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How to Beat the Rule Against Perpetuities

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How TO BEAT THE RULE AGAINST PERPETUITIES.—Many people seem to think that the lawyer's problem is not so much to know what the law is as to know how to get all they want while obeying the law to the letter. In the case of perpetuities the history of nearly a thousand years of our law shows an almost unbroken series of disastrous failures of the best-laid schemes to violate the public policy of freedom of alienation.

It is true that one victory was won against this policy by the aid of the legislature in 1285 through the Statute De Donis, soon restricted by application of the doctrine of warranties, and finally overthrown by common recoveries; and a temporary advantage was gained in *Scholastica's Case* (*Newis* v. *Lark & Hunt,* 1572, Plowd. Com. 403) through an oversight of the judges in applying the law of conditional limitations. But it was reserved to the lawyers of the present generation to point the sure and safe way, by invoking the law of charitable trusts, covenants, etc.

Many a man has left a fortune to preserve his memory green. Lord COKE was of opinion that these graveyard trusts could be supported as public charities; since monuments serve public uses in preserving proof of pedigrees, putting the living in mind of their end that they may live uprightly, and by wise counsel pointing out the good to follow and the evil to eschew. 3 INST. 202, 203. But the courts later declined to accept these views, and these decisions have been followed by many American courts. The legislatures have in many cases intervened to modify the rules thus established; and in some recent cases gifts of substantial sums to admitted charities, burdened with trifling charges for maintenance of the donor's grave, though of an uncertain amount, have been sustained. *Smart* v. *Town of Dunham* (N. H. 1913), 86 Atl. 821; *Burke* v. *Burke* (Ill. 1913), 102 N. E. 293.

But why should ambition be restrained to expenditure of trifling sums? Why not give the whole estate to trustees under strict orders to use the whole of it in erecting a university, hospital, public library, or the like, to be forever known as the John D. Girard College, where instruction shall forever be given, among other things, concerning the life and works of the benefactor? To this might be added commands to have masses regularly and publicly said for the repose of his soul, and suggestions as to erection of a tomb for him and keeping it in order. These the courts of chancery would assist rather than restrict, within reasonable terms. But if this does not satisfy, why not direct the executors to pay the whole estate to the city of the testator's selection, *if* it should happen, within one year from testator's death, that *anyone,* by use of his own funds without any aid from the estate of the testator, should see that the latter's body was properly and decently buried, and a substantial monument of marble, suitably inscribed as directed, and not less than one hundred feet in height, should be erected over his grave. This is not an attempt to bequeath any part of testator's estate to that purpose, and yet it would be safe to say that the monument would be erected if the estate were large enough. Now, to insure that the monument would be properly cared for and preserved after it was erected, it could easily be provided that the proceeds and profits of the estate should be devoted to the uses of the city until such time as this monument should fall into decay, and then should be returned to testator's executors or their successors, and become a part of his estate to be distributed as intestate residue according to law. Surely a direction that in a particular event a fund shall go in the way in which the law would make it go in the absence of such a direction cannot be said to be invalid or contrary to the policy of the law. *In re Bowen* [1893], 2 Ch. 491. If there is fear by the testator that the beneficiary and the testator's next of kin might get together and free the fund of the incubus of supporting the monument, he might direct that if the monument should fall into decay, then from such time as it should be put in repair until it should again fall into decay the fund should be devoted to some other public charity named, thereby furnishing the inducement to the friends of the other charity to see that the tomb was repaired. In this way a chain of charities might be set up, each as a watch-dog upon the preceding, to see that the wishes of the testator, however whimsical, should be observed to the letter. This would seem to be clear and easy. *Christ's Hospital* v. *Grainger*, 1 Macn. & G. 460; *In re Tyler* (1891), 3 Ch. 252. It has even been held (strangely enough) that the residue thus created could be given over to a private beneficiary on such a remote contingency. *In re Randell*, 38 Ch. D. 213, 58 L. T. 626, 57 L. J. Ch. 899, 36 W. R. 543; *In re Blunt's Trusts*, [1904], 2 Ch. 767.

What has been said of perpetuities to preserve tombs, could as well be applied to establish any other perpetuity. Why not give the whole estate to trustees to pay the income to the Home for Superannuated Ministers for such time only as some good hearted soul should, out of his own purse, provide board, lodging, medical attendance, clothes and $50 per day as pin-money to each of testator's descendants, and then to some other charity? This is no attempt to tie up any part of testator's estate in any private perpetuity. Indeed, no part of his estate could lawfully be devoted to anything but the public charity. It is merely creating indirectly an inducement to the rest of mankind to do it "for the love of charity."

Since the law of perpetuities applies only to property and not to contracts (*Woodall* v. *Clifton*, [1905], 2 Ch. 257), would it not be safer for persons desiring to accomplish such purposes to abandon their attempts to do it by means of a will, and instead make a contract with some substantial trust company to make specified payments through all the ages to come. It is now pretty well agreed that one for whose benefit a contract is made can sue on it, though he was not a party to it. Furthermore on this subject see articles by Prof. A. M. KALES in 5 ILL. L. REV. 47, 251. J. R. R.