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PERPETUITIES. The Rule against Perpetuities is not often brought to the attention of the attorney, but the questions arising under it are sometimes of great importance, as witness the attacks on the Girard and Franklin bequests, and the recent case of *Pulitzer* v. *Livingston*, in Maine, 36 Atl. Rep. 635 (1897).

Pulitzer v. *Livingston* was an action brought for an alleged breach of a special covenant that the grantors in certain deeds of trust had remaining in them no title which could be maintained against the title conveyed to the plaintiff by the grantees. The plaintiff claimed that these deeds of trust were not legally sufficient to divest the grantors of their title in the property, that there were future estates and interests so limited therein that they offend against those rules of law which prescribe and limit the period within which future

estates and interests must necessarily vest, and that these deeds being void no title ever passed to the trustees but still remains in the grantors, or their heirs or assigns.

The facts were these: William Bingham, of Philadelphia, and United States Senator from Pennsylvania, in the last century, was the owner of very large landed estates, including over two million acres in Maine alone. In 1853, his heirs were so numerous and so scattered that it was not feasible for them to make conveyances directly or to act through agents appointed by letter of attorney; deeds of conveyance in trust were therefore executed to Joseph R. Ingersoll, then the American Minister to England and one of the most distinguished members of the old Bar of Philadelphia, and John Craig Miller, as trustees. The trustees were empowered, *inter alia*, (1) to let, demise and mortgage the real estate and invest and reinvest the personal estate; (2) to collect and receive the rents and income of the real estate and the income from the personal estate under their control; (3) to remit the net income to the grantors or apply and dispose of the same as the grantors or their representatives might direct; (4) to appoint successors in the trust. The power was expressly reserved to the grantors and their legal representatives, at any time, to alter or revoke the trusts as to their respective shares. From this it appears that the beneficial enjoyment of the estate is absolutely and unqualifiedly vested in the original holders of the legal title or their representatives, with full power of sale and disposition; that the trustees have, during the continuance of the trust, the fullest powers of sale and conveyance; and that all the *cestuis que trustent*, as to the whole, or each, as to his own purpart, may change or terminate the trust and require a conveyance of the legal estate.

The terms of this trust have been set forth at some length, as it involves property-rights of unusual magnitude, and the case is one that may well become an important authority. It is of interest, too, from its involving the soundness of the reasoning in *Slade* v. *Patten*, 68 Me. 380. This last case, it may be recalled, is one of four in the United States criticised in *Gray on the Rule against Perpetuities* (Sections 235-6) as in "conflict with the fundamental principles which govern questions of remoteness."

Pulitzer v. *Livingston* was very fully argued and elaborate briefs were submitted, especially on behalf of the defendant. The text-books—Marsden, Lewis and Gray—were cited at length, and all the available decisions brought to the attention of the court. The

opinion is full and clear. It recognizes distinctly the essential difference, so often overlooked, in the uses of the word "perpetuity" —now, strictly, with reference to remoteness of vesting, and again, more loosely, with reference to a perpetual prevention of alienation or restraint upon it. The two uses are well shown in such cases as *Philadelphia* v. *Girard's Heirs*, 45 Pa. 26, and *Fosdick* v. *Fosdick*, 6 Allen 41, which are referred to in the opinion. In the judgment of the court the deeds of trust in this case do not offend against either the Rule against Perpetuities or the Rule against Restraints on Alienation. All the interests, whether legal or equitable, are vested and all are freely alienable. The very purpose, indeed, of the trusts was to promote the alienability of the subject-matter. The fact that they may continue indefinitely does not militate against them, for a legal fee is indeterminate, as well as is an equitable one, and the same rule applies to one as to the other.

The power of revocation reserved to the grantors is relied upon by the court as a further and conclusive ground for sustaining the trust. This destructibility of the estate, at the will of the present owner alone, reduces all the future interests contained therein to the level of present estates and is by itself sufficient to prevent their being obnoxious to the Rule against Perpetuities.

The objection to the indefinite duration of the trustees' power to sell is answered in the same way:—"It is true that if an unlimited indestructible power to sell exists, it does restrain free alienation by the one who, subject to that power, is the owner of the fee," and thus offend against the Rule against Restraints on Alienation. But the right reserved to destroy the power renders the power valid, although in terms perpetual: 2 Sugd. Pow. 472.

This brings the court to a discussion of the case of *Slade* v. *Patten*, 68 Me. 380, already mentioned. Here there was no reservation of a power of revocation—"a most important difference." The reasons given for the decision are severely criticised and the ground upon which it is apparently based, *viz.*, "that a trust which will not or may not *terminate* within lives in being and twenty-one years and a fraction afterwards is void as creating a perpetuity," is declared incorrect and not to be sustained on principle or authority. It is pointed out, however, that the judgment was in itself correct. The court then adverts to the cases in Maryland which follow the *dictum* of the reasoning in *Slade* v. *Patten* and expresses its disapproval of them.

This decision of the Supreme Court of Maine is the more

important as it effectually discards the former opinion of the same court, which had been generally recognized as anomalous, and thus tends to restore a substantial unanimity of view upon this subject. The opinion in which this is done is so well reasoned and amply supported by authority and the interests involved were of such importance, that we may fairly expect *Pulitzer* v. *Livingston* to take rank as a leading case in this difficult branch of the law.

ACCIDENT INSURANCE. In the *Travelers Insurance Company of Hartford* v. *W. M. Randolph, Executor*, not yet reported, the action was upon policies of insurance issued to one Mitchell, by the insurance company. The policy exempted the company for injuries caused by "voluntary exposure to danger," on the part of the insured. The defence set up that Mitchell voluntarily exposed himself to unnecessary danger by riding upon the steps of a railroad car while the train was proceeding at the rate of twenty-five miles an hour, and that having fallen thence and been killed, the plaintiff (his executor) could not maintain an action upon the policy. The defendant moved for a peremptory instruction in his favor, which was refused, and a verdict found for the plaintiff. On appeal, Mr. Justice Harlan, delivering the opinion of the court, in affirming a judgment for the plaintiff, said:

"But the defendant's motive for a peremptory instruction distinctly presented the question, whether riding upon the platform of a car running fifteen to twenty-five or thirty miles an hour, even if the passenger while so riding holds to a railing, and thereby diminishes the danger of being thrown from the car, was, within the meaning of the policy and *as matter of law* a voluntary exposure of himself to unnecessary danger.

"The words 'voluntary exposure to unnecessary danger,' literally interpreted, would embrace every exposure of the assured not actually required by the circumstances of his situation or enforced by the superior will of others, as well as every danger attending such exposure, that might have been avoided by the exercise of care and diligence upon his part. But the same words may be fairly interpreted as referring only to dangers of a real substantive character, which the insured recognized, but to which he, nevertheless, purposely and cautiously exposed himself, intending at the the time to assume all the risks of the situation. The latter interpretation is most favorable to the assured, does no violence to the words used, is consistent with the object of accident insurance

contracts, and is, therefore, the interpretation which the court should adopt."

The action of deceased, although unnecessary, was not in itself, and as a *matter of law*, a voluntary exposure to danger within the meaning of the contract.

The court further said: "The contract in suit covers the injury or death of the assured from *all* external causes and accidental means. Bodily injury or death resulting from the carelessness of the assured is not excepted from the contract." The negligence of the deceased was insured against, as well as other causes of injury or death.

WILL—LATENT AMBIGUITY. In *Wampole's Estate*, 3 Pa. Superior Ct. 414, the testator left a will containing the following residuary clause: "I give and bequeath the remainder of my estate, if any, to the Trumbauersville Church, to be used for the general benefit of said church." Two religious bodies claimed the benefit of this clause.

Christ's Evangelical Lutheran Church of Trumbauersville and the German Reformed Church of Trumbauersville, both incorporated bodies, owned their church building in common, and both bodies used it as a house of worship, pursuant to a written agreement which contained, *inter alia*, the following: While the congregations have unitedly contributed in church building, etc., it is therefore decided that both shall have equal rights and privileges of the same. Each congregation is entitled to one-half of the time for use of the *church*, alternately, one Sunday after the other. In case of funerals, the one first announced through the church bell shall have first privileges. The cemetery is free for every regular member of either congregation to bury therein. Those that are not members or have not contributed to their support within two years, and wish to bury in this cemetery, must pay from two to five dollars *per* grave, according to its size. The money thus accumulating shall be for the *mutual benefit of both congregations*.

In the lower court it was held (17 C. C. R. 597) that the legacy should go to two bodies in possession and control of the Trumbauersville Church building as trustees. Christ's Evangelical Lutheran Church appealed from the decree on the ground that there was a latent ambiguity, and that therefore evidence dehors the will should be admitted to explain the terms used. The Appellate Court reversed the decree.

It is a settled doctrine that as a latent ambiguity is only disclosed by extrinsic evidence, it may be removed by extrinsic evidence. Such ambiguity may arise upon a will either when it names a person as the object of a gift or a thing as the subject of it, and there are two persons or things that answer such name or description; or, secondly, it may arise when the will contains a misdescription of the object or subject, as where there is no such person or thing in existence, or, if in existence, the person is not the one intended, or the thing does not belong to the testator: *Patch* v. *White*, 117 U. S. 210-227. In this case there is undoubtedly in existence such an object as the Trumbauersville Church. The term *church* is applied, especially in country districts, to a building and appointments used for religious purposes quite as frequently as to a religious body or organization. The Trumbauersville Church could have been a legatee or devisee, for the bequest could have been received by the whole body as an unincorporated association or society to hold it upon a trust, as for charitable purposes: *Tucker et al.* v. *Seamen's Aid Society et al.*, 7 Metc. 188.

In the face of these considerations it appears somewhat doubtful that any ambiguity existed as to the meaning of the disputed terms, and it is submitted that it was improper to allow the introduction of extrinsic evidence.