Suretyship and Trusts

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Suretyship

Suretyship- Binding Extention of Time not Consenting party.

PD owed the X Bank three notes, one for $750 on which S was indorser. The X Bank agreed to give PD additional time on the $750 note provided PD would get additional security for the other notes which he did.

The receiver of the X Bank sued S, and the jury found for the receiver, but the judge set aside the verdict and rendered judgment for defendant S. Was this correct? Yes. Here there was a binding extension of time without the consent of a party secondarily liable and with no reservation of rights against him. Hence under Code § 43-120 (Sec. 120) S was discharged.

Suretyship

I contracted under seal to do certain work for the State. S was surety on L's bond (sealed contract). One of the terms of the agreement was that L would pay for all materials furnished. L failed to pay for materials. Five years later the material ran sued S. The materials had been bought upon open account.

What two defenses can S plausibly make? And are they valid?

First defense: L promised to pay for his own materials, not J's materials. Defense not valid as contract was made for benefit of material men and to enable contractors for state work to get labor and materials easily. Second defense: Since 3 year statute of limitations has run on the principal debtor the surety has the same defenses as the principal debtor. There is a conflict of authority on this point, but the Virginian view is that it is the surety's debt as such as the principal debtor's debt so far as the creditor is concerned, and since the running of the statute does not extinguish the debt the surety is liable until the statute runs against him, in our case 10 years.

Suretyship

Suretyship 1/1 of Reimbursement- Forcing Cr to Sue Sur to Get Reimbursement

Suggested by 8 S.E. 2d 306 at p. 30

What do you think of this argument, "If a statute of limitations has run against the principal debtor, but not against the surety, the surety should be discharged because the surety's right of reimbursement against the debtor has likewise been barred."

This is fallacious for three reasons: (1) Before the claim was barred the surety could have paid the debt and then he could have sued the debtor for reimbursement.

(2) Under 11/1-25, the surety can require the creditor to sue the debtor by giving the notice there required at .(3) There is no right of reimbursement until the surety pays. Hence the statute has not even started to run on this right.

Suretyship

Bankruptcy

If a creditor of a bankrupt fails to file proof of his claim the surety discharged. No. The surety can pay himself and then be subrogated to the creditor's rights. Moreover under the Bankruptcy act he has a right to file proof in the name of the creditor if the creditor fails to prove.

Suretyship

"A surety can never charge a creditor with laches until he has in vain prompted the creditor to pursue the principal. The creditor need not move until he has been notified."

Reason: The reason the debt is due it is the surety's debt, too, and he can pay it and then proceed against the principal debtor. In failing to do this he is guilty of laches himself.

Suretyship

Guaranty by Bank Officers

P refused to deposit a large sum of money in the X Bank unless its officers would guarantee solvency of bank. They did so. During the depression the bank failed. Some of the officers died and their estates were settled.

Are the heirs of the officers liable for breach of guaranty to extent of assets received by them? 1. Since this was a continuing guaranty it is immaterial that money was left in bank for quite a period of time for, where there is nothing to show when principal debt matures, there can be no such extension of time as to discharge the guarantor.
2. Since this was not a contract for personal services, death of obligors did not discharge contract and heirs are liable to extent of assets received from guarantying ancestors.

Suretyship Implied in Suretyship

In 1934, Jones was appointed clerk of the Supreme Court of Appeals of Virginia and entered into a bond in the penalty of $10,000 with Surety Co. of N.Y. as surety, conditioned upon the faithful performance of his duty. Thereafter he was appointed clerk for five successive terms of one year each, beginning Jan., 1935. In 1935, 1936, 1937, and 1938 Jones and Surety Co. of N.Y. executed a similar bond. In 1939 and 1940 Jones failed to give a bond. The Surety Co., however, rendered a bill in 1936 and in 1940 for the annual premium, which was paid by the Commonwealth of Va., who received a receipt from the Surety Co. In 1941 Jones resigned and it was found that his account was short in 1939 and 1940. The Commonwealth of Va. brought suit in equity against the Surety Co. to recover the shortage. Is the Surety Co. liable? The Surety Co. is liable on an implied contract of suretyship which is taken out of the Statute of Frauds by the written receipt for the premium signed by the Surety Co.

Suretyship

By statute the clerk of the Supreme Court of Appeals must give a bond ($)10,000 approved by the Court. One Jones was Clerk of the Court and when his term expired no new bond was given when he was appointed for a new term. The D Surety Co. sent him a bill each year for the premium and Jones paid it out of State funds. Jones embezzled over $30,000, i.e., more than $10,000 for each of his last three terms of 6 years each. D Surety Co. claimed that since no bond approved by the Court had been given for the last two terms it was not liable. Is this a good defense?

Hold: No. The condition that the bond be approved by the Court was for the benefit of the Commonwealth and could be waived by it. While no new bond was given Jones retained the money and used it for personal purposes. By accepting the annual premium, the D Surety Co. impliedly promised to comply with the terms of the original surety bond.

Suretyship Fidelity Ins. v. Surety

In the case of suretyship at common law, the surety is a favorite of the law and any reasonable doubt is resolved in his favor. In the case of insurance any reasonable doubt is resolved against the insurer. Which of these two principles is applicable to fidelity insurance?

Hold: Fidelity insurance is insurance. Companies writing fidelity insurance for a premium need no particular protection or sympathy. So the insurance rule applies rather than the suretyship rule whether the fidelity insurance's contract is in the form of an insurance policy or in the form of a bond.

Suretyship SLR. v. Surety

The D Surety Co. wrote a fidelity bond for a term of six years in favor of the Commonwealth of Virginia insuring the fidelity of one Jones, a clerk of the Supreme Court of Appeals. When the bond expired no new bond was issued but Jones continued to pay the $25 per year premium as billed, Jones embezzled $30,000. Defense: the statute of frauds. Is this a good defense?

To the following points:

(1) There is a conflict of authority as to whether the premium of a fidelity insurance company is within the statute of frauds. According to some authorities it is a primary promise to answer for its own debt and hence not within the statute. According to other authorities (including Restatement of Contracts 18a) it is a collateral promise to answer for the debt or default of another and is within the statute.

(2) But in the instant case the receipt given for the annual premium was a sufficient memorandum to satisfy the statute of frauds, as the Supreme Court of Appeals found it unnecessary to pass on the question as to whether or not the implied promise of the D Surety Co. was within the statute of frauds.
SURETYSHIP Statute of Limitations

Gore died in 1921. He bequeathed $2,000 to P who was then a child a year old. A was Gore's administrator. At the request of D, A lent $2,000 of the estate's money to D's son-in-law, W, taking W's note due in 2 years for that amount. This note was secured by a second deed of trust on Blackacre which W owned. As further security D gave his bond guaranteeing payment of the note, but D was to be liable only for such deficiency that might exist after foreclosure of the deed of trust, or some prior deed of trust. The note was not paid, but the interest thereon was kept current. In 1926 the note, the deed of trust securing same, and the surety bond were earmarked by A as P's property and later turned over to P's guardian in payment of the $2,000 bequest. This transaction was approved by the Commissioner of Accounts and A was duly discharged as having completed his work as administrator. In early 1941 Blackacre was sold under a prior deed of trust. There was nothing left for P after prior claims had been paid. P then sued D on his bond. D claimed that the statute of limitations had run. His argument was as follows: W's note matured in 1923. A could have then asked that the deed of trust securing it be foreclosed. He cannot prevent the statute of limitations from running on D's bond by doing nothing when had it in his power to demand a foreclosure.

While there is authority for this view the rule in Virginia is that where one has it within his power to start the statute running he has a reasonable time in which to do the act that would cause the statute to start to run (foreclose the second deed of trust in this case). In the absence of other evidence a reasonable time is the time allowed by the statute of limitations to sue on the principal obligation. If he does nothing the statute then starts to run—in the instant case in 1928, five years after W's note became due. However, at that time the holder of the bond was an infant. Now observe that A held W's note in 1923 when it matured, that the statute of limitations started to run on this note while A was the owner, and that the intervening infancy of P when she became the owner of W's note in 1926 did not stop the running of the statute on the note. Hence any action on the note was barred in 1928. Now observe that if A had kept the surety bond the statute would have started to run on the bond in 1928, but at that time P, an infant, was the owner. The statute does not start to run as against an infant until she becomes 21, so P's suit against D on his surety bond is not barred by the ten year statute of limitations.

SURETYSHIP Fraudulent or Voiding Fidelity Ins.

X and Y were partners in the installment sale of jewelry. They carried fidelity insurance on all employees. P was the manager of their Portsmouth office and B was a salesman who worked under P. The fidelity bond provided, "This bond shall be deemed cancelled as to any employee(s) immediately upon discovery by the insured, or, if the insured be a partnership, by any partner thereof, of any fraudulent or dishonest act on the part of such employee". X and Y permitted the salesmen to pay themselves out of cash collected, and once a week they would settle accounts. From time to time salesmen would overdraft their accounts, and in such cases they had just that much less coming to them in the future. B overdrew his account $125 and P made arrangements for its repayment. A few days later B absconded with $1500 worth of money and jewelry. X and Y had no actual notice of the overdraft. Is the insurance company liable?

Held: Yes. A permitted overdraft giving rise to civil liability only is not a fraudulent or dishonest act avoiding the policy. Even if it were, X or Y, one of the partners, must have had notice of it. The policy says "notice by any partner". If this is ambiguous it means actual notice by a partner. Notice to P was then not notice to X or Y.
D, the owner of a lot in the City of Richmond, left unguarded an excavation adjacent to the street. A pedestrian fell into the excavation, was injured, and recovered a judgment against the City. Although D knew of the pending litigation against the City, he took no part in defending the suit. The City sued D for indemnity claiming that he was bound by the judgment. D claimed he was entitled to his day in court and that his liability was not res adjudicata.

Held: D is liable even though not a formal party to the proceedings. He had notice of the proceedings and in effect was an indemnifier or insurer (whether by operation of law or by contract is immaterial) of the City. Such a person must intervene if he wishes to protect his interests. If he does not he is bound by the judgment. This principle was also applied in a Va. case (148 S.E. 815). Where insured promptly notified title guaranty company and called on it to defend the suit against the insured involving title to the insured land, and title company declined to defend, it was as much bound by the judgment therein against insured as if it had been formally impleaded.

SURETYSHIP CORPORATIONS No duty to other group

There were two groups of dissenting stockholders (which we will call the A group and the B group) who were demanding the fair value of their stock as of the day before consolidation as per V132-43. The consolidated corporation instituted an appraisal suit against Group B in order to determine the value of the stock which was determined to be $55 per share. The A Group knew of the proceedings but did not intervene. The Consolidated Corporation claims that the A group is bound by the judgment on the principle just laid down in the case immediately preceding this.

Held: Not so bound. Everyone is entitled to his day in court. In the preceding cases there was a legal duty to indemnify or insure and an opportunity to intervene. In this case there is only the letter. Group A and Group B owed no duty to the other. While Group A could have intervened it is equally true that the Consolidated Corporation could have made Group A formal defendants. Hence neither party should blame the other for failing to do what it itself could have done.

SURETYSHIP Letter of Credit Sales Trust Receipts

The D Bank wrote P as follows: "Our customer, H, has been granted a line of credit with this bank for the purpose of floor planning his purchases of major appliances. If you will draft on him at this bank attaching invoice, drafts will be honored as soon as received." The expression, "floor planning his purchases," means that H was to give the D Bank trust receipts for the appliances whereby he agreed to keep the particular purchases apart from his other stock and to apply the proceeds of their sales to the payment of his indebtedness to the D Bank. P sent shipments to H from time to time, drawing 7 drafts all of which were promptly honored by the D Bank. Afterwards P merely sent invoices but these were promptly paid too. Some of these invoices were for $39 vacuum cleaners. Others were for more expensive electrical appliances. Later H became bankrupt. He had failed to execute trust receipts on the last three shipments one of which was for twenty $39 vacuum cleaners. The D Bank refused payment contending that $39 vacuum cleaners were not major appliances, and that the issuing of trust receipts by H was a condition precedent to its liability.

Held: For P. When the D Bank paid invoices for $39 vacuum cleaners it interpreted its own contract and cannot now claim they were not major appliances. The letter set forth above is a letter of credit, and when P sold to H relying on said letter of credit and sending invoices to the D Bank at first with drafts attached and later without drafts which were all honored the D Bank incurred a direct liability to P, and not a liability as surety or guarantor of H. There was also a second and independent contract between the D Bank and H. The fact that H's failure to give trust receipts to the D Bank was a breach of this last contract had no effect on the D Bank's liability to P under its letter of credit to him.
D was president of the X Corporation which owed P $4,000. D for a new and independent consideration (promise on P's part to get stock for him from a third party so that D would have a controlling interest and promise by P to withhold suit against corporation) orally promised to pay P that sum. D, however, when tendered the stock refused to accept it and also refused to pay the $4,000. Is the statute of frauds about answering for the debt of another a good defense?

Held: Yes. The following analysis was made: "Every collateral promise to answer for the debt *** of another person, is within the statute, and void if not in writing; but original undertakings need not be in writing ***. The difficulty is in determining under which head the undertaking in any particular case is to be classed."

"If the original contractor remains liable and the undertaking of the new party is merely that of surety or guarantor, the undertaking of the latter is collateral and within the statute of frauds." In the instant case there was no novation and the corporation continued to be liable. Hence D's promise was within the statute and he cannot be held liable unless there is a memorandum in writing signed by him.

SURETYSHIP Contracts Illegality

P's new buildings leaked and he hired D, a contractor, to remedy the defects at the contract price of $20,000. S was surety on D's contract. D did not comply with the statute requiring contractors who do jobs of $20,000 or more to procure a license. P paid the $20,000 when it became due, but because of defective work the buildings very shortly leaked as bad as before. D was unable to remedy the trouble, and P had to get another contractor to do a proper job at a cost of $22,000. Is D liable? Is S liable?

Held: Both are liable. The statute was passed for the protection of the general public. P was a member of the class to be protected and hence is not regarded as being equally to blame. While D could not have legally collected if P had not paid him, P, as an innocent party, can collect damages for breach of contract. Since D is personally liable his surety S is also liable. "Where the non-enforcement of an illegal contract would impose a penalty on those intended to be protected by the law, the obligation will be enforced against the surety."

SURETYSHIP Contribution

State, City and Railroad entered into an agreement to effect the elimination of a grade crossing. This constituted a joint venture for the mutual advantage of all. State agreed to do the actual construction work and to require of its contractors insurance against liability for property damage. State let the contract for this work to J who took out a bond protecting State with P. J caused $125,000 worth of property damage to X, and P paid X. P is now seeking contribution from City.

Held: No contribution. State insisted on J carrying insurance for the benefit of each party to the agreement. A surety cannot recover contribution from one meant to be protected by the suretyship bond as that would defeat in part at least the purpose of requiring the bond.
SURETYSHIP

S wrote C, "In consideration of your supplying PD with goods, I guarantee you the payment of, and I promise to pay, such sums of money as PD shall owe for goods purchased at any time, provided that at no time shall the total indebtedness of PD to you exceed the sum of $2,500." C extended credit to PD in the amount of $3,063. PD paid $660 on account but failed to pay the rest. C sued S for the amount still due which is less than $2,500. The trial court gave summary judgment for S. Was this error?

Held: No error. S's promise is clearly conditional and the condition has been violated. S's reason for inserting the condition was a reasonable one as he might not want PD to become so involved in debt that he might not be able to repay, in large part at least, what S had paid for him. The condition set forth above does more than merely limit S's liability to not over $2,500.

SURETYSHIP

C was general contractor, S was surety and co-signer with C of a bond to the effect that C would construct a certain house and pay in full all laborers and materialmen. P was an unpaid materialman due to C's bankruptcy before the building was completed. P did not take any steps to file a mechanics' lien. He did not file any claim against C in the bankruptcy proceedings, and he gave no notice to S that C had failed to pay him until shortly before this suit by P against S was instituted. S claims to be discharged because of each of the above. Nevertheless the trial court gave judgment for P.

Held: Affirmed. S was a surety and not a guarantor. The Supreme Court of Appeals distinguishes them as follows:

"...Guaranty is distinguished from suretyship in being a secondary, while the latter is a primary obligation.

"The contract of the guarantor is his own separate undertaking, in which the principal does not join. The guarantor contracts to pay, if, by the use of due diligence, the debt cannot be made out of the principal debtor, while the surety undertakes directly for the payment, and so is responsible at once if the principal debtor makes default; or, in other words, guaranty is an undertaking that the debtor shall pay; suretyship, that the debt shall be paid.

"A guarantor is often discharged by the indulgence of the creditor to the principal, and is usually not responsible unless notified of the default of the principal. A surety, on the other hand, is an original promiser and debtor, and is held ordinarily to know every default of his principal. A surety, by his contract, undertakes to pay if the debtor do not; the guarantor undertakes to pay if the debtor cannot. The one is insurer of the debt; the other an insurer of the solvency of the debtor."

"It is certain that in most cases 'the joint execution of a contract by the principal and another operates to exclude the idea of a guaranty and that in all cases such fact is an index pointing to suretyship.'"

It follows that S was not entitled to notice of non-payment unless the bond expressly so provided. (The bond in the instant case provided for notice in case of non-performance by C but not in case of non-payment by C). A mere failure to enforce a lien or to file a claim in bankruptcy on the part of the creditor is not the same thing as affirmatively releasing security given to the creditor by the principal debtor. While the latter discharges a surety pro tanto, the former has no such effect in and of itself.
TRUSTS To see for Charitable Purposes 1900. Substitute Trust 134 S.E.199.
1. Is a devise of property to a trustee to be disposed of for such charitable purposes as the trustee may deem proper, valid?
2. If such a trustee were to die (assuming provision valid) what would happen to the estate not disposed of by the trustee?
   Held: (1) Before 1914 such a gift would have been invalid for uncertainty.
   (2) Va. 55-2: as amended in 1914 validates this gift. Learn substance of code, "And every gift—made for charitable purposes—shall be as valid as if made to or for the benefit of a certain natural person."
   (3) Va. 22-1a provides for substitute trustees even in case of discretionary trusts.

TRUSTS and FIDUCIARIES Failure to settle back. Executor vs. 497. 187 S.E.442
A fiduciary who fails to promptly settle his accounts in the manner required by law forfeits his commissions.
An executor who is also an attorney is not entitled to a reasonable attorney's fee (at least where there is no evidence that he intended to charge one).
In 1 Washington (1 Va.) 246 the general rule was laid down that the personal representative was chargeable with interest at the rate of 6% per annum on the balance in his hands due to the estate of the decedent at the end of each year.

TRUSTS 193 S.E.514.
One Triplett in his will created a trust to establish a business college for all deserving men, trustees to select the students. Objection: 1. Does not say whether for white or colored and is hence too indefinite. 2. Applies to non-residents as well as to residents. Are those objections valid?
As to (1) it would be presumed that trustees would obey law with respect to selection of students from one race exclusively.
As to (2) it is sufficient that the school is to be in this state.
Held a valid charitable trust under statute 1914. Note that prior to 1914 charitable trusts were not allowed in Virginia the Statute of Elizabeth having been repealed in Virginia at an early date.

TRUSTS Trustor wants trust property back 196 S.E.593.
R entered into a Trust Agreement with F whereby certain cash and securities were to be held by F as follows:
To pay the net income to R for life, neither the corpus nor the income of the trust fund to be subject to alienation by R, and R not to have the power to change the trust agreement. At R's death testamentary to R's legatees; in case R dies intestate then to R's heirs at law.
Later R married, and she now wants the trust property. Should the trustees, F, give it to her?
Held: Yes. Her legatees and heirs have no vested interest. She retained the power to defeat any, or all of them. A gift to one's heirs or to those persons who may be his legatees conveys no interest. "In effect, the trustor has merely conveyed to the trustee a life interest in the property for the benefit of the trustor, leaving the trustee a remainder in the property."

TRUSTS Where no power to revoke has been reserved 196 S.E. at p. 594.
"It is well settled that where a valid and effective voluntary trust has been created and no power of revocation has been reserved, it cannot be revoked by the creator without the consent of the beneficiaries thereunder. If any of the beneficiaries are not in being, or are not sui juris, and hence cannot consent, the trust agreement cannot be revoked." 4339 of Trusts.
When is a co-trustee liable to the beneficiary for a breach of trust committed by the co-trustee? The court quotes with approval R/224 of the Law of Trusts, if he (a) participates in a breach of trust committed by his co-trustee; or (b) improperly delegates the administration of the trust to his co-trustee; or (c) approves or acquiesces in or conceals a breach of trust committed by his co-trustee; or (d) by his failure to exercise reasonable care in the administration of the trust he enabled his co-trustee to commit a breach of trust; or (e) neglects to take proper steps to compel his co-trustee to redress a breach of trust.

TRUSTS

1 8.2d 506,512.

The or legal listing the type of securities in which fiduciaries may invest, is a statute furnishing inutility to those who invest according to the provisions of the statute, but these provisions are purely permissive and not mandatory.

Hence if a trustee exercises his care to be expected of the average prudent man in the management of his own affairs, he is not liable for loss that befalls in spite of the exercise of such care.

TRUSTS

K was the owner of Staunton Military Academy, and owned all the stock in the corporation. He gave one Rowland a monopoly on the sale of uniforms. He also employed one Russell as superintendent and gave him 6% commission in the purchase of uniforms so he could not leave the school for a better position.

K died. He created a testamentary trust for the benefit of his wife and children. The corpus of this trust was the shares of stock in the corporation. Rowland and Russell were testamentary trustees. Russell continued to take his 6% commission. His salary was increased to $10,000. Rowland was also a director. K's widow and minor children knew nothing of the secret commission of 6% on uniforms. Before his death Russell collected over $57,000 in commissions.

Bill in equity to force Rowland to pay the Academy this sum with interest.

Held: Rowland is liable. He was a director and a trustee. He owed a duty to the Academy that conflicted with his personal interest. Rowland and Russell were joint wrongdoers. The Academy could have gotten the uniforms 6% cheaper. All of the parties interested did not know the facts after K's death.

TRUSTS—Wills

T's will read, "WILL: I am very sick. I don't think I can get well. I want you to have my home and everything and you take care of Lula the best you can (signed) T." It is entirely in T's handwriting. What are Lula's rights, if any?

Held: No. Reason 1. There must be more than mere precatory words or mere words of suggestion.

2. In order to be a precatory trust testator must point out with clearness and certainty the subject matter of the intended trust. If this subject matter is so uncertain as to be incapable of enforcement no trust will be created. It does not appear that any property was meant to be charged. The words used constitute a personal charge rather than a property charge.

Note: The court refused to admit in evidence a letter to Lula that T intended to leave her property to her on the ground that T's will was unambiguous and hence there was no need to interpret and no need for extrinsic evidence.

TRUSTS—Bills and Notes

C, a real estate agent, sold a house to S, and S made out the check to C instead of to the owner, Coleman. C deposited this check in the D Bank telling the cashier thereof to collect it as quickly as possible as $2.751 of it belonged to Coleman. C sent Coleman a check for that amount. Shortly thereafter C became bankrupt. He owed the D Bank $11,000. Coleman had not yet presented the check when he did the D Bank refused payment. Coleman then filed a bill in equity against the D Bank to compel payment. Discuss.
The weight of authority and the rule in Virginia is that "where trust funds are deposited with a bank, and the bank has notice of the trust character, it has no right to appropriate them to the payment of the individual debt of the depositor due from him to it."

"That a court of equity had jurisdiction to determine the matter is beyond question for the reason that the suit was instituted to enforce a trust."

**TRUSTS**

Wrongful Sale of Trust Prop - Title of Purchaser 12 S.B. 2d 763.

If the trustee in a deed of trust wrongfully sells the property what does the purchaser get?

Note: (1) The deed is not void, so the trustee no longer has an interest.
(2) At law the purchaser gets the legal title.
(3) But in equity he succeeds to the interest of the trustee only and holds the property on the same trusts assuming of course that he has actual or constructive notice of the trust.

**TRUSTS**

Director dealing with Corporation 177 Va.168,662.

W was a director and stockholder in a retail drug store in Staunton. He was also a testamentary trustee of the Staunton Military Academy.

It appears that the Academy bought a great many items from the drug store.

Is this a reason why W should be removed as a trustee at the request of the beneficiaries of the trust?

Held: No. The transactions were open and not secret. They were in the ordinary course of business and at regular prices less 10% discount. "...it was held that a director could deal with his corporation and sell his property to it so long as the transaction is fair, open, and honest, and the corporation is represented by competent agents."

**TRUSTS**

Removal of Trustee 177 Va.658,676.

1. All other things being equal, which requires more cause for removal, a trustee appointed by a court of equity, or a trustee appointed by the creator of the trust?

A. The latter, for here the court will take into consideration the fact that the creator of the trust especially wanted that particular trustee.

2. Is friction between the trustee and beneficiary alone cause for removal?

A. No. The fault may be with the beneficiary.

3. What is the real guide of a court in cases in which a removal is asked?

A. "In all cases, the real guide is whether or not it is best for the trust estate that the trustee be removed."

**TRUSTS**

Property 177 Va.299.

A mother M created a spendthrift trust in favor of her son S, for his life, and at his death to his children who survive him, children of deceased children to take their parents' share if they should survive S.

S accepted the benefits of this arrangement from 1928 to 1940 when he formally renounced same. His children then demanded the corpus of the estate on the theory that renunciation accelerated their vested remainders. Discuss.

The trustee should not say the corpus to the children. A remainder will not be accelerated if such acceleration would defeat the intention of the creator, here it intended to protect S for the rest of his life. If we allow acceleration S's children might donate the property to S and thus enable S's creditors to reach the property.

Besides, upon S's death there may be more children, or there may be children of deceased children. To give the present set of children the property now might prevent S's expressly designated remainders from getting the property thus still further defeating S's intentions. Where a spendthrift trust is one incapable the beneficiary cannot terminate it by releasing his interest therein. N. of Law of Trusts #337.
TRUSTS—4 to 3 decision

S created a trust orally and gratuitously in X as trustee, X to invest the $2,000 corpus and pay the interest thereon to Martha Washington College for the purpose of keeping "Litchfield Hall" in repair in order to perpetuate the Litchfield name. The College went out of existence and conveyed all its property to Emory, and Henry which latter college leased Litchfield to a commercial hotel for 25 years, and it is now called to Mt. Inn and Tavern. S now wishes the $2,000 to go to X personally. Is X entitled to the $2,000?

Held: (by 4 judges) Since the gift was absolute and no power to revoke was reserved S has no further interest in the fund, and hence no right to give it to X.

"There is no such thing as a resulting trust where the property is once given outright to charity". The settlor cannot enforce the trust, but only the trustee, the attorney general, or the beneficiaries. The 3 dissenting judges said that when a trust fails, a corpus reverts to the creator of the trust and the trustee holds the property as a resulting trustee for him.

TRUSTS  Negligence of Trustee  180 Va. 34.

(a) T, a trustee, let the statute of limitations run on some of the notes that constituted a portion of the trust res. Is he liable?

(b) T, a trustee, invested the trust funds in a bond secured by a deed of trust on an undivided one-half interest in a farm owned by his sister-in-law. T owned the other half interest and was manager of the entire farm. When the property was sold after T's death there was a $3,000 deficiency. Is T's estate liable?

 Held: As to part (a), it is negligence for a trustee to let the statute run and the trustee is personally liable.

As to part (b), note: (1) that the security is not one of the classes of securities described in Code 25-22 and hence the trustee does not have the security furnished by the statute. Note (2) that even though a trustee does not invest in the securities therein mentioned he is not liable for a loss unless he has been negligent, or violated some fiduciary duty. Note (3) that T in his case did violate a fiduciary duty in that he placed himself in a compromising position. As trustee he was under a duty to act promptly if the interest of the beneficiary so required. As a relative, and as a co-owner of the trust property he might wish to be indulgent. He has in effect dealt with the trust property personally and in such cases the transactions are voidable by the beneficiaries without giving any reason, or alleging any fraud. P. 95. Hence T's estate is liable for the deficiency.

TRUSTS—Wills and Administration  176 Va. 501.

Property was willed to testator's widow absolutely for her life, she to have the full use and control thereof, and at her death to testator's children. The administrator turned over the property to the widow without requiring any bond. The widow then attempted to continue her husband's business, and borrowed money from the S Bank on the security of part of the personal property. The widow, in spite of excellent management lost everything in the great depression. Contest between the children on the one part and the S Bank and administrator on the other part.

Held: (1) That where testator gives the management of the property as well as the income of a life tenant, the life tenant is entitled to the possession of the property without putting up a refunding bond. Hence no cause of action against the administrator.

(2) That under such circumstances the life tenant is a trustee or quasi-trustee of the corpus for the benefit of remaindermen, and as such must use due diligence. During the depression it was common good business practice to attempt to save something by sacrificing the rest, and if without fault the life tenant loses the whole there is no liability. As manager she was empowered to borrow, and pledge the personal property for the purpose of attempting to save the rest, and hence the S Bank has a right to retain the property so pledged as security for the loan made by it.
I willed my property "to the Trustees of some Methodist Institution for the poor or what in my Executor's judgment is worthy of the same."
This clause was attacked by T's heirs. Is it valid?
Held: to be a valid charitable trust, now allowed by code provisions 587, 588 and 629 &c. The court said (11.475-476) "A number of cases which have been decided by this court are cited which hold that such general expressions as "to the poor", "for the benefit of the poor", or "for the relief of the poor" and other life general expressions, are too indefinite and uncertain to be enforceable. But this case is not of that sort. The gift is not to the poor but to some Methodist institution or institutions for the poor or what in the judgment of the executor is worthy of the same. The taking of the gift and the application of its benefits is perfectly plain. But if there is any doubt about any particular Methodist institution satisfying the intention of the testator, in the opinion of his executor, then he is authorized to employ his own judgment as to what prospective recipient is worthy. We use no legalism about this. They are just plain and reasonable deductions."

TRUSTS 179 Va. 377.
X claimed that an express trust of real property fully recorded was void for indefiniteness, and that the parol evidence rule prohibited parol evidence being considered to make the matter more definite.
Held: Since parol trusts of realty are valid in Virginia, a fortiori one that is partly in writing and partly oral is valid, and the parol evidence rule is inapplicable. Remember that Virginia has not adopted that section of the English Statute of Frauds dealing with trusts of realty. Our safeguard against fraud is insistence that the evidence creating a parol trust of realty be unequivocal, clear, and convincing.

Q.6. Jones conveys his ship-building business in Norfolk, Va., to B, in trust for C, and directs that B continue the business and pay the profits to C. B accepts the trust and after operating the business for sometime he purchases and operates a ship-building business in Portsmouth in his own name. The Portsmouth business is located within half a mile of the Norfolk business. C, upon learning of this, brings a suit to enjoin B from operating the Portsmouth business. What decree? A. Since B accepted the trust he owes a duty of the utmost good faith to the beneficiary thereof and himself is not within his rights in starting competing business to the detriment of the beneficiary while still acting as trustee. Hence the injunction should be granted.

Q.12. A is trustee of certain securities which constitute the whole of the trust property, for the benefit of X. A misappropriates these securities and by proper action is removed as trustee. B is then appointed successor trustee. B demands the securities of A but A refuses to return them or to pay their value. There was not sufficient money in the trust estate to bring a suit against A. B does not notify the beneficiaries of the situation or ask them to advance the money necessary to maintain a suit against A. A is solvent at the time but later declares insolvent. X brings a suit against B for the value of the securities. Can he recover? A. While "B" was under no duty to advance the cost of the suit personally, he was under a duty to use due care to collect from A. The least he could have done was to notify the beneficiaries of the trust of the situation, so that they would have an opportunity to advance the money necessary. Failure to give such notice was a failure to use due care and renders B liable to the extent that by such failure he was the cause of the loss to the beneficiaries.
TRUSTS—Property, Evidence 1605.

A real estate corporation which contracted to sell lots in a certain subdivision, and agreed to put aside 10% of all receipts in a fund to be used, when 75% of the lots would be sold, for the establishment and maintenance of a community house, playground, or park. When the deeds were given no mention of the above agreement was made. The company disregarded the agreement and appropriated all the money to its own use. It was held: (1) that the contract merged in the deed and was hence discharged; (2) that the transaction violated the rule against perpetuities as 75% of the lots might not be sold within lives in being and 21 years; (3) that there was no trust res, and hence no trust.

TRUSTS—Spendthrift Trusts—Allman Case 181 Va. 497.

A by will created a spendthrift trust to the extent of $65,000 corpus the income of which was to be paid to A's son, and when he became 35 years of age he was to receive one-half the corpus. The will provided that the trust was created pursuant to the provisions of Va. 55-19 which provides that if the creator so indicates neither the corpus to the extent of $100,000 or the income shall be subject to the beneficiaries' liabilities, or shall be assignable. When A's son was 23 years of age he contracted to assign the one-half interest of the corpus that would be due him on his 35th birthday to X. But before becoming 35 he changed his mind. Should the trustee pay the $32,500 to A's son, or to his assignee X, upon the son becoming 35?

Held: A's son is entitled to the money. The contract to assign violates the policy of Va. 55-19 which expressly states that it is not assignable. The creator of the trust want to protect the trust from any such assignment, or any liability of the beneficiary including a breach of contract even if the contract to assign were valid. Notes: (1) The spendthrift trust must be for the maintenance and support of the "spendthrift" who need not be a spendthrift. (2) Such trusts were invalid in Virginia until permitted by statute in the principal sum of not to exceed $100,000.

TRUSTS—Trust of Debt. 181 Va. 725.

Property was devised by wife to husband, H, for his life, H to pay $50 per month out of the net income from the property to D, a daughter. H got some $3,000 behind in his payments. To what extent if at all, is the debt barred by the statute of limitations or laches?

Held: This is not a new debt, but an equitable charge on his life estate. H was to pay the $50 out of the income. He was not within his rights in using all the income as his own and paying the $50 per month out of other assets. Where the parties are in a fiduciary relationship reoccurrence by the beneficiary without a denial or repudiation of the trust does not constitute laches, and the statute of limitations about the payment of debt has no application.

Note: In this case D's husband owed H $4,000. Held, one judge dissenting, that a set-off against D's husband was not a set-off against D even though D had received considerable advantage from the $4,000. Set-offs must be mutual to be used one against another.

TRUSTS 181 Va. 960.

The beneficiary of a trust filed a bill in equity charging the trustee with gross mismanagement of the trust and demanding his removal. The trustee hired counsel to defend himself. The court found the charges invalid, found the trustee to have managed the estate exceedingly well, and refused to remove him. It is the trustee entitled to collect his counsel fees out of the trust estate or, if there is none.
the beneficiary who filed the bill, or must he pay his own counsel?

Hold: (two judges dissenting) that he is entitled to reimbursement from the estate for all his costs including counsel fees, and if there is no trust estate within the control of the court then from the beneficiary. This is a legitimate expense connected with the trust estate. Otherwise who would wish to be a trustee, or to fight an unjust suit for removal? The trustee has nothing to gain personally, so he should be protected from the possibility of personal loss where the charges against him are unrecognized.

TRUSTS

Exception to Rule that Guardian Can Collect Casual Amounts

G, the guardian of an incompetent, lent $5,000 to X taking back a bond and deed of trust to secure same. T was the trustee of the deed of trust. On default G asked T to sell. T agreed to do so. By the terms of the sale one-third or more was to be paid at once in cash. T wished the property to be sold to a friend of his. At the bidding the friend bid $2,000 and G, in his capacity as guardian bid $2,500, and offered to pay all costs of the sale in cash, and credit the balance on the bond. T refused to do this saying (1) that he must have $333.33 cash, and (2) that a guardian had no right to convert personally into reality without a court's consent. Result?

Hold: (1) Since all the cash, over and above expenses paid to G, his offer was the equivalent of cash. (2) That there is an exception to the rule that a guardian cannot change personally into reality, or vice versa, without his court's consent when he does this for the purpose of protecting his security. (In the instant case X was insolvent) Not: The reason for the above rule is that reality and personality may go to different parties in the event of the death intestate of the incompetent.

TRUSTS

10 S.E. 2d 507, 512.

If a trustee buys bonds in his own name and does not convert them as trust property he is liable for any loss whether due to his fault or not. Otherwise if the investment was profitable he would be tempted to claim it as his own, and if it were unprofitable he might later mark it as a trust investment and shift the loss to the beneficiary.

But where the bonds were purchased by an administrator in his own name (to avoid red tape when he might wish to sell them) and were placed in a separate envelope and marked in pencil to what estate they belonged, the above rule has no application (Chief Justice Campbell ably dissenting on pp 514 and 515.)

For Exam. June 1939.

Smith, the owner of a valuable farm in Augusta County, entered into an agreement, which was reduced to writing and signed by him, with Jones that if he Jones would live with him and act as the manager of his farm he would pay the said Jones for his services at the rate of $50 per month and would leave a will devising the said farm to him in fee at his (Smith's) death. Jones did not sign this paper but complied with all the conditions thereof. Smith died without having made a will, leaving two nephews, the sons of a deceased sister. These latter entered upon the farm and refused to recognize any claim of the part of Jones thereto. Jones consulted you as to his rights. What advice would you give him?

The statute of frauds only requires that the party to be charged sign the memorandum, and the party to be charged in the person against whom one is asserting rights (in this case Smith, his nephews being in privity with him). Since Smith has received Jones' performance there is no question of lack of necessity involved. The nephews are not bona fide purchasers for value, and equity will hold them as trustees of the land for Jones.

TRUSTS

A owned a realty and placed it in the hands of B for sale, asking $5,000. B, believing that the land was worth more than this, organized a corporation, had most of the stock issued in the name of his finance in order to pay $5,000 for it, and then informed A that he (B) had an offer of $6,000 for the land from "a client of my office." A worked without knowledge of B's relation to the corporation which sold it out in
parcels over a period of three years at a total profit of $30,000. A later learned of this and of the history of the corporation and brought suit against B and the corporation to recover $30,000. What result and why?

Judgment for A. An agent owes a duty of loyalty to his principal and must act to him for any secret profit. A court of equity will hold B and the corporation (which is here B's alter ego) as constructive trustees for any profit so made.

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C had lent D $1,000 and held D's note for that amount which was past due. C was in bed and said to D "Here, take this note and use the money to pay my funeral expenses, when I am gone, and keep the rest." D consented and took the note. Later C died, and D paid $400 out of his own funds for the expenses of a reasonable funeral for C. C's executor learned of the transaction and sued D on the note for $1,000. D claimed he was a trustee of the note for the purpose of paying C's funeral expenses and keeping the balance for himself. What result and why?

The defense urged here is bad since a man cannot be trustee of a debt due to himself by himself as no man can sue himself.

X owed a large block of stock in the C corporation. He persuaded S to accept a job as head accountant and agreed with S to protect him in that job should X die. Accordingly X made a will, and left the stock to T as trustee (1) for the benefit of X's mother for life and at her death to A absolutely and (2) the trustee was to vote said stock in such a way as to assure S his job as long as his work was satisfactory. X's mother died, later X died, and later the C corporation discharged S. S claims that the corporation had no such power as he was the beneficiary of an employment trust.

Hold: (1) The C Corporation was not a party to any contract, and hence was not bound to keep S. (2) That A has the stock absolutely and the trust (if there was meant to be one) never came into being as the mother died first. If X had intended something different he would have changed his will after the death of his mother.

TRUSTS Trustee de son tort (by his own wrong) Set-off 183 Va. 227, 237.
X was a merchant. He owed B $1,000 on a note, and he owed C $2,000 for goods sold by C to X on credit. X skipped out, no one knew where. C seized the premises, entered and sold D all the goods in the store. D had an attachment issued which was levied upon the goods on the premises just before the sale by C to D and served on C and D. C contended that since he had converted X's goods X could sue him for conversion, or waive the tort against in assumpsit, in which case C could take advantage by way of set-off of the fact that X owed him. Is this argument sound?

Hold: No. When C stopped in and sold X's property without any authority he became a trustee de son tort. Set-offs can be used only between persons who owe each other in the same capacity. Since C, the trustee, owed X in his capacity as trustee, and since X owed C, the trustee, personally the debts cannot be set-off against each other. To allow that would mean that C might be his own wrongful act be paid in full while other creditors of X received nothing.

Notes: (1) The conversion by C is void as to all creditors of X since it is a "sale" not in the usual course of business and within the terms of the bulk sales act Va. 56-53.
(2) The attachment was valid even if goods were in hands of a third party. The lien of the attachment on tangible property arose when the officer levied upon the property or served the writ of attachment on a party in possession named as a co-defendant.

TRUSTS—Spendthrift Trusts for oneself
X, when 21 years of age inherited $100,000. He paid this sum to Y who then created a $100,000 spendthrift trust in favor of X. Years later X became heavily indebted. Can his creditors reach the corpus of the spendthrift trust? Yes. No one can evade the payment of his debts by creating a spendthrift trust for himself directly or indirectly.
When X took a deed to Blackacre she orally stated that she was buying it for her
daughter. Is she a trustee for her
daughter?

Yes. Virginia has not adopted the section of the English Statute of Frauds requiring
that trusts of realty be evidenced by a writing. Consequently they may be by
parol. But, the evidence creating a parol trust must be clear and convincing. Where
the witnesses are not sure, have acted inconsistently with their testimony, and
some testify one way, and some another, and are all of equal credibility the party
claiming that there is a parol trust has not carried the burden required that it be
shown by evidence that is clear and convincing.

H and W were a devoted couple. W by the last clause of her will left all the rest
of her property to a Trustee on the following trust, to wit: that he pay H $150 per
month— if H should need more then the trustee could use more. H made a will leaving
this property to T. On H's death W's heirs claimed the property on the theory of a
resulting trust in their favor.

Held: W meant for H to have an equitable estate as large as the trustee's legal
estate. The terms of the trust were meant as a protection for H, and not to cut down
his estate. There was no limitation over of the corpus on H's death. Hence H's
legatee succeeds to H's interest and W's heirs get nothing.

T died. The sixth clause of his will left the bulk of his property to trustees to
be selected in a designated way, said trustees to use the property for the building
and maintenance of a home for destitute and dependent aged white people living in
Wythe County, the trustees to select the number to be benefited and to supervise the
details. The amount available for all this turned out to be only $93,000 and his
residence. The trial court held that this was not near enough for the purpose intend­
ed and hence the trust was void.

Held: Reversed on appeal. Evidence indicated that it would be possible to provide
for a few inmates, and that additional funds might be available from other sources.
The fact that there was not enough to carry the plan out on a grand scale should not
defeat the testator's desires to help the aged as best he could.

Notes:

(1) The court reached this conclusion without applying the cy pres doctrine,
or the kindred doctrine of approximation.

(2) Va.55-31 passed in 1946 validates the cy pres doctrine.

(3) It was urged that the gift was void for indefiniteness. Since the 1914 act
now Va.55-26 every devise made for charitable purposes is just as valid as if made to
a certain natural person.

(4) It was urged that the gift violated the rule against perpetuities as the
trustees might not be chosen within 21 years and lives in being.

Held: The estate vests at once—only the enjoyment is postponed—and hence the rule
is not violated.
TRUSTS—PROPERTY

X made a will leaving all his property to E on the following trusts: To pay one sixth the income to the Sheltering Arms hospital, one sixth to the R Church, and one sixth to the white park of P County. The other one half of the income to be accumulated for 125 years and then the corpus to be sold and one third of the proceeds of the corpus and the accumulation to be paid each as above stated. X's heirs contended that the will was void for uncertainty and that it violated the rule against perpetuities.

Held: The provisions are valid as charitable trusts. Any gift in trust for an indefinite beneficiary which is promotive of science, or tends to the enlightenment or amelioration of the condition of mankind or lightens the burdens of government is a charitable trust and under the ultimate control of a court of equity. If the accumulation for 125 years eventually proves unreasonable then a court of equity may take proper action. In the meantime the trust is valid. Note: In 186 Va. 77 a bequest of all testator's property for charitable purposes was held good under the Virginia Code 587 (now V. 55-26) "every devise made for charitable purposes is just as valid as a devise made to a certain natural person or for his benefit."
Deceased delivered 13 life insurance policies to the Central National Bank, proceeds to be held in trust for his wife and children upon his death and grandchildren were given contingent rights. According to the trust instrument, "On the written demand of insured, the trustee shall deliver to him any or all of the policies held under the terms of this agreement. If this agreement be revoked by the insured, he shall pay a revocation fee." In his will, and without prior notice to the Bank, deceased revoked the trust and directed that his executors pay the revocation fee and distribute the life insurance proceeds directly to his wife and children. Was the revocation valid?

Held: No. Where a valid trust has been created, the settlor cannot revoke it without the consent of the cestui que trust unless he has reserved the right to revoke. If a particular mode of revocation be specified, it must be strictly followed if the revocation is to be effective. The weight of authority is that the maker of a trust who has reserved the right to revoke it by giving a written notice to the trustee cannot revoke it by his last will, but must do so by notice in writing during his lifetime.

Note: In the above case all the beneficiaries who were sui juris agreed to the revocation. But the grandchildren were not sui juris and were incapable of consenting.

Restatement of Trusts, comment "f", section 320(1) reads, "If the settlor reserves a power to revoke the trust by a transaction inter vivos, as, for example, by a notice to the trustee, he cannot revoke the trust by his will."

TRUSTS Rule against Perpetuities Income to school children 192 Va.135.

T left his property by will to the B Bank to invest same and divide the net income on the last school day of each calendar year before Easter and also before Christmas into as many equal parts as there are children in the first, second and third grades of the John Kerr School of the City of Winchester, and to pay one of such equal parts to each child in such grades, to be used by such child in the furtherance of his or her obtaining of an education. Is the trust valid?

Held: No. It is not a charitable trust, (1) because beneficiaries are definite, (2) because each child is to receive the money whether he needs it or not, (3) because it will not actually be used for educational purposes but for the satisfaction of childish desires at a time when education is not particularly on their minds. The fact that it is for a benevolent purpose is not enough to make it a charitable trust. The cy pres doctrine cannot be used to change an ordinary trust into a charitable trust. Since it is not a charitable trust the rule against perpetuities must be remorselessly applied, and the trust fails since some of the beneficiaries might become such at a time more remote than lives in being and 21 years.

TRUSTS Requests to Churches 1/100,000 limitation 193 Va.136

S died. She left $375,000 to trustees designated in her will. The trustees were directed to pay the income to the trustees of the B Church, or to spend the income themselves for the benefit of the B Church. This Church already had $13,000 worth of personal property. Code 57-12 provides that the trustees of a church shall not take or hold at any one time money, securities, or other personal estate exceeding in the aggregate, exclusive of certain books and furniture, the sum of $100,000. It is urged that a gift to the will trustees of $375,000 for the church is not a gift to the church trustees.

Held: The gift is so far as it exceeds $37,000 is void. One cannot do indirectly what he cannot do directly. The equitable or beneficial title to the $375,000 is personal property. Wealth is power, and the whole history of religious organizations that have been allowed to collect unlimited wealth is one of attempted interference in political affairs. It is the object of the statute to prevent such an eventuality. It was also held (a) in Virginia a religious trust is a special form of a charitable trust; (b) the rule against perpetuities is not applicable as this is a charitable trust; (c) any financially interested person is a proper party to object to the validity of the trust; (d) under Code 26-59 at least one of the trustees must be a resident trustee even in the case of testamentary trusts.
X died intestate seized of several tracts of land one of which was known as the Gin tract. D was one of X's heirs and was entitled to an undivided 1/24th of all X's realty. The heirs sought partition. The court ordered each tract to be sold to the highest bidder at a judicial sale. P was interested in buying the Gin tract and he made a clearly proven agreement with D for D to bid in the tract provided it was not necessary to go over $500. D bid in the Gin tract for $495, but took title in his own name. The other heirs refrained from bidding as they thought D was bidding it in for himself, and P refrained from bidding as he thought D was bidding the property in for him. When D refused to convey the Gin tract to P as per the agreement P filed a bill in equity to compel him to do so. What decree, and why?

Held: Decree for P. A fathless agent holds the property he was supposed to buy for his principal as a constructive trustee for his principal and a court of equity will order him to execute the trust. There was no evidence that P and D conspired to prevent competitive bidding at the sale (which conspiracy, had it existed, would have been void as against public policy). P could bid either personally, or by agent. If there was any stifling of the bidding it was because of D's actions and he should not be allowed to profit thereby. Note: If proper objection had been made before confirmation of the sale by the court, it is probable that the sale would not have been confirmed because of the mistaken understanding of the bidders had.

T who had a wife and one son devised Blackacre to his wife for life and at her death to his son in fee simple. Several years later he added a codicil as follows, "Recognizing the possibility that my son may die without issue it is my wish that he after providing a home for life for his widow, will Blackacre to the Trustees of the Baptist Orphanage at Salem". What is the state of the title after the deaths of T and his widow?

Held: The son has the fee simple, and the son's wife and the Orphanage have nothing. It is only the testator's wish that the son will the property to the Orphanage. Whatever charge there is is on the son and not on the land. Trusts are no longer created by preparatory words alone. The son may, at his option, carry out his father's wishes, or not, as he sees fit. Hence the son and his wife can pass a marketable title to X.

T by will left a certain portion to A and the balance of his estate one half to a certain Baptist Church and one half to a certain Parent-Teachers Association. The gift to the Church was to the Trustees. It was to be in the nature of a fund, Trustees to use the interest only. T's estate was about half personality and half realty and the Church already held all the realty it was allowed to hold but had not yet reached the new limit of $250,000 for personality. T's heirs contend the gift to A is void.

Held: They cannot raise the point. Even if it is void it would not go to the heirs but to the residuary takers as void gifts fall into the residuum.

T's heirs contend the PTA gift is void.

Held: Wrong again. The PTA is a charity. The beneficiaries are indefinite. It is formed for educational purposes.

T's heirs contend Church cannot take any portion of realty or proceeds therefrom since it already holds all the land allowed by statute.

Held: Wrong for the third time. The law favors gifts to charities. If necessary the proceeds of the realty can go to the PTA and the proceeds of the personality to the Church. But under the doctrine of equitable conversion the realty can be regarded as personality since it is only by a sale thereof that a fund can be created.
A and B are brothers and heirs of T, their father, who died intestate. A had been absent for over ten years as a fugitive from justice and owed some $5,000 in debts in Virginia. A's creditors had attached his interest in the estate. B did not disclose to A the true value of his interest. He accepted from A a deed of A's interest for $5,000 although that interest was worth some $20,000 of which more than $5,000 was personalty. Is the deed valid?

Held: It is voidable at A's election. Where a fiduciary receives a conveyance from the beneficiary it is deemed presumptively fraudulent and he had the burden of proving that it was made after full disclosure for an adequate consideration. B who was the administrator and hence in a fiduciary relationship to A has not met that burden.

In 1911 T devised his property in trust for one of his sisters and her children for their lives. The will provided that if any of the beneficiaries died without issue the share of the one so dying (had the beneficiary owned it in fee) should go to the Virginia Mechanics Institute to be used by its directors in its educational work. All of the above beneficiaries have died without issue the children of the sister having predeceased their mother. The Virginia Mechanics Institute ceased functioning in 1943. Its functions and property have been taken over by the School Board of the City of Richmond. T's heirs claim the property so devised.

Held: This was a charitable trust. The testator's main purpose was educational. The Virginia Mechanics Institute was designated as a trustee to carry out T's intent. Figuratively speaking, it is dead. A court of equity will not allow a trust to fail for want of a trustee. So both on common law principles and under Va. 55-26, 55-27, and 55-29 the trust will not fail. It was proper to appoint the School Board of the City of Richmond a substitute trustee.
X conveyed land to trustees of the Church. The land was occupied by the minister and was a permitted use of Church property under V/#7. X died and the minister died, and the land in question is not now being used for a permissible church purpose. X's heirs wish to have the conveyance set aside.

**Held:** For defendants. X conveyed the fee to the trustees of the Church, so his heirs have no further interest in the matter. Only the State can now object to the use to which the land is now being put.

G created an irrevocable inter vivos trust in 1940 and a testamentary trust on his death in 1952. By the terms of these trusts the trustee was authorized to invest in any bonds, stocks, etc. eligible for the investment of fiduciary funds under the statutes of the State of Virginia. In 1956 the "prudent man investment statute" (V/#26-45.1) considerably enlarged the investments that trustees are permitted to make unless the trust instrument itself limits the types of investments in which the trustee is permitted to invest. This statute was made applicable retroactively so as to apply to trusts that had already been created. X contended that this constituted an impairment of contract so far as the 1940 trust was concerned and an interference with the vested rights of the beneficiaries so far as the 1952 trust was concerned in violation of the federal and state constitutions as G must have had the pre-1956 statutes in mind.

Held: This contention is wholly without merit. G is presumed to have been a reasonable man, and every such man knows that investments that are good at the time may be poor at another time, and that such a change of circumstances would naturally bring about new laws as to what investments trustees can make. He would wish the trustee to conform with such new laws. Carrying out his wishes can in no sense be said to be impairing a contract or interfering with vested rights.

Mrs. W. had a son who was a helpless incompetency from birth but to whom she was extremely devoted. She purchased an annuity for his life which produced $506 per month. In her will she created a trust the income (and the corpus, if need be) to be used for the support of her son to provide him with necessities, comforts, and reasonable luxuries such as she had given him during her lifetime. He survived Mrs. W by 18 years. During this period his committee used the $506 per month annuity and sought and obtained additional funds from the trustee. It is now contended by the next of kin of the son that the fact that the son had property of his own—the annuity—was no reason why the trustee should not have supported the son in full, and that the annuities should have been accumulated for the benefit of the son and that they are now entitled to same.

Held: Contention is unsound. Whether a trust for support and maintenance is absolute and independent of the means the beneficiary may have, or merely supplementary to such means, is a question of interpretation. In the instant case there was no reason whatever for the incompetent to have an estate on his death, nor was there any intent to benefit his next of kin. The very purpose of buying the annuity was to provide him with maintenance, so the provisions in the trust were clearly meant only to supplement the annuity, and not to be the primary fund for the son's support.
Almost all of F's personal property consisted of shares of stock in the X Corporation, the stockholders of which were close relatives of F. In order to prevent his wife from getting any portion of this property F executed a trust agreement with the X Corporation whereby he transferred the stock to the X Corporation as trustee on the following trusts: (a) F is to receive $1500 per year for the rest of his life. If the dividends are insufficient as much of the corpus may be invaded as may be necessary, (b) F retained the right to vote the stock. (c) on F's death the stock is to become treasury stock. As such it would belong to the corporation and inure to the benefit of the stockholders thereof. F's wife contended the entire transaction was void as to her because it was a deliberate plan to defraud her of her share of F's estate on his death, because in reality he retained ownership since he is to receive the dividends and has the right to vote the stock, and because there can be no trust if the creator thereof has both the equitable and legal title to the subject matter of the trust.

Held: Against F's wife. She has no interest in her husband's personal property during his life time. He did not reserve the right to revoke the trust. It would require the consent of all the beneficiaries to revest the property in F after the trust became effective. There has been a present gift of a future right to the Corporation. This is not testamentary and the laws about a spouse renouncing a will have no application.

TRUSTS--Rule against Perpetuities

T died seized of a farm worth $39,000 and possessed of personalty worth $68,000. She was survived by five nieces. She disposed of this property as follows: To X as trustee for the benefit of indigent widows and maiden ladies in perpetuity, X to choose as many as he felt the farm property could support in comfort, X and his successors to be the sole judges of whom to take, but they are requested to prefer such indigent widows and maiden ladies who might be T's nieces or descendants of T's nieces. In the event no eligible persons could be found for a period of five years then the property was to go to a charity of the trustee's choice "of continued and proven service". T's heirs claimed that the gift above was void as in violation of the rule against perpetuities.

Held: Not void. The first gift is for charitable purposes. A request to prefer T's nieces and their descendants does not make this a mere personal benevolence. A gift may shift from one charitable purpose to another charitable purpose at any time in the future as such a situation comes under an exception to the rule against perpetuities since the property involved has already been taken out of the channels of trade and devoted forever to charitable purposes.

TRUSTS Right of beneficiaries to corpus

F, over the years, became the owner of Lee Telephone Company Stock worth some $7,000,000 as a result of a combination of genius, hard work, and organizational ability. He was an extremely religious man as well, and created a testamentary trust in favor of three seminaries. The telephone stock was the corpus of the trust, the trustees were his attorney, and two close business associates. The trustees were given wide discretionary powers including the right to determine when and how the stock should be sold and were even allowed by the terms of the trust instrument to buy the stock themselves. After F's death the dividends on the stock were paid regularly to the beneficiaries, but they became impatient and wished the corpus of the trust. Relying on a generally recognized rule of trust law that where all beneficiaries concur and are sui juris and no public policy will be violated the beneficiaries are entitled to delivery in kind of the trust assets thereby terminating the trust. The beneficiaries agreed to transfer their interest in the trust to T, a corporation which wished to acquire the stock. T was to pay $35.50 per share for the stock, and anything in excess of that amount which should be received by the trustees was to belong to T. It was also agreed that T would pay 50 cents more per share than any other bidder. T's attorney explained this substantially as follows: "Since we will receive everything in excess of $35.50 we will be bidding against ourselves and can outbid, any one else." The trustees over the objection of the beneficiaries and of T accepted an offer from W for $42.50 per
share. The validity of such a sale is now being questioned as confirmation thereof by the Chancellor is sought.

Held: Sale to W proper. The rule that the beneficiaries when sui juris can take charge of the trust will not be applied where the settlor's intention will clearly be defeated and no public policy subserved. Especially is this true, as here, where the trustees are given practically an absolute discretion in the exercise of wide powers. Here the trustees were experienced business men with the special knowledge required while the charitable beneficiaries knew nothing about such things.

The agreement by T to pay 50 cents more per share than any other bidder does not entitle T to the stock. Such an agreement is void because, if effective, would completely stifle all other bidding thereby resulting in lower rather than in higher price, and, if there were two or more such bids Solomon himself would be puzzled at the possibilities!