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Recent Cases

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BILLS AND NOTES—ADMISSIBILITY OF PAROL EVIDENCE TO PROVE THE REPRESENTATIVE CHARACTER OF THE SIGNATURE OF A NEGOTIABLE INSTRUMENT—BURDEN OF PROOF

Finch v. Heeb[1]

Suit by the endorsee, as a holder in due course, on the following note: ". . . we as principal, promise to pay . . . Chaffee Lodge, No. 735, I.O.O.F. Trustees, J. W. Heeb, L. C. Bisplinghoff, J. C. Wylie." On the first trial of the case, the court ruled that parol evidence was not admissible to show that the defendants had signed the instrument on behalf of the lodge only and were not, therefore, personally bound, since there was no ambiguity on the face of the note as to whether defendants were obligated individually, or the lodge, but on appeal this court had held that the addition of the word "Trustees" to the signature did create such ambiguity and parol evidence was admissible to show the capacity in which defendants had signed the instrument.[2] On second trial and appeal, the plaintiff contended that the word "Trustees" was only descriptive of the persons and that defendants were bound as principals. The issue was whether or not extrinsic evidence is admissible to absolve of personal liability one who adds to his signature on a promissory note words indicative of representative capacity and disclosing a principal. The court held in the affirmative.

Though Section 20 of the N. I. L. ("Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability."[3]) assumes to resolve the problem posed by the instant case, the courts have revealed the provision to be cryptic in several respects and prolific of doubt and confusion.

Before codification of the law of negotiable instruments, there were two methods of approaching the issue: (1) that when a person added to the signature of a negotiable instrument words suggesting a representative capacity and/or referred to a principal, extrinsic evidence was not admissible to exonerate him of personal liability (and he was bound personally unless he used words indicating his agency and authority and explicitly and unequivocally showing that he signed for or on behalf of a disclosed principal);[4] and

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1. 131 S. W. (2d) 146 (Mo. App. 1939).
2. Finch v. Heeb, 231 Mo. App. 591, 107 S. W. (2d) 962 (1937).
3. MO. REV. STAT. (1929) § 2649.
4. In the following cases the courts refused to receive parol evidence to relieve defendants of personal liability: Williams v. Second National Bank of

(2) that if a person added to the signature of a negotiable instrument words revealing representative capacity and adverted to a specific principal, there arose an ambiguity (as to whether the signer was responsible personally, or the disclosed principal) which parol evidence was admissible to dispel.[5] The courts of Missouri adhered to the latter rule, an early case[6] declaring that—"Although . . . the mere addition of the official character . . . is (not) tantamount to a disclaimer of personal responsibility, it is deemed such an indication of the representative character as to warrant a resort to parol evidence, not of course to contradict or vary the writing, but to explain it . . . Where . . . it is doubtful from the face of the contract whether it was intended to operate as a personal engagement of the party signing it, or to impose an obligation on some third person as his principal, parol evidence is admissible to show the true character of the transaction." There are many later cases intoning the same formula.[7]

Lafayette, 83 Ind. 237 (1882) (note—". . . we promise to pay . . . Geo. Williams, Isaac Barr, Geo. W. Fousman. Trustees Perry Lodge 37, F. & A. M."); Davis v. England, 141 Mass. 587, 6 N. E. 731 (1886) (note— "I promise to pay . . . W. H. England, Pres. & Treas., Chelsea Iron Foundry Co."); Sturdivant v. Hull, 59 Me. 172 (1871) (Note—". . . I promise to pay . . . John T. Hull, *Treas. St. Paul's Parish*"). See Note (1913) 42 L. R. A. (N. S.) 1-63.

5. Note (1913) 42 L. R. A. (N. S.) 1-63.

6. Smith v. Alexander, 31 Mo. 193 (1860) (note—". . . I promise to pay . . . J. H. Alexander, Treas'r Ohio & Miss. R. R. Co.": held —extrinsic evidence admissible to explain import of the signature).

7. In the following cases parol evidence was admitted to discharge defendants of personal liability: McClellan v. Reynolds, 49 Mo. 312 (1872) (note —". . . I promise to pay . . . a balance due (plaintiffs) for building a schoolhouse in School District No. 3 . . . P. T. Reynolds, Local Director"); Klostermann v. Loos, 58 Mo. 290 (1874) (note—". . . we, the undersigned, (trustees of the Evangelical German Church at Jackson, Missouri, for ourselves as such trustees, and our successors in office) promise and bind ourselves, (for said congregation and such successors in office) to pay . . . Chas. Harenburg, Jacob Friedrich, Adam Hoffman, Hy. Loos, Trustees."); Ferris v. Thaw, 72 Mo. 446 (1880); Turner v. Thomas, 10 Mo. App. 338 (1881) (note—signed "W. C. Thomas, Pres. Moniteau Coal & Coke Co."). In the following array of cases parol evidence was admitted to charge principals on negotiable instruments executed by alleged agents—because there was ambiguity as to who was intended to be bound: Washington Mutual Fire Ins. Co. v. St. Mary's Seminary, 52 Mo. 480 (1873) (instrument—"For value received in Policy No. 2969 . . . I promise to pay (plaintiff) . . . Daniel McCarthy, President, per Thomas Burke."); Jefferson Mutual Fire Ins. Co. v. St. Mary's Seminary, 52 Mo. 556 (1873); Sparks v. The Dispatch Transfer Co., 104 Mo. 531, 15 S. W. 420 (1891) (notes—". . . I promise to pay to the order of (plaintiff) . . . Dispatch Transfer Co., By S. Jackson, President," and "We promise to pay . . . Dispatch Transfer Co., By S. Jackson, President."); Franklin Ave. German Savings Institution v. Board of Education of the Town of Roscoe, 75 Mo. 408 (1882) (bond—". . . Special School Dist. of the Town of Roscoe . . . is indebted to ..... or bearer . . . Jas. Isaminger, President. Henry S. Swan, Secretary); Markham v. Couer, 99 Mo. App. 83, 72 S. W. 474 (1903) (the notes were signed by three men—and it was held that plaintiff could introduce parol evidence to show that they were partners and that they executed the notes as obligations of the firm). *Quaere*: Is the problem the same where plaintiff seeks to *charge* a principal with liability on a negotiable instrument—and should parol evidence be admitted for that purpose more or less readily than to *discharge* an agent of liability? Some of the Missouri cases are difficult of reconciliation with the rule adopted by the

The conflict has persisted into the era of the N. I. L.,[8] the courts of Missouri abiding by their ante-N. I. L. principles and decisions.[9]

The traditional statement of the parol evidence rule is that parol evidence is admissible to explain the ambiguity of a written instrument, but not to contradict or vary the writing. As, in any specific case, the admissibility of the extrinsic evidence depends upon the court's perception and definition of ambiguity, the function of the rule in the resolution of our problem is dubious, even

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Missouri courts and their applications of that rule. So, in Rittenhouse v. Ammerman, 64 Mo. 197 (1876), a note signed "P. H. Ammerman, Executor of last will of James Johnson, deceased;" was held to bind defendant personally —because the note manifested no purpose to charge the assets of the estate; in Studebaker Bros. Mfg. Co. v. Montgomery, 74 Mo. 101 (1881), the court held that a note signed "M. S. Montgomery, as administrator, as surviving partner of M & M", was the personal obligation of the signer—because defendant had not limited liability to assets of the estate, the court saying that McClellan v. Reynolds and Smith v. Alexander, *supra*, did not control for the reason that in those cases the notes revealed principals for whom defendants were acting as agents, but that here defendant was not acting as an agent; and in Webster v. Switzer, 15 Mo. App. 346 (1884), defendant was held personally liable on a note signed "C. M. Switzer, trustee of M. E. Mead and children", the court declaring that if defendant wished to restrict liability to the trust estate, his intention must appear on and of the note itself and that the addition of the words "trustee ....." did not create an ambiguity requiring explanation by parol evidence. A possible explanation of the latter cases is that the signers of the instruments were administrators and trustees and not agents representing principals capable of being confronted and sued as persons or legal entities. See Notes (1913) 42 L. R. A. (N. S.) 56-63, (1935) 33 MICH. L. REV. 766, 773-774; *Cf.* Williams v. Schulte, 103 S. W. (2d) 543 (Mo. App. 1937).

8. Note (1938) 113 A. L. R. 1364-1385; BRANNAN'S NEGOTIABLE INSTRUMENTS LAW (6th ed. 1938) 295-316; Notes (1930) 43 HARV. L. REV. 955, (1933) 27 ILL. L. REV. 452, (1935) 48 HARV. L. REV. 674.

9. Myers v. Chesley, 190 Mo. App. 371, 177 S. W. 326 (1915) (note—". . . I, we, or either of us, as principals, promise to pay . . . Bluebelle Mining Co., Frank Chesley, Pres. Vera E. Whitten, Sec'y": held—parol evidence admissible to explain whose the note was intended to be since there was ambiguity on the face of the instrument as to whether it was intended to bind the individual defendant or the disclosed corporation, if the note did not conclusively show that it was the obligation of the corporation—the court citing many of the Missouri pre-N. I. L. cases and declaring that the rule adopted by them does not militate against, but is in full accord with, Section 20 of the N. I. L.); Rudolph Wurlitzer Co. v. Rossmann, 196 Mo. App. 78, 190 S. W. 636 (1916) (notes—". . . I promise to pay . . . International Electric Piano Co., M.D. Gross, Pres. Tekla Rossmann" and ". . . we promise to pay . . . M.D. Gross, Tekla Rossmann, Sec'y": held—parol evidence inadmissible to show that defendant signed the notes as obligations of the piano company and not as her personal obligations, as there is nothing in the instruments or manner of signature that makes for such ambiguity as would warrant the introduction of parol evidence—the court saying that the decision is determined by Section 20 of the N. I. L. and is consistent with the earlier Missouri cases, before and since the N. I. L.); Farmers' Bank v. Redman, 24 S. W. (2d) 235 (Mo. App. 1929) (note—". . . we as principals promise to pay . . . Weatherby Co-opp Assn. By J. D. Chisham, Mgr. Ardy Redman, J. A. Parton, T. F. Warner, J. Wesley Taylor": held—parol evidence inadmissible to prove that defendants had signed the instrument only as agents of the corporation and not to bind themselves personally and that cashier of plaintiff bank had told them that they would not be bound personally, under Section 20 of the N. I. L., as varying and contradicting the instrument and violating the parol evidence rule, the court relying chiefly upon Wurlitzer Co. v. Rossmann, *supra*). In spite of their protestations, in the last two cases the courts seem to deny their heritage.

if it is conceived to apply to negotiable instruments at all. Holdings apparently fall into three categories: (1) that parol evidence is admissible to explain an equivocal negotiable instrument—but an agent's designation of his representative capacity and disclosure of his principal do not constitute ambiguity, to warrant the admissibility of parol evidence in order to absolve the agent of personal liability; (2) that such condition does present ambiguity—which parol evidence is admissible to dispel; and (3) that parol evidence is never admissible to discharge an agent of personal liability on a negotiable instrument. It is hard to say whether the conflicting rules, laid down as the law of an identical fact situation by the courts of the several states, derive from difference of opinion as to what constitutes ambiguity or as to whether parol evidence is ever admissible to explain the signature of an agent on a negotiable instrument.

Though Section 20 of the N. I. L. was designed to banish the confusion concerning the liability of an agent on a negotiable instrument, it has not served its purpose because it is not sufficiently explicit with respect to what are "words indicating that he (the agent) signs for or on behalf of a principal or in a representative capacity" and what constitutes "mere addition of words describing him (the agent) as agent, or as filling a representative capacity" and "disclosing his (the agent's) principal," thus leaving the courts free to construe the words of the statute and of negotiable instruments according to precedent and conjecture; because it is not sufficiently general—as not declaring that ordinary, reasonable commercial methods and principles, rather than legal axioms and subtleties, are to determine the interpretation and effect of negotiable instruments; and because it makes no provision for or reference to parol evidence.[10]

In our case the court further held that, regardless of the burden of proof, though plaintiff had reared a *prima facie* case of personal liability on the part of defendants when she offered the note in evidence, yet defendants' proof of the authority with and capacity in which they signed the note cast upon plaintiff the burden of proving that they had no authority[11] or that they were in fact principals—and that as plaintiff did not offer such evidence, there was nothing to submit to the jury and the trial court should have sustained defendants' demurrer to the evidence and discharged the individual defendants. There is no other Missouri case passing upon this question of evidence or presumption—and

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10. BRANNAN'S NEGOTIABLE INSTRUMENTS LAW (6th ed. 1938) 295-316; 1 MECHEM, LAW OF AGENCY (2d ed. 1914) §§ 1127-1140; Comment (1935) 33 MICH. L. REV. 766.

11. But is not the court assuming a controversial principle, that an unauthorized agent who signs a negotiable instrument apparently on behalf of a disclosed principal is personally bound by the instrument? See the Ames-Brewster joust, BRANNAN'S NEGOTIABLE INSTRUMENTS LAW (3rd ed. 1919) 418-549; BRANNAN'S NEGOTIABLE INSTRUMENTS LAW (6th ed. 1938) 296-298; Notes (1911) 34 L. R. A. (N. S.) 538, (1926) 42 A. L. R. 1318, (1929) 60 A. L. R. 1351, (1907) 20 HARV. L. REV. 160, (1923) 23 COL. L. REV. 392, (1928) 13 CORN. L. Q. 429, (1928) 28 COL. L. REV. 821, (1929) 27 MICH. L. REV. 806.

we have been able to find only two authoritative decisions on the rolls, both of which support the rule of the instant decision.[12]

SAM BUSHMAN

TRUSTS—DURATION

Loehr v. Glaser[1]

The testator devised his residuary estate in trust, with directions that trustees should within two years after final settlement of the estate sell the trust property and distribute the proceeds to certain charities as beneficiaries. As against the contention that the residuary clause was void because "said clause provided that said trust should not be created on the date of the death of deceased but should be created and commenced after the administration of decedent's estate," the court held that the trust was created upon the death of testator and that the clause was valid.[2]

There may be no quarrel with the holding of the court, but this case raises some problems in the law of future interests and trusts which might have been clarified. The court has construed the limitation here in such a way that there can be no question of violation of the rule against perpetuities, for the interests vest immediately—the legal interest in the trustees and the equitable interest in the beneficiaries. Therefore there can be no possibility of any interest vesting at a period more remote than lives in being and twenty-one years.[3] Even if the interests had been held to be capable of vesting at a period too remote

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12. Eisinger v. Murphy Co., 285 Fed. 931 (App. D. C. 1922), in which case the court said that if Section 20 of the N. I. L. had changed the common-law rule (that an unauthorized agent is not liable on the instrument, but only for fraud or deceit or breach of implied warranty), ". . . there is, nevertheless, a presumption that the instrument is what it purports to be,—the obligation of the disclosed principal,—and the burden is upon the plaintiff of overcoming this presumption by affirmative proof of the want of authority of the agent"; Carre v. Seaman, 190 Atl. 564 (Del. 1937), where the court said, ". . . want of authority is of the gist of an action brought to impose a personal liability upon one who has signed an instrument in a representative capacity and disclosing him for whom he purports to have acted; and, being an essential of the cause of action, lack of authority must be alleged and proved."

1. 133 S. W. (2d) 394 (Mo. 1939).

2. The contentions of the parties are not made clear by the opinion. Evidently the appellant heir at law was contending that the trust was not to commence until two years after final settlement and that there was a violation of the rule against perpetuities for the reason that administration, plus two years, might take longer than twenty-one years. If appellant's contention that the trust was not to commence until after administration was correct, then the further contention that the rule against perpetuities was violated, was clearly correct. See *infra*, note 9. However, if the trust was to commence upon the death of the testator, as the court held it was, then all interests would vest immediately, (the legal title in the trustees and the equitable interest in the beneficiaries) and there would be no violation of the rule against perpetuities.

3. GRAY, RULE AGAINST PERPETUITIES (3rd ed. 1915) § 201, states the rule: "No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest."

under the rule against perpetuities, there is a possibility that the gift in such case would have been saved under an exception to the rule in the case of gifts to a charity.[4]

The principal case suggests the possibility, however, that the trust itself may be within a rule, if there be one, that a trust cannot be completely enforced if made indestructible for a longer period than lives in being and twenty-one years. It has been suggested that there is such a rule, separate and apart from the rule against perpetuities, but which limits the enforceability of a trust to lives in being and twenty-one years, using a period analogous to that allowed by the rule against perpetuities.[5]

The validity or enforceability of a trust made indestructible by the testator or settlor for a remote period, or perpetually, is never called into question by the English courts, because the English courts have said that a beneficiary of a trust who is *sui juris* and has a present vested interest may secure the termination of the trust and obtain the trust *res*.[6] Where the English rule is followed there would be no necessity for a rule limiting duration, except in those cases where there is no *cestui que* trust, as a perpetual trust to maintain a burial plot. However, in Massachusetts it was held, in the case of *Claflin v. Claflin*,[7] that a trust could be made indestructible by the testator or settlor and that such a trust was not terminable at the will of the beneficiary when he

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4. If a gift is made to Charity *A* on condition that if Charity *A* ever uses the property for other than designated purposes the property shall go over to Charity *B*, it is said that the gift to Charity *B* is valid even though as to its interest the rule against perpetuities is violated. Christ's Hospital v. Grainger, 16 Sim. 83 (V. C. 1847), *aff'd*, 1 Mac. & G. 460 (Ch. 1849); Mc Donogh's Executors v. Murdoch, 15 How. 367 (U. S. 1853); Jones v. Habersham, 107 U. S. 174 (1882); Storrs Agricultural School v. Whitney, 54 Conn. 342, 8 Atl. 141 (1887); Dickenson v. City of Anna, 310 Ill. 222, 141 N. E. 754 (1923); Herron v. Stanton, 79 Ind. App. 683, 147 N. E. 305 (1922); MacKenzie v. Trustees of Presbytery of Jersey City, 67 N. J. Eq. 652, 61 Atl. 1027 (1905); Lennig's Estate, 154 Pa. 209, 25 Atl. 1049 (1893). However, if the gift is to a charity upon a remote contingency in the first instance, that is, is not preceded by a gift to a charity which is valid, it would seem to come within the rule against perpetuities and be invalid. Girard Trust Co. v. Russell, 179 Fed. 446 (C. C. A. 3rd, 1910); Easton v. Hall, 323 Ill. 397, 154 N. E. 216 (1926); Sandford's Adm'r v. Sandford, 230 Ky. 429, 20 S. W. (2d) 83 (1929); Merritt v. Bucknam, 77 Me. 253 (1885); Institution for Savings v. Roxbury Home, 244 Mass. 583, 139 N. E. 301 (1923); Leonard v. Burr, 18 N. Y. 96 (1858); *In re* Penrose's Estate, 257 Pa. 231, 101 Atl. 319 (1917). Missouri cases, however, have contained flat statements that a gift to a charity is valid no matter how remote. Farmers' & Merchants' Bank v. Robinson, 96 Mo. App. 385, 392, 70 S. W. 372, 374 (1902) (". . . while it is a perpetuity . . . since it is a charitable gift, the rule against perpetuities does not apply."); Newton v. Newton Burial Park, 326 Mo. 901, 34 S. W. (2d) 118, 121 (1930) ("But the rule against perpetuities does not apply to gifts for charitable uses and purposes.").

5. 2 SIMES, FUTURE INTERESTS (1936) § 553; 1 BOGERT, TRUSTS AND TRUSTEES (1935) § 218; Scott, *Control of Property by the Dead* (1917) 65 U. OF PA. L. REV. 632, 647; Whiteside, *Restrictions on the Duration of Business Trusts* (1924) 9 CORN L. Q. 422, 428; Smith, *Honorary Trusts and the Rule Against Perpetuities* (1930) 30 COL. L. REV. 60, 63; Clark, *Unenforcible Trusts and the Rule Against Perpetuities* (1911) 10 MICH. L. REV. 31.

6. Saunders v. Vautier, Cr. & Ph. 240 (Ch. 1841), *aff'g*, 4 Beav. 115 (Rolls. 1841); *In re* Jacob's Will, 29 Beav. 402 (Rolls. 1861).

7. 149 Mass. 19, 20 N. E. 454 (1889).

became *sui juris* even if he were absolutely and indefeasibly entitled. This view has been adopted by the majority of our courts.[8] Therefore the problem of the length of time during which a trust may be made indestructible and completely enforceable is an important one in this country.

The existence of a rule limiting the period during which a trust may be made indestructible and completely enforceable is admittedly supported by little authority, but if it had been sought to be applied in the instant case, cases under the analogous rule against perpetuities could have been cited to establish that this trust which was to endure until two years after administration of testator's estate might last longer than lives in being and twenty-one years.[9] Under the rule against perpetuities where no lives in being are used as a measure, the estate must be certain to vest within a gross period of twenty-one years. Likewise, applying the suggested rule, the trust would have to be made terminable within twenty-one years, since no lives in being were used as a measure. It is entirely possible that settlement of testator's estate may take longer than twenty-one years. Suppose in this case the settlement took twenty years—add to this the two years during which the trust is to continue after settlement, and it can readily be seen that this trust might endure for a longer period than twenty-one years. The rule against perpetuities is concerned with what might happen,[10] not what actually happens or what probably will happen.

The rule limiting the duration of a trust is supported by the argument that it is unwise to permit the tying up of property or taking it out of commerce for a longer period than lives in being and twenty-one years. Of course, the trustee may transfer the corpus of the trust to a *bona fide* purchaser, although if he does so he is liable to the *cestui que* trust; and the *cestui que* trust may transfer his beneficial interest to whomever will purchase it. However, as a practical matter very few transfers are made of a beneficiary's equitable interest, and for all practical purposes both the interest of the trustee and of the beneficiary are inalienable. Furthermore, if the trust is made indestructible the trustee and the beneficiary cannot join and make a good conveyance to merge both interests. It is argued that where the practical alienability of the corpus is thus restrained, the trust should not be enforced if the restraint may

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8. Easton v. Demuth, 179 Mo. App. 722, 728 (1913); *cf.* Rector v. Dalby, 98 Mo. App. 189, 71 S. W. 1078 (1903). Shelton v. King, 229 U. S. 90 (1913); Wallace v. Foxwell, 250 Ill. 616, 95 N. E. 985 (1911); Will of Hamburger, 185 Wis. 270, 201 N. W. 267 (1924).

9. In the following cases it was held that where vesting was contingent upon the probate or administration of testator's estate the rule was violated. Miller v. Weston, 67 Colo. 534, 189 Pac. 610 (1920); Johnson v. Preston, 226 Ill. 447, 80 N. E. 1001 (1907); Ryan v. Beshk, 339 Ill. 45, 170 N. E. 699 (1930). Although the improbability of probate requiring more than twenty-one years almost approaches impossibility, still it is possible and the interest *might* vest at too remote a period. But see Belfield v. Booth, 63 Conn. 299, 27 Atl. 585 (1893) (where it is presumed that testator intended and presumed that probate would not require more than seven years; hence an estate which was to be held in trust for fourteen years from the settlement of testator's estate and then distributed, was held valid).

10. Loud v. St. Louis Union Trust Co., 298 Mo. 148, 249 S. W. 629 (1923). See also 2 SIMES, FUTURE INTERESTS (1936) § 496.

last for longer than lives in being and twenty-one years. There is a feeling that it is undesirable to allow the dead hand of the testator to control the management or disposition of property for an extended time in the distant future.

> "So long as the rule against perpetuities compels future interests to take effect in possession or to vest . . . not later than twenty-one years after some life in being at the creation of the interest, it would seem inconvenient to allow trusts of interests which vest in time to be continued far beyond that period. The public policy of which the rule against perpetuities is in part an expression, is that the testator or settlor's control over his property shall cease at least at the end of a period of a life in being and twenty-one years from the death of the testator or the date of the settlement."[11]

This does not mean that all such trusts are void at their inception. The policy of the law will be carried out by making such a trust unenforceable against a beneficiary who is *sui juris* and absolutely and indefeasibly entitled after a period of lives in being and twenty-one years has expired.[12] The best statement of the rule should then be: A trust which may endure for a longer period than lives in being and twenty-one years[13] may be terminated by the beneficiary (or beneficiaries) who is absolutely and indefeasibly entitled, upon his coming of age and after the expiration of that period; but if there be no *cestui que* trust, the trust is void in its entirety.[14]

As we noted earlier, if the rule against perpetuities had been involved in the instant case, an exception might have saved the gift since it was to a charity. It is certain that a similar exception would save the gift if the rule we have been discussing were sought to be applied. It is everywhere recognized that even a perpetual trust with a charitable beneficiary is valid,[15] hence the gift in the instant case is completely valid. It is said by many of the courts holding these gifts under a perpetual charitable trust valid, that a charitable trust is valid because of an exception to the rule against perpetuities, but as we have attempted to point out, the rule against perpetuities is not involved. The case of the charitable trust is an exception to the rule against trust of

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11. Kales, *Several Problems of Gray's Rule Against Perpetuities, Second Edition* (1907) 20 HARV. L. REV. 192, 204.

12. See Note (1909) 4 ILL. L. REV. 281.

13. This period is suggested simply because it comes most readily to mind, being the period allowed by the rule against perpetuities. A better period might be lives of beneficiaries in being and twenty-one years. Comment (1938) 23 CORN. L. Q. 629.

14. See Note (1911) 5 ILL. L. REV. 379. *Cf.* Smith, *Honorary Trusts and the Rule Against Perpetuities* (1930) 30 COL. L. REV. 60, where it is argued that the so-called honorary trust (trust without a beneficiary) is not void but is unenforceable against the trustee, *i. e.*, the trustee can enforce it if he wants to, but cannot be forced to perform it.

15. Farmers' & Merchants' Bank v. Robinson, 96 Mo. App. 385, 70 S. W. 372 (1902); Buchanan v. Kennard, 234 Mo. 117, 136 S. W. 415 (1911) (*dicta*); Stewart v. Coshow, 238 Mo. 662, 142 S. W. 283 (1911); Newton v. Newton Burial Park, 326 Mo. 901, 34 S. W. (2d) 118 (1930); Art Students' League v. Hinkley, 31 F. (2d) 469 (D. C. Md. 1929); Alden v. St. Peter's Parish, 158 Ill. 631, 42 N. E. 392 (1895); Dexter v. Gardner, 7 Allen 243 (Mass. 1863); Smart v. Durham, 77 N. H. 56 (1913); Mills v. Davison, 54 N. J. Eq. 659, 35 Atl. 1072 (1896); Hilliard v. Parker, 76 N. J. Eq. 447, 74 Atl. 447 (1909); *In re* Smith's Estate, 181 Pa. 109, 37 Atl. 114 (1897); Webster v. Morris, 66 Wis. 366, 28 N. W. 353 (1886).

too long duration, and the reason for the exception is found in the fact that the benefit which the public derives from the charitable trust is greater than the harm it sustains by having the property taken out of commerce.

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