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Trusts--Exercise by Trustee of Power to Terminate After Period of Good Behavior by Spendthrift

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business in that particular locality. The court in applying this realistic approach to the facts of the case in hand found that the danger of a prejudicial monopoly in the ice business is largely averted by two prevalent conditions, namely: (1) the ease with which ice can be, and frequently is shipped long distances and (2) the introduction of domestic refrigeration plants. Thus the protection sought for is furnished naturally, without the aid of such a statute.¹⁰ A similar approach was made in another recent case.¹¹

Undoubtedly, there are those who have different ideas as to the wisdom of invalidating a statute rigidly controlling the manufacture and sale of ice. Still their quarrel here would be with the conclusion reached by the court, while from a broad viewpoint the judicial approach to a general problem is more significant than a decision in a single case.

—E. GAUJOT BIAS.

TRUSTS — EXERCISE BY TRUSTEE OF POWER TO TERMINATE AFTER PERIOD OF GOOD BEHAVIOR BY SPENDTHRIFT. — The St. Louis Union Trust Company was named trustee for Vincent Kerens under the will of Kerens' father. The trust created was terminable in two ways: by Vincent's death or by satisfactory proof to the Trust Company "that he shall of his own free will and desire have passed five consecutive years of continued sobriety and good behavior". The Trust Company determined that Kerens was entitled to the *corpus* of the trust in 1928, after his fifth application to have this trust terminated. To insure its position it filed a bill for instructions in the Federal District Court for Eastern Missouri, naming Kerens and his sisters, the remaindermen under the trust, as nominal defendants. The sisters appealed from the decision of the District Court affirming the position taken by the Trust Company. The Circuit Court of Appeals found from the evidence in the case that the Trust Company knew that Kerens had falsely sworn to an affidavit made in

¹⁰ Southwest Utilities Ice Co. v. Liebman, *supra* n. 4, at 353. ". . . . there is both potential and actual competition in such business to afford adequate protection With such competition existing in the business, we seriously doubt that the manufacture of ice is so affected." (as to warrant such regulation).

¹¹ Consumers' Light & Power Co. v. Phipps, 251 Pac. 63 (Okla. 1926). See also Mr. Justice Stone's dissent in Tyson & Bros. v. Banton, 273 U. S. 418, 447, 47 S. Ct. 426 (1927).

support of his fourth application during the period of probation covered by his fifth application. It also found that the Trust Company had not investigated certain charges, made by Kerens' divorced wife in the divorce proceedings in Texas, to the effect that Kerens had lived with another woman for a year and a half while establishing a residence in Texas for the divorce, which conduct would also have fallen within the period of probation covered by the fifth application. Consequently the case was reversed, the court deciding that the action of the Trust Company was arbitrary on the evidence and that Kerens had not so complied with the trust provisions as to warrant the termination of the trust in his favor by the Trust Company. *Colket v. St. Louis Union Trust Co.*¹

At the death of his father when the trust was established Kerens made an effort to break it by a suit to "construe the will".² Clearly Kerens father intended to protect him with a spendthrift trust; and this the court recognized.³ Yet the father also intended to attempt to reform his son by this trust.⁴ The trust device terminable on the condition of the reformation of the *cestui* has been employed elsewhere.⁵ These trusts necessarily involve the discretion of the trustee as to just when the *cestui* is entitled to the *corpus*.

The discretion left with a trustee may not be arbitrarily exercised but honest judgment is required.⁶ It is said that the discretion will not be interfered with, however, unless it is exercised for improper motives, or unreasonably, or is not exercised at all when there is a duty on the trustee.⁷ It is also said that a court will not deprive a trustee of an honest exercise of the discretion that the maker of the trust has vested in him.⁸ Still a Massachusetts court has ruled that an honest exercise of discretion in good faith is not enough, but there must also be the use of reasonable prudence and sound judgment in reaching the decision to terminate the

¹ 52 F. (2d) 390 (C. C. A. 8th 1931).

² *Kerens v. St. Louis Union Trust Co.*, 283 Mo. 601, 223 S. W. 645, 11 A. L. R. 288 (1920).

³ *Supra* n. 2, at 283 Mo. 615.

⁴ *Supra* n. 3.

⁵ *Markham v. Hufford*, 123 Mich. 505, 82 N. W. 222, 48 L. R. A. 580 (1900); *Ordway v. Gardner*, 107 Wis. 78, 82 N. W. 696 (1900).

⁶ 2 PERRY ON TRUSTS (7th ed. Baldes, 1929) § 511.

⁷ *Morton v. Southgate*, 28 Me. 41 (1848); *Bacon v. Bacon*, 55 Vt. 243 (1882); *Jones' Estate*, 12 Pa. Dis. Rep. 113 (1898); *Stein v. State Deposit & Trust Co.*, 127 Md. 206, 96 Atl. 349 (1915); *Viall v. Rhode Island Trust Co.*, 45 R. I. 432, 123 Atl. 570, 32 A. L. R. 437 (1924).

⁸ *Mason v. Jones*, 3 Edw. Ch. 497 (N. Y. 1842); *Sharon v. Simons*, 30 Vt. 458 (1857); *Ireland v. Ireland*, 89 N. Y. 321 (1881).

trust.⁹ And no matter how absolute the discretion given by the maker of the trust may be, it is not sufficient to deprive equity of jurisdiction to supervise the discretion.¹⁰ It seems that the Circuit Court properly ruled on the present case.

But the trust in the principal case is rather unique in that a corporation is executing a trust which involves a determination of the propriety of personal conduct of the *cestui*. The reported cases in which this has been considered are practically *nil*. In *Roberts v. Corson*¹¹ a corporation held property in trust to use as it determined the personal *needs* of its members, but the court discusses the case on the charitable trust basis. Then in *Viall v. Rhode Island Trust Co.*,¹² a corporate trustee was given power to terminate a trust when it decided that the *cestui* was competent to handle the property but no question of the reformation of the *cestui* arose there.

The unusual and novel exploitation of the trust device in the principal case constitutes the chief interest in the case. And such a trust imposes on a corporate Trust Company a great fiduciary responsibility; the possibilities for fraud and collusion between trustee and *cestui* are quite apparent. Yet with the ordinary impersonal attitude of a Trust Company and its usually efficient administration of estates, such a trust is not likely to become the subject of abuse. There appear to be grounds for preferring the corporate trustee to the individual for the execution of such a trust device.

—HENRY P. SNYDER.

⁹ *Corkey v. Dorsey*, 223 Mass. 97, 111 N. E. 795 (1916).

¹⁰ *Angell v. Angell*, 28 R. I. 592, 68 Atl. 583 (1908); *Keating v. Keating*, 182 Iowa 1076, 165 N. W. 74 (1916).

¹¹ 79 N. H. 215, 107 Atl. 625 (1919).

¹² *Supra* n. 7.