

PERPETUITIES—WILL BEQUEATHING AND DEVISING PROPERTY IN TRUST TO COMMENCE UPON TERMINATION OF ADMINISTRATION—NOT INVALID UNDER RULE AGAINST PERPETUITIES.—Testator by his will left his residuary estate to his son, "in trust, however, upon the following uses, trusts, and conditions, that is to say: (a) This trust is to commence immediately upon the termination of the administration of my estate. . . This trust is to continue for a period of twenty years from its beginning." In order to uphold this will, the Missouri Supreme Court interpreted this clause as creating a trust which commenced at the death of the testator and lasted for twenty years from that time, although the trustees were to have no active duties until the end of the period of administration. The Court considered this construction necessary to avoid the rule against perpetuities since it would otherwise be uncertain whether the trust must arise within the period of a life or lives in being and twenty-one years and also since the trust probably would not terminate within such a period, because the process of administration would necessarily take a year or more. *Trautz v. Lemp* (Mo. 1932) 46 S. W. (2d) 135.

In construing similar provisions the courts generally reach the same result, but their reasons are to some extent different, although still involving the rule against perpetuities. They are concerned solely with the possibility that the administration of the estate may extend beyond the period of a life or lives in being and twenty-one years allowed by the rule. To avoid this fatal possibility, and based upon the presumption that the testator knew the law, it is normally held that the trust becomes vested at once, although the trustees have no immediate right to the trust assets. *Canda v. Canda* (1921) 92 N. J. Eq. 423; 112 Atl. 727; and *cf.* note (1921) 13 A. L. R. 1033. Obviously this presumption is false, for if the testator or his lawyer knew the law, he would not use language which in its literal meaning is contrary to it, and so probably force a lawsuit over the will. However, it would seem that the result is socially desirable in that it upholds, as near as may be, the testator's wishes and obviates the evils against which the rule is aimed.

Trusts established for the benefit of public charities are not in any way subject to the rule against perpetuities. *Christ's Hospital v. Grainger* (1848) 1 Macn. & G. 460, 41 Eng. Repr. 1343; *Chambers v. City of St. Louis* (1860) 29 Mo. 543 (attempt to break the Mullanphy Emigrant Aid Trust). The legal fights to establish whether or not a particular trust is charitable or not have tended to obscure from view the well-settled principle that if the trust begins within a proper time and has only beneficiaries whose interests vest within a period which satisfies the rule against perpetuities, then the trust may last for an indefinite period regardless of this rule. *Deacon v. St. Louis Union Trust Co.* (1917) 271 Mo. 669, 197 S. W. 261; *Plummer v. Roberts* (1926) 315 Mo. 627, 287 S. W. 316; *Nicol v. Morton* (1928) 332 Ill. 533, 164 N. E. 5; and GRAY, RULE AGAINST PERPETUITIES (3rd ed. 1915) secs. 235-245b. Missouri has recanted its earlier heresy that a failure to give a right of possession within the period was as fatal as a failure to vest a right within this period. *Lockbridge v. Mace* (1892) 109

Mo. 162, 18 S. W. 1145; overruled in *Gates v. Seibert* (1900) 157 Mo. 254, 57 S. W. 1065. The question whether the interests of the beneficiaries of a trust are sufficiently vested or not is determined by the same rules that apply in considering the rights of holders or prospective holders of legal titles. Gray, *op. cit.* sec. 413. An indestructible trust which may last more than a life or lives in being and twenty-one years after the entire equitable interest under it has become indefeasibly vested is void. *Fitchie v. Brown* (1906) 211 U. S. 321; *Colonial Trust Co. v. Brown* (1926) 105 Conn. 261, 135 Atl. 555. The better view seems to be that this result is based upon a special rule formed by analogy to the rule against perpetuities rather than upon the rule itself. Gray, *op. cit.* sec. 1211; KALES, FUTURE INTERESTS sec. 658; and *cf. Armstrong v. Barber* (1909) 239 Ill. 389, 88 N. E. 246. The practical result of these cases is to throw into sharp relief the great legal and practical differences between an indefeasibly vested estate and an estate which is vested subject to being divested, although both of these satisfy the rule, while the latter's closer analogy, an estate whose vesting depends upon an indefinite contingency, does not.

There are two special types of trusts which frequently come into conflict with the rule against perpetuities. The spendthrift trust is obviously a violation of the rule if it is to last for more than a life in being and twenty-one years, because the beneficiary does not secure a vested interest until the principal or income is actually paid over to him. *Loud v. St. Louis Union Trust Co.* (1922) 298 Mo. 148, 249 S. W. 629. A trust which provides that all or part of the income shall be allowed to accumulate for a certain period is not rendered void by the length of this period alone. *Thellusson v. Woodford* (1805) 11 Vesey 112, 32 Eng. Repr. 1030; *Goldtree v. Thompson* (1889) 79 Cal. 613, 22 Pac. 50; and *cf. Lane v. Garrison* (1922) 293 Mo. 530, 239 S. W. 813. Influenced by the undesirability of starving the present generation to accumulate unbounded luxuries for the future, England early passed a statute narrowly limiting this practice. (1800) 39 and 40 George III, c. 98. This has been copied in several American states, with varying modifications, but the Missouri legislature has never seen fit to adopt such a measure, perhaps because no case has as yet arisen in this state bringing the possible evils into striking prominence. R. S. Ill. (Cahill, 1931) ch. 3 sec. 145; C. S. N. Y. (Cahill, 1930) ch. 42 sec. 16; Vierling, *The Rule Against Perpetuities Applied to Trusts* (1924) 9 ST. LOUIS L. REV. 286. G. W. S., '33.

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**POLICE POWER—EXERCISE FOR AESTHETIC PURPOSE—ERECTION OF SCREEN BY STATE TO HIDE SIGN FROM MOTORISTS' VIEW.**—The state highway department erected a screen in front of plaintiff's property so that motorists would not see a sign on plaintiff's property. *Held*, such action could be enjoined as a deprivation of property rights. The court, in its opinion, observed: "The original motive in erecting the screen was purely aesthetic. . . . It is contended that under the police power of the state this screen may be erected. Courts have gone far in upholding the police power,