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TRUSTS-ACCUMULATIONS-EFFECT OF STATUTES AGAINST ACCUMULATION ON THE VALIDITY OF A CHARITABLE TRUST FOR ACCUMULATION

TRUSTS—ACCUMULATIONS—EFFECT OF STATUTES AGAINST ACCUMULATION ON THE VALIDITY OF A CHARITABLE TRUST FOR ACCUMULATION—*S* deposited in the Bank of Canby $1000 in trust for the city of Canby, with a direction to accumulate interest at 4 per cent compounded semi-annually, for 110 years, and then to pay the accumulated fund to the city. The settlor recommended that the city dispose of the fund "as may seem proper and for the best interest of the community." The bank failed, and the city, having received a *pro rata* payment, claimed a preference for the remainder. *Held*, plaintiff is entitled to a preference. Although it was to endure longer than the maximum period named in the most general statute in force in the jurisdiction which related to trusts of personal property,[1] a valid charitable trust was created, because it was of a class expressly excepted from any restriction as to duration.[2] *City of Canby v. Bank of Canby*, 192 Minn. 571, 257 N. W. 520 (1934).

[1] "Express trusts may be created for any of the following purposes: . . .

"5. To receive and take charge of any money, stocks, bonds, or valuable chattels of any kind and to invest and loan the same for the benefit of the beneficiaries of such express trust; . . . and express trusts created under the provisions of this paragraph shall be administered under the direction of the court.

"6. For the beneficial interests of any person or persons, whether such trust embraces real or personal property or both, when the trust is fully expressed and clearly defined on the face of the instrument creating it: Provided, that the trust shall not continue for a period longer than the life or lives of specified persons in being at the time of its creation, and for twenty-one years after the death of the survivor of them. . . ." Minn. Stat. (Mason 1927), sec. 8090.

Of these two statutes, only the second, subsection 6, was considered by the court.

[2] This statute, subsection 7 of sec. 8090 (see note 1, supra) contains two paragraphs which were enacted at different times. The first paragraph provides that any city or village may receive and administer either real or personal property for the benefit

When a provision for accumulation is attached to a vested gift in trust of an equitable fee, the cestui's enjoyment of the property is postponed if the provision is given effect. If the postponement is valid, the accumulation for the same period will be valid.[3] According to the English common law, the beneficiaries can secure a conveyance from the trustee if all are *sui juris*, and the postponement is thus effective only during a period of minorities.[4] In the United States it is generally held that a postponement will be effective for the period of lives in being and twenty-one years if the trust is private,[5] and for a longer period if the trust is charitable.[6] But whether or not the postponement and the provision for accumulation creating it are void, there is no reason for holding that the trust itself is not good. There is no problem of vesting, and no suspension of the power of alienation is created, for the cestui can convey his interest freely, subject to the postponement. The statutes which limit the power to accumulate do not invalidate the trust. They shorten the period of accumulation either to the minority or minorities of the beneficiary or beneficiaries,[7] or to that period and twenty-one years.[8] Their application to a vested gift to charity is doubtful.[9] In

of any public library, cemetery, park, or institution of learning. The second paragraph grants, in addition, to "each city . . . which now has or hereafter may have 20,000 and not more than 50,000 inhabitants" the further right to receive and administer real or personal property" for any public or charitable purpose," or for a number of specified public purposes. As in subsection 5, there is no limitation on duration in the statute.

[3] KALES, ESTATES, FUTURE INTERESTS AND ILLEGAL CONDITIONS AND RESTRAINTS IN ILLINOIS, 2d ed., sec. 699 (1920).

[4] Saunders v. Vautier, 4 Beav. 115, 49 Eng. Rep. 282 (1841); Wharton v. Masterman, [1895] A. C. 186.

[5] Claflin v. Claflin, 149 Mass. 19, 20 N. E. 454 (1889).

[6] Lyme High School Ass'n v. Alling, Attorney-General, 113 Conn. 200, 154 Atl. 439 (1931); Jones v. Habersham, 107 U. S. 174 (1882); Brigham v. Peter Bent Brigham Hospital, (C. C. A. 1st, 1904) 134 Fed. 513.

[7] 7 N. Y. Ann. Cons. Laws (1918), 2d ed., p. 7312, sec. 61; 5 *idem.*, p. 6150, sec. 16; 20 Pa. Stat. (Purdon 1931), sec. 3251, p. 455; Mich. Comp. Laws (1929), sec. 12957; Wis. Stat. (1931), sec. 230.37; Minn. Stat. (Mason 1927), sec. 8068. The statutes in Michigan, Wisconsin, and Minnesota apply to accumulations of real property only.

[8] 39 & 40 Geo. 3, c. 98 (1800); Ill. Rev. Stat. (Smith-Hurd 1931), c. 30, sec. 153. In Alabama the periods are a minority or a succession of minorities or ten years. Ala. Ann. Code (1928), sec. 6914.

[9] Wharton v. Masterman, [1895] A. C. 186; Schnebly, "Some Problems under the Illinois Statute Against Accumulations," 26 ILL. L. REV. 491 at 504-508 (1932). In these citations the conclusion is reached that the English and Illinois statutes do not apply to charitable accumulations, at least if the charity's interest is vested. In New York, Pennsylvania, and Wisconsin the statutes expressly except all or certain charities. In the absence of such an exception, the statutes cited in note 7, which limit accumulation to a period of minorities only, should give a charity with a vested interest the *res* free from any requirement of accumulation, since there is no period of minorities during which the statute can operate on the gift. And if the interest is vested in an individual, those statutes produce the result found in Saunders v. Vautier, 4 Beav. 115, 49 Eng. Rep. 282 (1841), for the accumulation continues only until the beneficiaries are *sui juris*.

Minnesota, however, there are no statutes relating directly to accumulations of personal property. But express trusts cannot be good in that state unless created under statutory authority,[10] and the broadest statute under which trusts of personalty can be created limits its authority to trusts which will not endure longer than lives in being and twenty-one years.[11] Since the trustee here is to retain the *res* for a far longer period, the trust would be void if tested by that statute alone. Nor can it be sustained under the statute providing for the creation of "municipal trusts." [12] The purpose of that statute was to provide for the creation of charitable trusts with municipal corporations as trustees, not as cestuis.[13] Even if the city is termed a trustee, the second paragraph of that statute, under which this trust must be considered, would not apply.[14] But the trust does fall within a third statute, one providing for the creation of trusts to loan or invest money, and under which it can be sustained.[15] It provides no limitation on the duration of the trust and the length of time a trust would exist should not be a factor in determining its validity.[16] Our problem is one of justifying the decision only; it is entirely in accord with the favored position given charitable trusts. It can as easily be sustained on the ground that the statutory question was not seasonably raised, not being argued until appeal, or that the receiver had admitted the existence of a valid trust by making a *pro rata* payment.

S. C. F.

[10] "Uses and trusts, except as authorized and modified in this chapter, are abolished." Minn. Stat. (Mason 1927), sec. 8081. The Minnesota statutes provide for a complete abrogation of the common law of trusts, and a substitution of a system of statutory purposes and manner of creation. Five types of trusts may be created in real property and three in personal property, or real and personal property. The three latter are contained in notes 1 and 2, supra. These statutes have entirely done away with the common law as regards trusts of personalty. Congdon v. Congdon, 160 Minn. 343, 200 N. W. 76 (1924). A trust of personal property is good only if it can be sustained under one of these statutes.

But these statutes more or less overlap, and it frequently happens that a trust can be considered under two or more statutes. In such a case, a trust which can be sustained under any of the applicable statutes is good. Young Men's Christian Ass'n v. Horn, 120 Minn. 404, 139 N. W. 805 (1913).

[11] Supra, note 1, subsection 6.

[12] Supra, note 2.

[13] In City of Owatonna v. Rosebrock, 88 Minn. 318, 92 N. W. 1122 (1903), the city was held an alternative trustee of the gift. A similar construction is possible here, but the settlor's language, which was largely precatory in regard to the disposal the city was to make of the fund, rather indicated that the city was to take beneficially.

[14] The deposit was made on March 25, 1913, and the settlor died on July 4, 1914. The second paragraph of this statute was not enacted until 1915. Minn. Laws of 1915, c. 98.

[15] Supra, note 1, subsection 5. It has been suggested that this statute will include almost all cases involving a trust of personalty except those in which there is an indefinite beneficiary. Young Men's Christian Ass'n v. Horn, 120 Minn. 404, 139 N. W. 805 (1913).

[16] Young Men's Christian Ass'n v. Horn, 120 Minn. 404, 139 N. W. 805 (1913). The court there stated that it would not countenance a perpetual accumulation, but the statement is dictum and derives no authority from the statute. Perhaps the statute would give the court power to terminate extravagant terms.