FUTURE INTERESTS-RULE AS TO REMOTENESS OF VESTING IN CALIFORNIA

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Future Interests—Rule As to Remoteness of Vesting in California—
T devised the income of a trust to his unmarried daughter for life. If at her death
there were living issue of the daughter, the income was to be distributed to such
issue until 24 years after T's death. The trust was then to terminate, unless issue,
who had been living at T's death, should survive the 24-year period, in which
event the income was to continue to be distributed until the death of such issue.
It was further provided, "if my said daughter survives me, but at the time of her
death leaves no issue of hers then living, the trust shall at the time of her death terminate. . .

1 On termination of the trust, gifts in remainder were limited to surviving children of the life tenant, to surviving issue of deceased children, to surviving named relatives and friends, and to surviving issue of those deceased. If none of these distributees or their children were living at the time of distribution, T's heirs were to take the corpus. The probate court found the entire trust invalid because non-separable gifts in remainder violated both the common law rule against perpetuities and the statutory rules prohibiting restraints on alienation. On appeal, held, reversed. Although the contingent remainders did not violate the statutory rule against restraints on alienation,2 all contingent remainders except those to named relatives and friends were void under the common law rule against perpetuities, which is in force in California.3 However, the valid portions of the trust are separable from the void ones. In re Sahlender's Estate, (Cal. App. 1948), 201 P. (2d) 69.

Because of the uncertain meaning of the word "perpetuity" when the California constitutional prohibition of perpetuities was adopted in 1849, it seems clear that this provision was not intended to embody the common law rule against perpetuities. Probably it was just a general statement of policy against tying up estates for long periods.4 The common law rule against perpetuities became a part of the law of California in 1850, when the state formally adopted the English common law.5 Most authorities agree that the statutory rules enacted in 1872 were intended to supplant the common law rule against perpetuities, and not, as the principal case holds, to codify a rule against restraints on alienation, leaving the common law intact.6 The current status of California law as to the existence of any general rule against remoteness of vesting remains uncertain, in spite of the holding in the principal case. Much early dicta supports the view that the statutes have displaced the common law rule against perpetuities.7 There is no judicial support, however, for the view that these statutes enact a broad rule against remoteness of vesting.8 There are now two decisions at the intermediate appellate

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1 Principal case at 72 (italics added).
2 Cal. Civil Code (Deering, 1941) §§715, 716.
3 The court stated that the common law rule was in force by reason of either Cal. Const. (1849), art. XI, §16; Cal. Const. (1879), art. XX, §9, which prohibits "perpetuities"; or Cal. Political Code (Deering 1944) §4468, which makes the common law of England the rule of decision in California.
5 2 Simes, Future Interests, §572 (1936).
8 California has substantially the same statutory provisions as those used by New York and Oklahoma as the basis for a broad rule against remoteness of vesting. See 4 Property Restatement, appendix, c. A, §§11, 12; appendix, c. B, §11 (1944); Cal. Civil Code (Deering, 1941) §§770, 773, 776. Sec. 776 states, "A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such that the remainder must vest in interest during the continuance or at the termination of lives in being
level, both relying on dictum in Re McCray, that the common law rule against perpetuities is in force in California. The Supreme Court of California has not yet authoritatively passed on the question, and its most recent dictum expresses doubt. Even assuming that the common law rule is in force in California, the decision in the principal case holding some of the contingent remainders invalid seems erroneous. The law is well settled that when a settler or testator separately states two or more contingencies or events and limits property differently and alternatively on these events, the validity of each limitation under the rule against perpetuities must be judged independently. If property is limited to B on the occurrence of either event X or event Y (separately stated), and event X is remote but event Y is not, the limitation will take effect if event Y, the valid contingency, occurs. The principal case clearly falls within the above rule or rules, the italicized portion of the will (stated supra) being a valid separately stated contingency. If T's daughter dies leaving no surviving issue, the valid contingency will have occurred and the contingent remainders in the will should be valid. Only if one of the other stated contingencies happens, should the contingent remainders be held void under the rule against perpetuities.

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