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FUTURE INTERESTS - CHARITIES - VALIDITY OF ACCUMULATION FOR CHARITY WHEN IMPRACTICABLE TO ACCUMULATE DESIRED AMOUNT

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FUTURE INTERESTS — CHARITIES — VALIDITY OF ACCUMULATION FOR CHARITY WHEN IMPRACTICABLE TO ACCUMULATE DESIRED AMOUNT—
An executor petitioned for instructions under a will which devised the residuary estate to trustees to be accumulated in trust until sufficient to purchase a farm upon which a home for the aged and indigent would be established. The trustees waived all interest in the fund, which amounted to less than two hundred dollars. *Held*, there is no reasonable prospect of the accumulation becoming sufficient to establish the charity, or to maintain it if it should be established. The

contingencies are thus so remote that the trust fails for impracticality. *Green v. Parker*, (N.H. 1943) 32 A. (2d) 316.

There are two common-law propositions that deserve to be stated at the beginning of a discussion of the validity of accumulation provisions in charitable gifts. First, where the accumulation is found to be a condition precedent to the vesting of the gift in the charity, such accumulation is invalid if it transgresses the rule against remoteness.¹ Secondly, where the gift to charity is presently vested, the fact that the proposed accumulation may extend beyond the period of the rule against remoteness is irrelevant in determining its validity. In England, by the application of the doctrine of *Saunders v. Vautier*,² it seems to be within the power of the attorney general to require an immediate application by the trustees to charitable uses,³ and thus the statute restricting accumulations is rendered inapplicable. On the other hand, the American courts, which are more disposed to effect the purpose of the testator,⁴ quite generally hold that the accumulation is not invalid by reason of the fact that it may last for a period longer than that of the rule against perpetuities.⁵ In the absence of statute, the

¹ *Girard Trust Co. v. Russell*, (C.C.A. 3rd, 1910) 179 F. 446; *First Camden National Bank & Trust Co. v. Collins*, 114 N. J. Eq. 59, 168 A. 275 (1933); *Malmquist v. Detar*, 123 Kan. 384, 255 P. 42 (1927); *Murphy v. Johnson*, 190 Ga. 23, 8 S. E. (2d) 23 (1940); 2 TRUSTS RESTATEMENT, § 401, comment j (1935).

² 4 Beav. 115, 49 Eng. Rep. 282 (1841). This case held that where the sole beneficial interest was vested in an ascertained person, a trust for accumulation may be terminated by that beneficiary whenever he becomes sui juris, although such termination violate the express terms of the trust. This doctrine was applied to charitable trusts in *Wharton v. Masterman*, [1895] A. C. 186. For minor qualifications of the doctrine, see *In re Knapp*, [1929] 1 Ch. 341, and *Berry v. Geen*, [1938] A. C. 575, affirming [1937] 1 Ch. 325. In no event may an accumulation continue longer than 21 years under the Thelluson Act [15 Geo. 5, c 20, § 164 (1925)], which applies to charitable as well as noncharitable trusts.

³ *In re Knapp*, [1929] 1 Ch. 341.

⁴ See *Clafin v. Clafin*, 149 Mass. 19, 20 N.E. 454 (1889).

⁵ *Boston v. Doyle*, 184 Mass. 373; 68 N. E. 851 (1903); *Penick v. Bank of Wadesboro*, 218 N. C. 686, 12 S. E. (2d) 253 (1940); *Frazier v. Merchants Nat. Bank of Salem*, 296 Mass. 298, 5 N. E. (2d) 550 (1936); *In re Galland's Estate*, 103 Wash. 106, 173 P. 740 (1918); *Reasoner v. Herman*, 191 Ind. 642, 134 N. E. 276 (1922); *Colonial Trust Co. v. Waldron*, 112 Conn. 216, 152 A. 69 (1930); *Lyme High School Assn. v. Alling*, 113 Conn. 200, 154 A. 439 (1931). Frequently courts say without reservation that charitable trusts are not subject to the rule against perpetuities. This statement is true if it is taken to mean that, at common law, charitable trusts are not subject to those rules of policy which prevent indefinite suspension of the power of alienation and which keep property in commerce. The New York statute against the suspension of the power of alienation and those modeled after it were at one time held to apply to charitable trusts, but now either remedial statutes have been passed [see *Matter of MacDowell*, 217 N. Y. 454, 112 N. E. 177 (1916); *Wolfe*, "Rules Against Perpetuities and Gifts to Charity," 17 IND. L. REV. 205 (1942)] or the courts have determined that the statute has no application to charitable gifts. *Phillips v. Chambers*, 174 Okla. 407, 51 P. (2d) 303 (1935) § 2 BOGERT, TRUSTS AND TRUSTEES, § 322 (1935); *Runk*, "American Statutory Modification of the Rule against Perpetuities, of Trusts for Accumulation and of Spendthrift Trusts," 80 UNIV. PA. L. REV. 397 at 400 (1932). However, charitable trusts are clearly subject to the rules which prevent the

main American limitation on the period of accumulation would seem to be the power of a court of equity to declare the provision void if the period contemplated be so long as to be considered unreasonable.⁶ Up to this time, however, there has been no authoritative determination of the approximate period of time that would be considered unreasonable, or even of the factors that a court would consider in determining the validity of the proposed accumulation—in large measure because no such provision has ever been held invalid for this reason.⁷ In the principal case the court ostensibly reaches its decision on the ground that the provisions of the will are impossible of attainment in the manner directed by the testatrix. Yet it must be observed that there is nothing impossible, or even impracticable, in the accumulation of a sum of two hundred dollars to an amount sufficient to purchase a home for the aged, although the time expended in this endeavor may be very great.⁸ It would seem, therefore, that the court's objection to this accumulation is more probably directed to the length of time necessarily involved in its execution than to the actual impossibility of amassing the desired amount. The decision may well mean that the court regards the time of accumulation to be so great that the effort and inconvenience connected with administration would probably overbalance the benefits eventually to be received.⁹ Such a view would seem to be proper on the facts, as well as technically sound.

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creation of remote future interests with a single exception—when the remote gift to charity is preceded by a present gift to charity. 2 SIMES, FUTURE INTERESTS, §§ 540 et seq. (1935); 2 TRUSTS RESTATEMENT, § 401, comment f (1935).

⁶ *Ripley v. Brown*, 218 Mass. 33, 105 N. E. 637 (1914); *Frazier v. Merchants Nat. Bank of Salem*, 296 Mass. 298, 5 N. E. (2d) 550 (1936); *St. Paul's Church v. Attorney General*, 164 Mass. 188, 41 N. E. 231 (1895); *Penick v. Bank of Wadesboro*, 218 N. C. 686, 12 S. E. (2d) 253 (1940); 2 SIMES, FUTURE INTERESTS, § 591 (1936).

⁷ The following cases are examples of the liberality of the courts in finding the time of accumulation reasonable. *St. Paul's Church v. Attorney General*, 164 Mass. 188, 41 N. E. 231 (1895) (accumulation of one-half the income of the principal allowed to continue 74 years after establishment of the trust); *Boston v. Doyle*, 184 Mass. 373, 68 N. E. 851 (1903) (corpus to be loaned out to selected class for 100 years at 5 per cent interest, then one-half of the principal and accumulated interest to be accumulated for another hundred years); *Frazier v. Merchants Nat. Bank of Salem*, 296 Mass. 298, 5 N. E. (2d) 550 (1936) (\$117,000 to accumulate until it reaches \$1,000,000); *Lyme High School Assn. v. Alling*, 113 Conn. 200, 154 A. 439 (1931); and *Penick v. Bank of Wadesboro*, 218 N. C. 626, 12 S. E. (2d) 253 (1940) (accumulations for 99 years).

⁸ Cf. cases in note 7, *supra*.

⁹ The precise basis of the court's decision is not clear, its sole citation of authority being § 399 of the Trusts Restatement, which section deals with the application of the doctrine of cy pres where it is impossible or impracticable to carry out the particular purpose of the trust. This would suggest a second possible interpretation of the court's language, that it is holding that the trust purpose itself rather than the accumulation is impossible of accomplishment. But this conclusion could hardly be reached unless the court has first decided that the accumulation is invalid, thereby preventing the aggregation of a sum sufficient to carry out the trust purpose.