

1936

TRUSTS-INTEREST REQUIRED TO SUPPORT SUIT FOR PROTECTION OF RES

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Estates and Trusts Commons](#)

Recommended Citation

TRUSTS-INTEREST REQUIRED TO SUPPORT SUIT FOR PROTECTION OF RES, 34 MICH. L. REV. 898 (1936).

Available at: <https://repository.law.umich.edu/mlr/vol34/iss6/23>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

TRUSTS—INTEREST REQUIRED TO SUPPORT SUIT FOR PROTECTION OF RES—The deceased had established a trust making the trust company and one Percy S. Peck co-trustees, and Peck was also made one of several beneficiaries. The will provided that Peck should have a general power of appointment by will over the corpus of the estate, and that in default of the exercise of such power, it should go to his issue if living. The plaintiffs are the issue of Peck, who is still alive. The trustees made certain investments which the plaintiffs claim injure the corpus of the trust, for which they ask that the transactions be declared illegal and that the trustees be required to restore to the trust fund the amount removed for these investments. The defendants, besides asserting the propriety of the investments, objected to the maintaining of a bill by these plaintiffs for the reason that as contingent remaindermen they did not have sufficient interest in the estate to support a suit. *Held*, that a contingent remainder, even of a defeasible character, is a sufficient interest upon which to predicate a suit for the protection of the trust res. *Roberts v. Michigan Trust Co.*, 273 Mich. 91, 262 N. W. 744 (1935).

It is stated as a general rule that "a *cestui que trust*, who can allege an existing interest, however minute or remote, may, upon reasonable cause shown,

apply to the Court to have his interest properly secured."¹ Though proper in itself, this generalization is subject to two restrictions whose boundaries may become quite shadowy. The first is that there must be a real interest in property in the plaintiff as distinguished from a mere expectancy. In this respect the principal case is within prior Michigan precedents,² although it has pushed the concept of an interest in property well into a region occupied by the concept of a mere expectancy under the English law,³ and it has come very close to the usual American view of a mere expectancy.⁴ The other restriction is that, even conceding it to be a future interest in property and not a mere expectancy, it cannot be of such an unsubstantial character that the complaining cestui is acting more as a nuisance to all concerned, including the court, than to protect a legitimate interest he is reasonably likely some day to enjoy.⁵ In the principal case, the court apparently believed that even though the life tenant may cut off

¹ LEWIN, TRUSTS, 13th ed., 874 (1928).

² *Hunt v. Hunt*, 124 Mich. 502, 83 N. W. 371 (1900). The trust instrument provided that the income should go to A and B for life and at their deaths the corpus should go to their heirs, devisees, or legatees. While the main decision was the refusal to terminate the trust, the court also approved the appointment of a trustee at the suit of the heirs during the life of A although he had already made a will, and said (at p. 507), "It is, of course, impossible to determine who will be the heirs of Charles at his death. In the event of his dying without children, his brothers and sisters . . . will be the beneficiaries under the will. They are therefore entitled to take proceedings to protect the trust fund, to compel the appointment of trustees, and to have them properly execute the trust."

Compare, however, *Allen v. White*, 36 Colo. 39, 85 P. 695 (1906), and see note in 7 L. R. A. (N. S.) 999 (1907).

³ *In re Parsons*, 45 Ch. D. 51 (1890). Testator's will was probated in 1879 and bequeathed property in trust to Eliza, and upon her death without issue to testator's next of kin as of time of probating will; Elizabeth was the then next of kin; Eliza died without issue in 1886. In 1882 the English Married Woman's Property Act became effective and the husband of Elizabeth tried to assert his marital rights in this property based upon her interest in 1879. *Held*, that Elizabeth had no interest in property to which her husband could lay claim prior to 1882; as her interest in 1879 was a mere expectancy.

⁴ *Wheeler's Exrs. v. Wheeler*, 59 Ky. 474 (1859). A son sold his interest in his father's slaves. *Held*, that since the son had merely an expectancy, no property was acquired by the grantees. Also see *McCall's Admr. v. Hampton*, 98 Ky. 166, 32 S. W. 406 (1895).

Compare, however, the view in PROPERTY RESTATEMENT (Tentative Draft No. 4), § 501 (1933).

⁵ *Carson v. Kennerly*, 8 Rich. Eq. (S. C.) 259 (1856). Plaintiff was to take upon the death without children of the first taker who was at the time of suit old and infirm and had no living issue. The court allowed plaintiff's claim, but remarked that were there interposed the lives of several young and robust persons, the chances of any estate's vesting in this plaintiff would be such a remote possibility that he would not be allowed to enforce a protection of the trust res even though his technical interest were the same.

The discussion in LEWIN, TRUSTS, 13th ed., 874 (1928), in distinguishing between a "possibility" of taking and a "possibility upon a possibility," suggests a similar idea, citing *Davis v. Angel*, 31 Beav. 223, 54 Eng. Rep. 1123 (1862).

the rights of the complainants to take the property by merely executing a will, the complainants' chances of eventually getting it are still sufficiently good to warrant its interference in their behalf.⁶

R. E. W.

⁶ When it is remembered that the life tenant himself was one of the trustees from whom an accounting was sought by this action, one wonders whether, in view of the adverse position of complainants in this case, there is any real probability that the life tenant defendant will refrain from exercising his power and thus allow the property to pass to complainants.