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JEWISH NATIONAL FUND (Keren Kayemeth Le Israel) Inc. (*Defendant*) — APPELLANT;

AND

THE ROYAL TRUST COMPANY, Executor of Frank Schechter, deceased (*Plaintiff*) — RESPONDENT;

AND

CLARA SCHECHTER RICHTER, ERWIN SCHECHTER, ANNA SCHECHTER ROSENZWEIG (individually and as representing Dora Goldreyer or Waldman, a person of unsound mind) PAULINE SCHECHTER HOROWITZ, IRVING G. SCHECHTER, FRANK WENDRUCK, SAMUEL WENDRUCK, DAVID WENDRUCK, ROSE WENDRUCK YOUNG, ANN WENDRUCK TAYLOR, ALBERT WENDRUCK, ALEXANDER WENDRUCK, JAMES P. WENDRUCK and PAULINE WALDMAN (*Defendants*) — RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Wills—Charities—Testator domiciled in British Columbia—Residuary estate to Jewish National Fund in New York as a trust for purchase of lands in designated countries and establishment thereon of Jewish colonies—Whether a valid charitable bequest—Law of which jurisdiction applicable.

A British Columbia testator left his residuary estate to be used by the trustees of the Jewish National Fund Inc., New York, as a continuing and separate trust for the purchase of the best lands available in Palestine, the United States of America or any British Dominion, and the establishment thereon of a Jewish colony or colonies, the land to be rented on such terms as might be decided on by the Jewish National Fund and the proceeds of the rentals to be used for the purchase of further lands on the basis outlined above. It was also provided that the receipt of the moneys by the Jewish National

*PRESENT: Cartwright, Martland, Judson, Ritchie and Spence JJ.

Fund from the Royal Trust Co. (the executor and trustee under the will) was to release them from any further responsibility.

On a motion for construction of the will, the Court held that this was a valid charitable disposition. The Court of Appeal was unanimously of the opposite opinion. The Jewish National Fund appealed to this Court and sought to have the judgment of the judge of first instance restored. The respondents were the next-of-kin of the testator and were interested in an intestacy.

In this Court the appellant, for the first time, took the position (i) that in the law of British Columbia the rule against perpetuities is one based on considerations of internal policy and does not apply to invalidate a trust of movables created by a testator domiciled in British Columbia if the trust is to be administered outside that province, (ii) that the trust created by the residuary clause was to be administered in the State of New York, (iii) that the question before the Court should be determined according to the law of that state, and (iv) that by that law the trust was charitable and valid.

Held (Judson and Spence JJ. dissenting): The appeal should be dismissed.

Per Cartwright, Martland and Ritchie JJ.: *Prima facie* the applicable law was that of British Columbia, the general rule being that the essential validity of a gift of movables is to be determined by the law of the testator's domicile. If the applicable law was that of British Columbia the bequest was invalid. The residuary clause did not require the trustees to devote the fund or its proceeds to purposes which were charitable in law and the trust was void as offending the rule against perpetuities. Unless the contrary was alleged and proved the presumption was that the law of all the other countries in which the trustees might decide to purchase was the same as that of British Columbia. A trust of movables void under the law of the testator's domicile and under that of many other countries in which the trustees were authorized to carry it out could not be rendered valid by the circumstance that the trustees were permitted, but not required, to carry it out in a country in which it would be regarded as valid.

In the circumstances of this case the place of administration would be the country in which the lands were purchased and managed; the place of residence of the trustees was irrelevant. To hold that the validity of a trust of personalty to be laid out in the purchase of land created by the will of a testator should be determined not by the law of his domicile or by the law of the situs of the land directed to be purchased (or perhaps by application of both) but by the law of the residence or the domicile of the trustee appointed to make the purchase would be contrary to authority and productive of uncertainty and inconvenience in the administration of estates.

Fordyce v. Bridges (1848), 2 Ph. 497; Re *Mitchner; Union Trustee Co. of Australia v. The Attorney-General for Australia (No. 2)*, [1922] St. R. Qd. 252; *Dunne v. Byrne,* [1912] A.C. 407, applied.

Per Judson and Spence JJ., *dissenting:* If a gift was valid by the perpetuities law of the place of administration but invalid by the perpetuities law of the testator's domicile, the governing law should be that of the place of administration. In the case at bar, the British Columbia executorship had ended. The residue was to be turned over to New York trustees upon clearly defined trusts which were recognized as valid by the law of that state. At that moment it became a New

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York trust to be administered there according to the law of the state. What difficulties of administration, if any, might be encountered outside the boundaries of that state were of no further concern to the Court of the domicile. The testator had directed the delivery of the residue to trustees in a foreign jurisdiction where the trust was valid. The administration of the trust from then on was controlled by the laws of a jurisdiction which recognized its validity. Accordingly, the appeal should be allowed.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], allowing an appeal from a judgment of Wootton J. on a motion for construction of a will. Appeal dismissed, Judson and Spence JJ. dissenting.

J. J. Robinette, Q.C., and *L. F. Lindholm*, for the appellant.

D. G. Cameron, for the respondent, Royal Trust Company.

D. M. Gordon, Q.C., and *J. C. Cowan*, for the respondents, Clara Richter *et al.*

The judgment of Cartwright, Martland and Ritchie JJ. was delivered by

CARTWRIGHT J.:—This is an appeal from a unanimous decision of the Court of Appeal for British Columbia[1] allowing an appeal from a judgment of Wootton J. and declaring that the residuary bequest to the appellant contained in the will of the late Frank Schechter is invalid and that his executor holds the property comprised in that bequest in trust for the next-of-kin of the testator.

Frank Schechter, hereinafter referred to as "the testator", died in Victoria, British Columbia, on May 2, 1961, domiciled in British Columbia. He was unmarried. He left a will dated September 17, 1932, probate of which was granted to the Royal Trust Company, the executor named in the will, on October 13, 1961.

The scheme of the will is simple. The testator appoints his executor, gives directions as to his funeral, gives legacies to two charities, gives seven legacies to relatives and then disposes of the residue of his estate in the following words:

I give and devise and bequeath all the residue of my real and personal estate unto my Trustees upon trust, to sell, call in and convert the same into money, and subject to the payments of my debts, funeral and

[1] (1964), 46 W.W.R. 577, 43 D.L.R. (2d) 417.

testamentary expenses, legacies and any duties payable on any legacies bequeathed or any real property devised by me herein, as to both capital and income to pay the same to the Jewish National Fund (Keren Kayemeth Le-Israel) Inc., 111 Fifth Avenue, New York, U.S.A. to be used by the trustees of the said Jewish National Fund as a continuing and separate trust apart from all other funds, for the purchase of a tract or tracts of the best lands obtainable, in Palestine, the United States of America or any British Dominion, and the establishment thereon of a Jewish colony or colonies, to be known as the Frank Schechter Colony or Colonies, the land to be rented on such terms as may be decided on by the Jewish National Fund, the proceeds of the said rentals to be used for the purchase of further lands on the basis outlined above, and that the receipt of such monies by the said Jewish National Fund to the Royal Trust Company, to release them from any responsibility of the said monies.

The net value of the estate after payment of debts was $351,153.53 of which $9,250 was realty and the balance personalty. The total of the pecuniary legacies mentioned above was $14,300.

The validity of the residuary bequest having been questioned by some of the next-of-kin, the executor applied to the Court by way of originating notice to have the matter determined.

In the Courts below it was the contention of the next-of-kin that the residuary clause was void for uncertainty and alternatively that it created a perpetual trust which was not charitable and therefore void. For the appellant it was argued that the residuary bequest constituted an absolute gift to it and alternatively that it was not void for uncertainty and created a good charitable trust.

After stating these submissions, Lett C.J.B.C. continued as follows:

> There was no suggestion in argument that the construction of the will is governed by any law other than that of British Columbia, since the testator was domiciled in this province prior to and at the time of his death. No argument was advanced on any question relating to the conflict of laws.

In this Court, in addition to the grounds on which it had relied below, the appellant, for the first time, took the position (i) that in the law of British Columbia the rule against perpetuities is one based on considerations of internal policy and does not apply to invalidate a trust of movables created by a testator domiciled in British Coumbia if the trust is to be administered outside that province, (ii) that the trust created by the residuary clause is to be administered in the State of New York, (iii) that

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the question before us should be determined according to the law of that state, and (iv) that by that law the trust is charitable and valid.

In my opinion, the argument that there was an absolute gift to the appellant cannot be supported; it was rejected by each of the members of the Court of Appeal and there is nothing that I can usefully add to their reasons on this point.

If the question is to be determined in accordance with the law of British Columbia I agree with the conclusion of the Court of Appeal that the residuary clause does not require the trustees to devote the fund or its proceeds to purposes which are charitable in law and that the trust is void as offending the rule against perpetuities. On this branch of the matter I am content to adopt the reasons of Davey J. A.

Turning now to the appellant's argument summarized above which was advanced for the first time in this Court it would seem that *prima facie* the applicable law is that of British Columbia. The general rule is stated in Dicey's Conflict of Laws, 7th ed. at p. 609 as follows:

> The material or essential validity of a will of movables or of any particular gift of movables contained therein is governed by the law of the testator's domicile at the time of his death.

In commenting on this rule the learned author says at pp. 610 and 611:

> It is well settled that the material or essential validity of a will of movables or of any particular gift of movables contained therein is governed by the law of the testator's domicile at the date of his death. That law determines such questions as whether the testator is bound to leave a certain proportion of his estate to his wife and children, whether legacies to charities are valid, to what extent gifts are invalid as infringing the rule against perpetuities or accumulations, whether substitutionary gifts are valid, whether gifts to attesting witnesses are valid, and so on.
>
> If the will bequeaths movables on trusts which are void for remoteness under the rule against perpetuities in force in the country of the testator's last domicile, but the movables are situated and the trust is to be administered in another country by the law of which it is valid, it has been suggested that the law of the place of administration should govern and that the trust should be valid. There is some British authority which supports this suggestion, and it seems reasonable in principle. In the United States the trust appears to be valid if it complies with the rule against perpetuities in force in either the place of administration or the testator's last domicile. The same principle should no doubt be applied to the question whether gifts to charities are valid.

In Morris and Leach, The Rule Against Perpetuities, 2nd ed., at pp. 22 and 23, the effect of the American authorities

is stated to be that a gift of movables which infringes the rule against perpetuities in force in the country of the testator's domicile does not fail if it is valid under the law of the place of administration and a gift which infringes the perpetuities law of the place of administration does not fail if it is valid under the law of the testator's domicile. This statement is followed by the following comment at p. 23:

> This may be an acceptable result if the two laws agree in general policy and differ only in detail. It might well not be acceptable to an English court if a testator domiciled in some country where there is no Rule against Perpetuities attempted to create a trust of English property, to be administered in England, which infringed the Rule.

In Cheshire, Private International Law, 6th ed. the matter is considered at pp. 573 to 577. The learned author says at p. 575:

> It should not be assumed that because a testator dies domiciled in England his will is therefore inevitably subject to all the rules of English domestic law concerned with essential validity. This fact has not always been admitted. It has been said, for instance, that whether a restraint upon marriage or a gift for masses, or a gift to a charity is valid, or whether a limitation is void as infringing the rule against perpetuities, must be determined by the *lex domicilii* of the testator no matter what the domicile of the beneficiary may be. It is submitted that this view is neither consonant with principle nor warranted by the authorities. It entirely ignores the essential difference between the right to give and the right to receive. The two are not necessarily *in pari materia*. The right of a testator to give, as for example whether he is free to bequeath the whole of his property as it pleases him or on the contrary whether he must reserve a legitimate portion for his children, is *ex necessitate* governed by the English *lex successionis* from which his testamentary power of disposition is derived. But there is no reason why this law should restrict the right of a foreign legatee to enjoy a gift in accordance with the terms of the will, provided that the legacy is valid according to his personal law and provided that the limitations imposed upon its enjoyment do not offend some rule of public policy so sacred in English eyes as to demand extra-territorial application.

and at pp. 576 and 577:

> Suppose that a testator, domiciled in England, leaves a sum of money in trust that the income thereof shall be used for purposes most conducive to the good of religion in a certain diocese in country X, and that persons domiciled in X are appointed to administer the trust. The trust is invalid by English law as not being charitable, but, if it is valid by the law of X, must the court forbid payment of the money to the trustees? Such a ruling would be indefensible. English law confines the definition of a charity within comparatively narrow limits, presumably with the object of restricting the amount of money that may be withdrawn from circulation, but it cannot justifiably claim to impose this policy upon foreign countries. The decisive factor is the law of the country where the trust is to be administered, not the law that governs the instrument of gift. No doubt, three conditions must be satisfied

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before transfer of the money to the foreign country will be authorized.

Firstly, the charitable bequest must be valid according to the law of the country where it is to be administered.

Secondly, there must be persons in that country willing and competent to undertake the task of administration.

Thirdly, the purposes for which the bequest is to be employed must not conflict with some rule of English public policy intended to operate extra-territorially. It can scarcely be maintained that a rule which confines within narrow limits the possible beneficiaries of a charitable gift is intended to be anything more than local in its operation.

For the purposes of this appeal I am prepared to assume, without finally deciding, that if the testator had directed that his residuary estate be paid to the appellant to be used by its trustees for the purchase of a tract or tracts of the best land obtainable in the State of New York to be held for the purposes set out in the residuary clause the validity of the clause should be determined by the law of the State of New York, and it would have been necessary to consider whether that law has been sufficiently proved.

But this is not what the testator has done. He has given to the trustees the choice of purchasing lands in Palestine, the United States of America or any British Dominion. I have already indicated my agreement with the conclusion of the Court of Appeal that if the applicable law is that of British Columbia the bequest is invalid. Unless the contrary is alleged and proved the presumption is that the law of all the other countries in which the trustees might decide to purchase is the same as that of British Columbia. It seems to me that a trust of movables void under the law of the testator's domicile and under that of many other countries in which the trustees are authorized to carry it out cannot be rendered valid by the circumstance that the trustees are permitted, but not required, to carry it out in a country in which it would be regarded as valid. To hold otherwise would, in my opinion, be an extension of the exception to the general rule, that the essential validity of a gift of movables is to be determined by the law of the testator's domicile, unwarranted by the two cases of *Fordyce v. Bridges*[1] and *Re Mitchner; Union Trustee Co. of Australia v. The Attorney-General for Australia (No. 2)*[2], which were chiefly relied on in support of the appellant's argument. Such an extension does not appear to me to be justified by any decision to which we have been referred. It would be

[1] (1848), 2 Ph. 497.

[2] [1922] St. R. Qd. 252.

productive of inconvenience and uncertainty and would be inconsistent with the underlying rule that a trust is not a valid charitable trust unless the trustees are obligated, not merely permitted, to devote the trust funds to a purpose which is charitable in law.

I agree with the submission of counsel for the next-of-kin that in the circumstances of this case "the place of administration" of the trust would be the country in which the lands were purchased and managed and that the place of residence of the trustees would be irrelevant. I find nothing in the two cases last referred to which is contrary to this view.

In *Fordyce v. Bridges, supra,* it would seem from the report that the testator was domiciled in England, that the trustees resided there and that the personal estate was situate there. By the will the trustees were given a discretion to invest the personal estate either in the purchase of lands in England on specified limitations which were valid by the law of England or in the purchase of lands in Scotland in a regular Scotch entail the limitations of which were valid by the law of Scotland but would have been void as a perpetuity by the law of England. It was held that the personal estate could be validly invested in the purchase of lands in Scotland. It was the law of the situs of the lands purchased that governed not the law of the residence of the trustees. The will did not give the trustees any power to invest the personal estate in the purchase of lands in England subject to the limitations of a regular Scotch entail, which purchase would have been invalid by the law of England. In the case at bar, the trustees in New York are authorized to purchase lands in British Columbia on trusts invalid by the law of that province.

In *Re Mitchner, supra,* the testator, domiciled in Queensland, directed his executors to pay part of his residuary trust funds to named persons in Germany who were to deal with such funds on certain trusts. The Supreme Court of Queensland held that this direction was void as offending the rule against perpetuities; see *Re Mitchner; Union Trustee Co. of Australia v. The Attorney-General of Australia*[1].

This decision was varied by the High Court of Australia by a judgment which declared that the gifts did not infringe

[1] [1922] St. R. Qd. 39.

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the law against perpetuities and referred the questions back to the Supreme Court. What occurred at the second hearing in the Supreme Court is summarized in the head-note at p. 253 as follows:

> Held, that the bequest was a valid bequest according to Queensland law; but that the Court would not pronounce finally on its validity until informed whether it was practical to give effect in Germany to the trusts declared, and whether the law of Germany would allow them to be carried into effect, because if they could not be carried into effect in Germany, the Queensland Court could not administer cy pres, and the bequest would fail.

It would appear that the law first applied was that of the testator's domicile which governed subject to ascertaining that the trusts could be lawfully carried out in Germany.

To hold that the validity of a trust of personalty to be laid out in the purchase of land created by the will of a testator should be determined not by the law of his domicile or by the law of the situs of the land directed to be purchased (or perhaps by application of both) but by the law of the residence or the domicile of the trustee appointed to make the purchase would, in my opinion, be contrary to authority and productive of uncertainty and inconvenience in the administration of estates. What, it may be asked, would be the result if the trustee at the date of the testator's death resided in a jurisdiction by the laws of which the trust was invalid and a year later moved into a jurisdiction by the laws of which the trust was valid? The difficulty suggested by this question is only one of several which would result from attaching importance to the residence or domicile of the trustee.

While that case was in no way concerned with the geographical location of the trustee or with the conflict of laws, the following words used by Lord Macnaghten in *Dunne v. Byrne*[1] appear to me to be appropriate:

> It is difficult to see on what principle a trust expressed in plain language, whether the words used be sufficient or insufficient to satisfy the requirements of the law, can be modified or limited in its scope by reference to the position or character of the trustee.

For the above reasons I would reject this argument of the appellant, even on the assumption that it has been proved that the trust created by the residuary clause would have been regarded as a valid charitable trust under the law of

[1] [1912] A.C. 407 at 410.

the State of New York. This renders it unnecessary for me to decide whether the law of New York was sufficiently proved. It also becomes unnecessary for me to consider the argument of the respondents, which found favour with Lett C. J. B. C., that the trust was void for uncertainty and I express no opinion upon it.

In the result I would dismiss the appeal but would direct that the costs of all parties in this Court, those of the executor as between solicitor and client, be paid out of the residuary estate of the testator.

The judgment of Judson and Spence JJ. was delivered by

JUDSON J. (*dissenting*):—The testator left his residuary estate to be used by the trustees of the Jewish National Fund Inc., New York, as a continuing and separate trust for the purchase of the best lands available in Palestine, the United States of America or any British Dominion, and the establishment thereon of a Jewish colony or colonies, the land to be rented on such terms as might be decided on by the Jewish National Fund and the proceeds of the rentals to be used for the purchase of further lands on the basis outlined above. It was also provided that the receipt of the moneys by the Jewish National Fund from the Royal Trust Company (the executor and trustee under the will) was to release them from any further responsibility.

On a motion for construction of the will, Wootton J., the judge of first instance, held that this was a valid charitable disposition. The Court of Appeal[1] was unanimously of the opposite opinion. The Jewish National Fund is the appellant in this Court and seeks to have the judgment of Wootton J. restored. The respondents are the next-of-kin of the testator and are interested in an intestacy.

The Jewish National Fund is a corporation which was incorporated in 1926 under the laws of the State of New York. Its principal objects are to collect gifts to be devoted to the purchase of land in Palestine for the purpose of promoting and furthering the religious, cultural, physical, social, agricultural and general welfare of Jewish settlers and inhabitants of Palestine now or hereafter residing there, and to aid, encourage and promote the development of Jewish life in Palestine. There is evidence in the record that

[1] (1964), 46 W.W.R. 577, 43 D.L.R. (2d) 417.

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a gift to this corporation would be recognized as a valid charitable gift under the laws of the State of New York.

The agent of the New York Fund in Israel, Keren Kayemeth Le Israel, is recognized as a charitable organization by the State of Israel. On the other hand, the English counterpart of the New York Fund, Keren Kayemeth Le Jisroel, Limited, when it sought exemption from income tax in England, was held not to be "a body of persons...established for charitable purposes only" and, as such, entitled to exemption from income tax[1].

I do not think that any valid distinction can be drawn between the objects of the English Fund and the New York Fund. The English Fund was incorporated in 1907 and acquired power to purchase lands in Palestine, Syria and any other parts of Turkey in Asia and the Peninsula of Sinai, for the purpose of settling Jews on these lands. The New York Fund can purchase lands in Palestine, the United States of America, or any British Dominion. Both Funds have many objects ancillary to the main object, and, indeed, the New York Fund until shortly after the death of the testator, confined its activities to acting as a collecting agent for the English Fund. In 1961 it severed its connection with the English Fund and provided for the sending of its moneys direct to Israel. This change of powers came after the death of the testator and nothing decisive can come from the fact that at the date of his death there was some dependent relation of one Fund to the other. Under the terms of this trust, it is the New York Fund that is to administer this residuary gift through its trustees in the manner specified in the will.

It is, however, of significance that when the English Fund was litigating with the Inland Revenue Commissioners in 1932, it was held not to be a charitable organization. It was rejected as a trust for religious purposes, as a trust for the relief of poverty and as a trust for other purposes beneficial to the community. The House of Lords was unable to say that there was any identifiable community to be benefited. The British Columbia Court of Appeal adopted this reasoning as the foundation of their judgment.

[1] *Keren Kayemeth Le Jisroel, Ld. v. Inland Revenue Commissioners*, [1932] A.C. 650.

The only function of the Royal Trust Company under this will as executor and trustee is to convert the estate into money and after payment of debts, funeral and testamentary expenses and legacies and duties, to pay the residue to the New York fund. It has no function in the administration of the trust which the will attempts to set up. The release of the New York Fund for these moneys is a complete release to the Royal Trust Company. Nothing is to be done by the Royal Trust Company in the administration of the trust in British Columbia. The trust sought to be set up here is a foreign trust to be administered in a jurisdiction where, according to the evidence, it is a valid charitable trust. Assuming that in British Columbia the trust is not recognized as charitable and that it is a trust the administration of which may last beyond the perpetuity period, the first question is whether the rule against perpetuities applies to a trust of movables created by a person domiciled in British Columbia if the trust is to be administered outside British Columbia in a jurisdiction which recognizes its validity. It has been said that the object of the perpetuity rule is to restrict the withdrawal of property from channels of commerce, a purpose which is purely local.

Both in Cheshire Private International Law, 6th ed., p. 576, and less emphatically in Morris and Leach, The Rule Against Perpetuities, 2nd ed., p. 22, the opinion is expressed that if the gift is valid by the perpetuities law of the place of administration but invalid by the perpetuities law of the place of the testator's domicile, the governing law should be that of the place of administration.

The beginning of the authority on which this opinion is founded is in *Fordyce v. Bridges*[1]. Here an English testator left the residue of his estate to trustees upon trust to convert it into money and lay it out in the purchase of land in England or Scotland according to the limitations of a Scottish entail. A purchase of land in England according to these limitations would offend the rule against perpetuities. On a bill being filed to test the propriety of purchases in Scotland, it was held that the legacy to be expended in Scotland in a manner permissible by Scottish law was valid. The *ratio* is in the following extract from the judgment of Lord Cottenham:

[1] (1848), 2 Ph. 497.

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An objection was made that the bequest of a fund to be invested in a regular Scotch entail was void as a perpetuity. The rules acted upon by the Courts in this country with respect to testamentary dispositions tending to perpetuities relate to this country only. What the law of Scotland may be upon such a subject, the Courts of this country have no judicial knowledge, nor will they, I apprehend, inquire: the fund being to be administered in a foreign country is payable here though the purpose to which it is to be applied would have been illegal if the administration of the fund had been to take place in this country. This is exemplified by the well established rule in cases of bequests within the statute of Mortmain. A charity legacy void in this country under the statute of Mortmain is good and payable here if for a charity in Scotland.

This case was followed in a Queensland case *Re Mitchner; Union Trustee Co. of Australia v. The Attorney-General of Australia (No. 2)*[1] in which a testator domiciled in Queensland bequeathed movables to trustees resident in Germany to be applied on trusts which infringed the rule against perpetuities in force in Queensland but which were valid by German law. The trusts were held to be valid.

There is more authority in the United States beginning with *Chamberlain v. Chamberlain*[2], at p. 434, where it is said:

> But so far as the validity of bequests depends upon the general law and policy of the State affecting property and its acquisition generally, and relating to its accumulation and a suspension of ownership and the power of alienation, each State is sovereign as to all property within its territory, whether real or personal.
>
> It is no part of the policy of the State of New York to interdict perpetuities or gifts in mortmain in Pennsylvania or California. Each State determines those matters according to its own views of policy or right, and no other State has any interest in the question; and there is no reason why the courts of this State should follow the funds bequeathed to the Centenary Fund Society to Pennsylvania, to see whether they will be there administered in all respects in strict harmony with our policy and our laws. The question was before the court in *Fordyce v. Bridges* (2 Phillips, 497), upon the bequest of a fund in England, to be invested in a Scotch entail.

This case was followed in the following four cases: *Robb v. Washington and Jefferson College*[3]; *In re Chappell's Estate*[4]; *Amerige v. Attorney General*[5]; *In re Grant's Will*[6].

To the same effect is Gray, The Rule Against Perpetuities, 4th ed., p. 288:

[1] [1922] St. R. Qd. 252.
[2] (1871), 43 N.Y. 424.
[3] (1905), 103 App. Div. (N.Y.) 327, 93 N.Y.S. 92.
[4] (1923), 213 P. 684, 124 Wash. 128 (S.C.).
[5] (1949), 88 N.E. 2d 126, 324 Mass. 648 (S.C.)
[6] (1950), 101 N.Y.S. 2d 423.

263. 3 *Influence of Law of Place of Administration.* If a legacy is given on a charitable trust which is to be carried out in another jurisdiction where it would be valid, sometimes the law of the domicil forbids such a legacy absolutely, and in that case the legacy is void; but sometimes the law only forbids such trusts within the state of the domicil, and then the legacy is good. And in this latter case it seems that the trust will be subject to the law of the other jurisdiction in matters of administration.

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The next-of-kin say that the law of the State of New York has nothing to do with the administration of this trust, that the law of the situs of the purchase of land will govern and that the will permits the trust to be administered in a multitude of places and that the trust fails if it would be non-charitable in any of them. I think that the first assertion is erroneous and that the rest falls with it. The British Columbia executorship has ended. The residue is to be turned over to New York trustees upon clearly defined trusts which are recognized as valid by the law of that state. At that moment it becomes a New York trust to be administered there according to the law of the state. What difficulties of administration, if any, may be encountered outside the boundaries of that state are of no further concern to the Court of the domicile. The testator has directed the delivery of the residue to trustees in a foreign jurisdiction where the trust is valid. The administration of the trust from then on is controlled by the laws of a jurisdiction which recognizes its validity.

I would allow the appeal on this ground alone. However, the reasons delivered in the Court of Appeal indicate that this point was not taken before that Court. For this reason I think that we should order that all parties should have their costs out of the estate, those of the executor, between solicitor and client.

It is only necessary to mention briefly the other grounds of appeal that were argued. The first was that as a matter of construction, it should have been held that this was an absolute gift of residue. To me, this was clearly a gift in trust and I think that both Courts in British Columbia have correctly rejected this submission.

The other argument was that the Court of Appeal should have held, as did Wootton J., that this was a valid charitable trust in British Columbia. The Court of Appeal thought that this course was not open in view of the decision of the

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House of Lords in the *Keren* case, *supra*. It is clear that Wootton J. did not think that this decision concluded the matter for all time. He was sitting in 1963. A lot had happened in the world since 1932. He felt that this enabled him to find that there was an identifiable world community to be benefited by this disposition. In so finding I think that he was right but I recognize that my opinion on this branch of the case is *obiter*.

I would allow the appeal and direct that all parties to these proceedings should have their costs throughout, those of the executor as between solicitor and client.

Appeal dismissed, JUDSON *and* SPENCE JJ. *dissenting.*

Solicitors for the appellant: Pearlman & Lindholm, Victoria.

Solicitors for the respondent, Royal Trust Company: Cameron & Cameron, Victoria.

Solicitors for the respondents, Clara Richter et al.: Crease & Co., Victoria.