment of the statute, shall not be invalid for violation of any statute or rule against perpetuities.

401 Estate of Ticknor, 13 Mich. 44 (1864) (bequest to unincorporated charitable society good). Although an unincorporated association cannot hold legal title to land, it can be the beneficiary of a trust of land, and there is a strong tendency in modern cases to construe a direct devise of land to an unincorporated charitable organization as creating a trust for the organization. In re Schoales, [1930] 2 Ch. 75, noted, 29 Mich. L. Rev. 651 (1931); 3 Scott, LAW OF TRUSTS, §397.2 (1939); TRUSTS RESTATEMENT §397, Comment g. (1935).
as to the application of the Rule Against Perpetuities to limitations to charitable corporations and societies.

In *Smith v. Bonhoof*, it was held that a conveyance of land made in 1842 to the Roman Catholic bishop of Detroit, upon trust for an unincorporated congregation, created a valid perpetual trust. The opinion does not mention the Rule Against Perpetuities which, of course, was in force as to limitations of land in 1842.

It will be recalled that Chapter 63 of the Revised Statutes of 1846, which is still in force, limits the purposes for which trusts of land can be created, and that provisions of Chapter 62, which were in force from 1847 to 1949, prohibited suspension of the absolute power of alienation of land for more than two lives. As neither chapter made provision for charitable trusts, these chapters greatly complicated the problem of the validity of charitable trusts involving land. Although neither chapter regulated trusts of chattels personal, the subsequent developments make it desirable to consider the decisions chronologically rather than according to the subject matter involved.

In *Attorney General v. Soule*, a provision in a will directing the executors to set aside $10,000 "for the establishment of a school at Montrose aforesaid, for the education of children," was held void as too indefinite to bind the executors to use for a public charity. In *Methodist Episcopal Church of Newark v. Clark*, a convey-

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402 2 Mich. 116 (1851).
403 Part One, notes 583, 586, supra.
404 Part Two, note 47 supra. These provisions were held to limit the duration of trusts of land. Part One, notes 592, 593, supra.
405 28 Mich. 153 (1873).
406 41 Mich. 730, 3 N.W. 207 (1897). It was assumed in Thatcher v. Wardens and Vestrymen of St. Andrew's Church of Ann Arbor, 37 Mich. 264 (1877), that a remainder to an incorporated church following a trust which offended by its duration the suspension statutes,
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ance to trustees upon trust for use as the site of a church forever was held void. The Court said that, as Chapters 62 and 63 of the Revised Statutes of 1846 made no provision for charitable trusts of land, they must conform to the rules for private trusts and were void if they suspended the absolute power of alienation for more than two lives. In *Penny v. Croul*, a testator devised land to his wife for life, remainder to trustees with directions to convert it into personalty and devote the income forever to maintaining the library and grounds of the Detroit Water Works. It was held that the direction to convert the land into personalty took the disposition out of the suspension of the absolute power of alienation statutes and that, as a trust of personalty for the benefit of a public charitable corporation, it was valid. The Court's opinion, written by Justice Campbell, cited as authority cases involving direct bequests to public corporations and stated:

"The rule which prevents personal property from being tied up for more than lives in being, and 21 years thereafter, is not a universal rule of common law, but would be void, and held in *State v. Holmes*, 115 Mich. 456, 73 N.W. 548 (1898) that a remainder to the State which might vest five years after a life in being was void. In *White v. Rice*, 112 Mich. 403, 70 N.W. 1024 (1897), a conveyance of land to an incorporated church, partially upon a potentially perpetual trust for unincorporated religious societies, was held to create a valid trust under a statute enacted after the conveyance involved in *Methodist Episcopal Church of Newark v. Clark* was executed. Act 145, P.A. 1855, §21, Comp. Laws (1857) §2029, Comp. Laws (1871) §3074, How. Stat., §4637, repealed, Act 209, P.A. 1897. This statute expressly authorized conveyances to trustees to hold in perpetuity for religious societies.


407 76 Mich. 471, 45 N.W. 649, 5 L.R.A. 858 (1889). In Home Missionary Society v. Corning, 164 Mich. 395, 129 N.W. 686 (1911), the validity of a bequest to trustees to pay the income in perpetuity to the society was assumed.

one worked out by courts of equity, and it never had any application to charitable or public benefactions. There has never been any incapacity to keep a fund in permanence when there is a public corporation to receive and expend the income." 409

The testatrix in Wheelock v. American Tract Society 410 devised her lands to her executors in trust "to pay the same" to the society and three other charitable corporations,

"And should my executors think it best to appropriate a portion of the moneys which may come into their hands, which shall not be expended and paid as hereinbefore set forth, - - and as to the amount to be paid, or sums to be distributed, to each, I leave entirely to the judgment and discretion of my executors to act in this respect as they shall think right, - - it is my wish and desire, and they are hereby directed, to pay to such worthy poor girls, to aid in their education, such sums as shall not be expended or paid as hereinbefore provided; - - -"

The Court held that the provision for worthy poor girls was invalid because it was not fully expressed and clearly defined upon the face of the instrument creating it, as required by subsection 5, Section 11, Chapter 63, Revised Statutes of 1846. 411 It ruled that the direct devises to the four charitable corporations also failed because they were inseparably connected with the void provision for worthy poor girls. So by the turn of the century it was clear, from Methodist Episcopal Church of Newark v. Clark, 412 that charitable trusts of land were subject to the suspension of the absolute power of aliena-

409 76 Mich. 471 at 480.
410 109 Mich. 141, 66 N.W. 955 (1896). Testatrix was domiciled in Pennsylvania, but the lands were in Michigan.
411 Part One, notes 583, 586, supra.
412 Part Two, note 406 supra.
tion provisions of Chapter 62 of the Revised Statutes, and, from *Wheelock v. American Tract Society*, that they were subject to the provisions of Chapter 63 governing trusts. As to charitable trusts of chattels personal, *Penny v. Croul* had indicated their validity when the beneficiary was a charitable corporation, and *Smith v. Bonhoof* might indicate that they were valid when the beneficiary was an unincorporated charitable society. *Attorney General v. Soule* had left doubtful the validity of any other type of charitable trust.

In *Hopkins v. Crossley*, the Detroit Volunteer Fire Department, a corporation, dissolved in 1886 and turned over its personalty to three trustees for the relief of poor and needy or disabled members of the old Volunteer Department and their families, of poor, needy, or disabled members of the new paid Fire Department, and of any other needy and worthy persons, and also for the upkeep of firemen's monuments in cemeteries. The Court, after saying that, because no land was involved, Chapters 62 and 63 of the Revised Statutes of 1846 had no application, and that the Rule Against Perpetuities does not apply to a gift to charity, held the trust void. The grounds of this decision are not clear, but it does not seem that the objection to charitable trusts rested on their being perpetuities. Under the law of trusts, the beneficiaries of a trust must be definitely ascertainable persons. Charitable trusts are an exception to this

413 Part Two, note 410 *supra*.
414 Part Two, note 407 *supra*.
415 Part Two, note 402 *supra*.
416 Part Two, note 405 *supra*.
417 132 Mich. 612, 96 N.W. 499 (1903). In Hopkins v. Crossley, 138 Mich. 561, 101 N.W. 822 (1904), it was decided that the fund belonged to the persons who were members of the corporation at its dissolution.
418 *Trusts Restatement*, §112 (1935).
PERPETUITIES AND OTHER RESTRAINTS

Hopkins v. Crossley probably amounts to a refusal to accept this exception to the general rule. In any event, several attempts to create charitable trusts were held ineffective under its authority. Act 122 of the Public Acts of 1907 provided,

"Section 1. No gift, grant, bequest or devise to religious, educational, charitable or benevolent uses which shall in other respects be valid under the laws of this State, shall be invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument creating the same, nor by reason of the same contravening any statute or rule against perpetuities. - - "

Id., §112, Comment h., §364 (1935).

McPherson v. Byrne, 155 Mich. 338, 118 N.W. 985 (1909) (inter vivos trust of personality for charity, "just as you wish."); Stoepel v. Satterthwaite, 162 Mich. 547, 127 N.W. 673 (1910) (bequest to physician "to be used as he sees best for carrying on the work of relieving suffering," void where testatrix died before the effective date of Act 122, P.A. 1907). In Gilchrist v. Corliss, 155 Mich. 126, 118 N.W. 938 (1908), a husband who died in 1896 devised the residue of his estate, real and personal, to his wife for life, remainder as to two-thirds to such charities in the City of Alpena as she should by will appoint. The wife, who died in 1905, attempted to exercise the power and also made bequests of her own property to "women's work in foreign fields," "women's work in home lands (not Tank Home)," and "Protestant Missionary work among poor colored people of the South." The Court held that the power created by the husband's will failed because the beneficiaries were not definitely ascertainable, but, on the basis of extrinsic evidence that the church to which she belonged had three organizations devoted to the three objects stated, held that the wife's bequests of her own property were to these organizations and were valid.

Amended by Act 125, P.A. 1911, to include trusts for the maintenance of parts of cemeteries. Repealed and superseded by Act 280, P.A. 1915, Comp. Laws (1915) §§11099-11101; Comp. Laws (1929) §§13512-13514; Mich. Stat. Ann., §§26.1191-26.1193; Comp. Laws (1948) §§554.351-554.353. Section 1 of the present statute provides, "No gift, grant, bequest or devise, whether in trust or otherwise to religious, educational, charitable or benevolent uses, or for the purpose of providing for the care or maintenance of any part of any cemetery, public or private, or anything therein contained which shall in other respects be valid under the laws of this state, shall be invalid by reason of the indefiniteness or uncertainty of the object of such trust or of the persons designated as the beneficiaries thereunder in the instrument.
Since the enactment of this legislation there is no doubt that any charitable trust which would be valid under general Anglo-American law is also valid under Michigan law. It has been held to exempt charitable

creating the same, nor by reason of the same contravening any statute or rule against perpetuities." Act 373, P.A. 1925, Comp. Laws (1929) §§18516-18517; Mich. Stat. Ann., §§26.1201-26.1202; Comp. Laws (1948) §§554.381, 554.382, provides: "Sec. 1. No statutory or common law rule of this state against perpetuities or restraint of alienation shall hereafter invalidate any gift, grant, devise or bequest in trust or otherwise, for public welfare purposes. Sec. 2. Public welfare purposes are defined to be all lawful purposes beneficial to the public as a whole." See also Act 380, P.A. 1918, Part Two, note 400 supra. Trusts created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan, or profit sharing plan, are exempted from the Rule Against Perpetuities by Act 193, P.A. 1947, as amended by Act 61, P.A. 1951, Mich. Stat. Ann., §26.82 (1), Comp. Laws (1948), §555.301.

422 Loomis v. Mack, 183 Mich. 674, 150 N.W. 370 (1915) (Devise of land and personalty on trust for dependent children of Oakland County; decree holding valid affirmed by four to four vote in Supreme Court. The justices voting for reversal thought Act 122 of 1907 was unconstitutional because of a defective title. This doubt was eliminated by Act 125 of 1911); In re Brown’s Estate, 198 Mich. 544, 165 N.W. 929 (1917), discussed at Part Two, note 428 infra; Peters v. Fowler, 202 Mich. 695, 168 N.W. 966 (1918), discussed at Part Two, note 427 infra; Scudder v. Security Trust Co., 238 Mich. 318, 213 N.W. 131 (1927) (devise of residue to trustee to provide for the welfare of elderly persons without means of support by paying income or principal to organized charities); Wanstead v. Fisher, 278 Mich. 68, 270 N.W. 218 (1936) (devise of land to trustee to provide college scholarships to needy graduates of Iron River High School); John Robinson Hospital v. Cross, 279 Mich. 407, 272 N.W. 724 (1937) (bequest to trustee to maintain room in hospital); Gifford v. First National Bank of Menominee, 285 Mich. 58, 280 N.W. 108 (1938) (devise of residue to trustee to pay income to named persons for life, then to devote to charitable purposes connected with medicine and public health); Floyd v. Smith, 303 Mich. 137, 5 N.W. (2d) 695 (1942) (bequest to trustee to construct a hospital in Lapeer); Chicago Bank of Commerce v. McPherson, 62 Fed. (2d) 398 (6th Cir. 1932) (devise to trustees for "such charitable, benevolent, educational and public welfare uses as such trustees shall elect"). In Moore v. O’Leary, 180 Mich. 261, 146 N.W. 661 (1914), a devise of the residue to “Mary E. Clary, to be disposed of by her as I have heretofore instructed her for charitable purposes” was held void in spite of the statute. Because of the Statute of Wills, such a devise does not create an express charitable trust. There is a conflict of authority in other jurisdictions as to whether a constructive trust for charity will be imposed in this situation. 3 Scott, LAW OF TRUSTS, §§359 (1939). In Scarney v. Clarke,
trusts of land from the suspension of the absolute power of alienation provisions of Chapter 62 of the Revised Statutes of 1846 and from the "fully expressed and clearly defined" provision of Chapter 63. It will be recalled that, under general Anglo-American law, charities are not wholly exempt from the Rule Against Perpetuities in that a contingent limitation to a charity not preceded by an interest in a charity is subject to the Rule, although one which follows another charity is exempt. In Peters v. Fowler, a testator directed his executors to invest $500 and pay the income to the local Methodist Episcopal church as long as it conducted at least twelve services a year, and when it ceased to do so to pay over the principal to the Board of Foreign Missions of the Methodist Episcopal Church. This was held valid, as it would be in most jurisdictions. In re Brown's Estate involved a devise of land and personalty to corporations to be organized within two years after probate of the will to operate charitable hospitals. This

282 Mich. 56, 275 N.W. 765 (1937), a trust for a clinic operated for profit was properly held to be non-charitable. Cf. Auditor General v. R. B. Smith Memorial Hospital Association, 293 Mich. 36, 291 N.W. 213 (1940), where a non-profit hospital was held charitable although it charged fees.


In re Brown's Estate, Part Two, note 422 supra. See Part One, notes 592, 593, Part Two, at notes 47, 406, supra.

Part Two, note 390 supra.

Part Two, note 391 supra.


198 Mich. 544, 165 N.W. 929 (1917). In re DeBancourt's Estate, 279 Mich. 518, 272 N.W. 891, 110 A.L.R. 1346 (1937), involved a bequest to a trustee to pay $10,000 to the Salvation Army in Jackson "when he is satisfied that the building will be completed and that the said Salvation Army will be able to finance the same." This was treated as valid, but it was held that the Salvation Army would forfeit the bequest if it failed to comply with the condition precedent within ten years, the period of the statute of limitations on claims against decedent's estates.
was held valid although it suspended the absolute power of alienation for a period which might exceed two lives, the maximum period permitted by the statute then in force, and postponed vesting for a period which might exceed lives in being and twenty-one years, the period of the common-law Rule Against Perpetuities. This decision appears to mean that in Michigan charities are exempt from the Rule Against Perpetuities in all cases, even when the charitable limitation is contingent and does not follow another charity.

B. DURATION; RESTRAINTS ON TERMINATION

Generally speaking, the common-law Rule Against Perpetuities prohibits only remoteness of vesting, it does not restrict the duration of interests in property, legal or equitable, whether or not they are vested. If Andrew Baker conveys land to John Stiles and his heirs, John takes a legal estate in fee simple which may last forever. If Andrew Baker conveys land to James Thorpe and his heirs upon trust for John Stiles and his heirs, James takes a legal estate in fee simple and John an equitable estate in fee simple. Both of these and the trust itself may last forever, but no violation of the Rule is involved because there is no postponement of vesting. A trust does not tie up property or impede alienation undesirably if the interests of the beneficiaries are alienable and they are entitled to terminate the trust by compelling the trustee to convey the legal title to them. Hence, in the absence of statutory restrictions, there is no legal

429 Part Two, note 134 supra.
limit to the duration of such trusts.\textsuperscript{431} As has been seen, the Michigan statutes prohibiting suspension of the absolute power of alienation, which were in force from 1847 to 1949, were construed to limit the permissible duration of trusts for receipt of the rents and profits of land, charitable and private, to two lives in being.\textsuperscript{432} A trust does tie up property and impede alienation undesirably if the beneficiaries are unable to compel termination of the trust, particularly if their interests are inalienable. Hence rules, collateral to the Rule Against Perpetuities, have been developed to restrict limitations which tend to make trusts indestructible for undesirably long periods. The application of these rules is not identical as to all types of indestructible trusts, so separate consideration of the types of trusts which may be indestructible is desirable.

(1) Charitable Trusts

Under general Anglo-American law, a charitable trust may be made perpetually indestructible; that is, it may be so limited that it may last forever and that no one will be entitled to terminate it.\textsuperscript{433} Michigan recognized this lack of limitation on the duration of indestructible charitable trusts in \textit{Smith v. Bonhoof},\textsuperscript{434} involving a trust of land created before the enactment of the suspension of the absolute power of alienation statutes, and in

\textsuperscript{431} In re Cassel, [1926] Ch. 358; 1 Scott, \textit{Law of Trusts}, §62.10 (1939).

\textsuperscript{432} Part One, note 593, Part Two, note 406 \textit{supra}. But these statutes were made inapplicable to charitable trusts by Act 122, P.A. 1907, Part Two, note 421 \textit{supra}.


\textsuperscript{434} 2 Mich. 116 (1851), Part Two, note 402 \textit{supra}.\n
Penny v. Croul, 435 involving a trust of personalty created before the charities statute of 1907. 436 Although charitable trusts of land were limited in duration to two lives by the suspension of the absolute power of alienation statutes, 437 it is clear that there has been no restriction on the duration of charitable trusts, whether of land or of personalty and whether or not they are indestructible, since the legislation of 1907. 438

(2) Honorary Trusts

A trust which has no ascertainable human beneficiaries but which does have a definite non-charitable purpose is known as an honorary trust. 439 The commonly recognized honorary trusts are those for care of graves, 440 for support of particular animals, 441 and for the promotion of non-charitable causes such as sports 442 and political parties. 443 An honorary trust is not a true trust because the trustee cannot be compelled to carry it out. If he refuses to do so, however, he holds upon resulting trust

436 Act 122, P.A. 1907, Part Two, note 421 supra.
437 Methodist Episcopal Church of Newark v. Clark, 41 Mich. 730, 3 N.W. 207 (1879), Part Two, note 406 supra.
438 Part Two, notes 422-424, 426-428, supra.
439 TRUSTS RESTATEMENT, §124, Comment c. (1955); 1 Scott, LAW OF TRUSTS, §124 (1939).
440 Lloyd v. Lloyd, 21 L.J. Ch. (N.S.) 596 (1852); Mussett v. Bingle, [1876] W.N. 170; 1 Scott, LAW OF TRUSTS, §124.2 (1939).
441 Pettingall v. Pettingall, 11 L.J. Ch. 176 (1842) (favorite black mare); In re Dean, 41 Ch. D. 552 (1889) (testator's horses and hounds); In re Kelly, [1932] I.R. 255 (testator's dogs); 1 Scott, LAW OF TRUSTS, §124.3 (1939). A trust for the benefit of animals in general, as for the prevention of cruelty to them, is charitable. In re Marchant, 54 Sol. J. 425 (1910); TRUSTS RESTATEMENT, §374, Comment c. (1935); 3 Scott, id., §374.2.
442 In re Thompson, [1934] 1 Ch. 342 (fox hunting); 1 Scott, LAW OF TRUSTS, §124.6 (1939).
443 Bonar Law Memorial Trust v. Inland Revenue Commissioners, 49 T.L.R. 220 (1933); 3 Scott, LAW OF TRUSTS, §374.6 (1939).
for the settlor or the persons who would have been entitled to the property if there were no trust, usually the heirs or residuary devisees of the settlor. In the absence of provision for its termination in the trust instrument, such a trust is indestructible. The beneficiaries cannot terminate it because there are no ascertainable human beneficiaries, the settlor or his heirs, etc., cannot compel termination, and the trustee cannot terminate the trust for his own benefit. This being so, a rule collateral to the Rule Against Perpetuities has been developed to the effect that an indestructible honorary trust is void unless its duration is certain not to exceed the period of the Rule. 444 If Andrew Baker bequeaths $10,000 to John Stiles upon trust to devote the income to the support of Andrew's horses and dogs so long as they live, the bequest is void, because the trust is not certain to terminate within human lives and twenty-one years. 445

In Lounsbury v. Trustees of Square Lake Burial Association, 446 a testator bequeathed $100 to the trustees "as a perpetual fund to be kept at interest by said trustees


445 It is the generally accepted view that animal lives may not be used to measure the period. In re Estate of Kelly, [1932] I.R. 255; Gray, Rule Against Perpetuities, 3rd ed., §§228a, 906 (1915); 2 Simes, Law of Future Interests, §491 (1936); Property Restatement, §374, Comment h. (1944). See Matter of Howells, 145 Misc. 557, 260 N.Y. Supp. 598 (1932). But in In re Dean, 41 Ch. D. 552 (1889), an honorary trust to last for fifty years if the horses who were its beneficiaries so long lived was held valid. Moreover, in In re Estate of Kelly, supra, where the trust was to apply £4 annually to the support of certain dogs, it was held that the annual payments were severable and the trust good for twenty-one years.

and the interest used to take care of the graves on my lot in said cemetery," and the residue of his estate to his wife for life, remainder to the trustees to erect a fence around the cemetery and a vault in it. The disposition of the residue was held valid, but the provision for a perpetual trust fund was held void as a perpetuity. Since 1911 the Michigan statutes have expressly permitted perpetual trusts for the care of graves, but the Lounsbury case is still authority for the proposition that Michigan recognizes honorary trusts and holds those not authorized by statute invalid if their duration may exceed the period of the Rule Against Perpetuities.

(3) Trusts For Unincorporated Societies

An unincorporated association has capacity to be the beneficiary of a trust. If the purposes of such an association are charitable, there is no limit to the duration of trusts for it. If the purposes of an unincorporated association are not charitable, a trust for it is void if, by its terms, it may continue for a period longer than that of the Rule Against Perpetuities and will be indestruc-

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447 Act 125, P.A. 1911, Act 280, P.A. 1915, Part Two, note 421, Act 380, P.A. 1913, Part Two, note 400 supra. See: In re More's Estate, 179 Mich. 237, 146 N.W. 319 (1914), where such a trust was held valid by virtue of the provisions of a special act incorporating the cemetery involved.

448 Trusts Restatement, §119 (1935); 1 Scott, Law of Trusts, §119 (1939). Such a trust must be distinguished from a trust for the present or future members of a society as individuals, which is a form of class gift.

tible during that period. It would seem, however, that a trust for a non-charitable unincorporated association is valid, even though it may continue for a period longer than that of the Rule Against Perpetuities, if some person may destroy it for his own benefit or if the current members of the association may expend the entire principal at any time for the purposes of the association.

(4) Indestructible Trusts For Private Persons

In England, if all the beneficiaries of a trust for private persons are in being and ascertained, they are entitled to terminate the trust by compelling the trustee to convey to them even though such termination will defeat a material purpose of the trust. The rule that trusts for private persons were always destructible by the beneficiaries had, until 1935, a single exception. The interest of the beneficiary of a trust for the separate use of a married woman could be made inalienable and she could be effectively prohibited from terminating the trust prematurely. Such a restraint on alienation and

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451 In re Drummond, [1914] 2 Ch. 90; 1 Scott, LAW OF TRUSTS, §119 (1939); PROPERTY RESTATEMENT, §380 (1944). The Restatement deems it sufficient if the trustee or some other person has such power to expend the principal, but this has been questioned. Morray, "The Rule Against Prolonged Indestructibility of Private Trusts," 44 ILL. L. REV. 467 at 484 (1949).

452 Saunders v. Vautier, Cr. & Ph. 240, 41 Eng. Rep. 482 (1841); Gray, RULE AGAINST PERPETUITIES, 3rd ed., §236 (1915); 2 Simes, LAW OF FUTURE INTERESTS, §557 (1936); 3 Scott, LAW OF TRUSTS, §337 (1939).

453 Jackson v. Hobhouse, 2 Mer. 488, 35 Eng. Rep. 1025 (1817); Tullett v. Armstrong, 4 My. & Cr. 977, 41 Eng. Rep. 147 (1840); Baggett v. Meux, 1 Ph. 627, 41 Eng. Rep. 771 (1846). The restraints on alienation and termination were effective, however, only while the
termination would endure, of course, only for the life of the married woman concerned. In re Ridley 454 involved a bequest to trustees to pay the income to Mary Cooper for life and then to hold upon trust for the children of Mary who survived her. The will prohibited alienation or anticipation of their interests by female beneficiaries. Mary survived the testator and later died, survived by two married daughters. The daughters sued to compel the trustees to terminate the trust by transferring the principal to them. Such transfer was decreed on the ground that provisions against termination of a trust which might last longer than the period of the Rule Against Perpetuities are void.

Since 1935 England has not permitted indestructible trusts for private persons whether or not they are married women; that is, if all the beneficiaries of such a trust are in being, ascertained and of full age, they may compel the trustee to terminate the trust by transferring the principal to them. In this country, however, it is generally held that the beneficiaries of a trust are not entitled to compel its termination if such termination would defeat a material purpose of the trust. 455 This doctrine is commonly applied in two situations, where


455 Gray, RULE AGAINST PERPETUITIES, 3rd ed., §121c (1915); TRUSTS RESTATEMENT, §§337 (2) (1935); 2 Simes, LAW OF FUTURE INTERESTS, §§557 (1936); 3 Scott, LAW OF TRUSTS §§337 (1939); Part One, note 615 supra.
the interest of the cestui que trust is inalienable by reason of spendthrift provisions which, as has been seen, are usually valid in the United States, and where, even though the cestui's interest is alienable, one of the purposes of the trust is to postpone the cestui's enjoyment of the principal until he reaches a stipulated age. Such provisions for postponement of enjoyment are ordinarily valid in this country under what is known as the rule in *Claflin v. Claflin.*

There is general agreement that provisions which would make trusts for private persons perpetually indestructible are void and some authority for the view adopted in *In re Ridley,* that provisions against termination of trusts which might last longer than the period of the Rule Against Perpetuities are void. The rules on this question are as yet somewhat unsettled.

The problem of indestructibility of trusts for private persons is complicated in Michigan by statutory provisions that a conveyance by a trustee of land in contravention of the trust is absolutely void and that the beneficiary of a trust for receipt of the rents and profits of lands cannot assign or dispose of his interest. In New

456 Part One, notes 569-572, *supra.*
457 149 Mass. 19, 20 N.E. 454 (1889).
458 TRUSTS RESTATEMENT, §62, Comment k. (1935); PROPERTY RESTATEMENT, §381 (1944). The Restatement takes no position as to the validity of provisions for indestructibility which are not perpetual but which may last longer than the Rule Against Perpetuities.
459 Part Two, note 454 *supra.*
York these provisions are held to prevent premature termination of trusts even though the beneficiaries are in being, ascertained, of full age and wish to terminate.\textsuperscript{463} As a trust suspends the absolute power of alienation, a trust of land which might last for more than two lives in being is void if created between 1847 and 1949, when the statutes prohibiting such suspensions were in force.\textsuperscript{464} The repeal of the statutes prohibiting suspension of the absolute power of alienation\textsuperscript{465} leaves us without any statutory restriction on the duration of trusts. If Michigan should follow the New York view, that the statutory inalienability of the interests of the trustee and cestui que trust makes trusts for receipt of the rents and profits of land indestructible, it would have either to permit perpetually indestructible trusts or to hold perpetual trusts of land void; it could not then follow the general Anglo-American view, that the trusts themselves are valid but the provisions preventing termination are void, because the provisions preventing termination would be statutory.

In \textit{Bennett v. Chapin},\textsuperscript{466} land and other property were devised to trustees to pay the income to a daughter of the testatrix until she reached thirty-five and then to transfer the principal to her. Before she reached that age the daughter sued to compel termination of the

\textsuperscript{463} Part One, note 614 \textit{supra}.
\textsuperscript{464} Part One, note 593 \textit{supra}.
\textsuperscript{465} Part Two, note 61 \textit{supra}.
\textsuperscript{466} 77 Mich. 526, 43 N.W. 893 (1889). The facts are stated more fully in Part One, at note 611 \textit{supra}. See: Fredericks v. Near, 260 Mich. 627 at 631, 245 N.W. 537 (1932), Part One, notes 616, 617, \textit{supra}. In Conover v. Hewitt, 125 Mich. 34, 83 N.W. 1009 (1900), land was conveyed to a trustee to apply the rents and profits to the use of William Fitzhugh during his life and after his death to apply them to the use of his wife and children during the life of the wife, remainder at her death to the children. After the death of William his widow released her interest to the other beneficiaries. They sued to compel termination of the trust and were granted the relief sought.
trust. It was held that she was entitled to such termination. This decision appears to be a rejection of both the New York view that the statutory inalienability of the interests of the trustee and *cestui que trust* makes trusts for receipt of the rents and profits of land indestructible and of the doctrine of *Claflin v. Claflin* ⁴⁶⁷ that the beneficiaries of a trust are not entitled to terminate it if termination would defeat a material purpose of the trust. Subsequent Michigan decisions indicate, however, that a beneficiary of a trust of either land or personalty is not entitled to compel its termination if the trust instrument contains express spendthrift provisions restraining the alienation of the *cestui's* interest. ⁴⁶⁸ It would seem that such spendthrift provisions are invalid in Michigan if the beneficiary whose alienation is restrained has more than a life interest in income. ⁴⁶⁹ Reading these decisions together, it appears that provisions against termination of a trust are wholly ineffective in Michigan, whether the subject matter is land or chattels, if the beneficiary has an equitable fee simple or equivalent interest. If Andrew Baker devises property to James Thorpe and his heirs upon trust to pay the income to John Stiles and his heirs by a will providing, "it is a material purpose of this trust that no beneficiary thereof shall have access to the principal or be entitled to terminate the trust," the trust is probably valid but the provision against termination void. If, however, a beneficiary has only a life interest, he cannot compel termination in contravention of express provisions of the trust.

⁴⁶⁷ Part Two, notes 455, 457, *supra*.
⁴⁶⁹ In re Ford's Estate, 331 Mich. 220, 49 N.W. (2d) 154 (1951), Part One, note 650 *supra*.
instrument, even with the cooperation of the beneficiaries in remainder. If Andrew Baker devises property to James Thorpe and his heirs upon trust to pay the income to John Stiles for life and then to transfer the principal to Roger White, his heirs, and assigns by a will providing "John Stiles shall not alienate or anticipate his right to income under this trust," John and Roger probably cannot compel the trustee to transfer the property to them during John's lifetime.

This raises the problem in *In re Ridley*. If Andrew Baker devises property to James Thorpe and his heirs upon trust to pay the income to John Stiles, who has no son, for life, then to pay the income to the eldest son of John for life, then to transfer the principal to Roger White, his heirs and assigns, by a will providing, "no life beneficiary under this trust shall alienate or anticipate his interest," is the restraint on termination valid? If so, it may make the trust indestructible for longer than lives in being and twenty-one years. *In re Ridley* and the best American authorities would hold the restraint invalid. Michigan should do so.

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470 Part Two, note 454 *supra*.