

Conveying the Direction for Accumulation and Issues Involved In Partial Accumulation

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Abstract: *Conveying the directions for accumulation and period for accumulation in the law of property. The owner of the property. The owner of the property can accumulation his own property to a beneficial for enjoyment of property for certain period prescribed amount will be received amount will be received by the owner. The invalid rule for repugnancy can be made. With a statutory period with section invalid rule can be made by the owner of the property.*

INTRODUCTION:

Section seventeen of the act speaks about the accumulation of income of property or direction for accumulation. A direction for the accumulation of income of property amounts to limiting beneficial enjoyment of property. Such direction is void as per s.11 of the act but s.17 is an exception 2.11 is applicable where there are absolute transfers whereas s.17 applies to all kinds of transfer e.g., A settler by deed directs. This section is akin to section 117 of Indian succession act, 1925.

Accumulation = profits or income arising out of the property, it can be whole or in part

PERIOD FOR ACCUMULATION ARE:

- (i) Life of the transferor or
- (ii) Period of 18 years, whichever is longer. Any condition beyond this period is invalid and not operative. The direction for the whole or part of the income can be made.

ACCUMULATION OF INCOME:

A direction which separates the income from the ownership of property so as to form a separate fund, or so as to postpone the beneficial enjoyment of property, is a direction for accumulation. The rule against perpetuities has for its object, the circumscription of the period during which the property might be tied up in such a way as to prevent its being transferred absolutely. Earlier an accumulation of income could be directed for so long as the property could be tied up without infringing the rule against perpetuities. The

object of this section is to make a separate rule further restricting the period for the accumulation of income.

A direction for accumulation may be express as well as implied. The question is one of construction and if the disposition cannot be carried out without an accumulation, the section appliesⁱ

VOID UNDER THE RULE AGAINST PERPETUITIES:

Independently of this section, a direction for accumulation may be void under the perpetuity rule if the accumulation is directed for a period in excess of that allowed by the perpetuity rule. Thus, if A transfers property to B for life and then to the son of B who shall first attain the age of 25, with a direction to accumulate the income till the son attains that age the direction would be void under the perpetuity rule. However, if A transfers property to B for life, and then to the first son of B who shall attain the age of 18 with a direction to accumulate the income during the lifetime of B and until the son attains that age, there is no infringement of the perpetuity rule, and the direction would be valid for one of the statutory periods allowed by this section.

VOID FOR REPUGNANCY:

Independently of this section, a direction for accumulation may be void for repugnancy. A direction for accumulation is a restriction on enjoyment such as is referred to in s 11. However, while s 11 is limited to transfers which create an absolute interest in the transferee, s 17 refers indifferently to any transfer. Where a transfer is of an absolute interest, the exceptions to this section are also exception for the benefit of the donee, merely postpones enjoyment, and is void for repugnancy. This is illustrated by Indian cases. The first illustration to s 56 of the Indian trusts act 1882, show that a direction for the accumulation of the income of a minor is determinable when he attains majorityⁱⁱⁱ.

SAVINGS OUT OF INCOME:

The section does not apply to savings out of income made voluntarily by the person entitles to the income, or by the court on behalf of an infant^{iv}. Nor does it affect the discretionary power of trustees to make accumulation out of a minors income under s 41 of the Indian trusts act 1882.

POWERS TO ACCUMULATE:

In England the law prohibits any person from settling or disposing of property in such a manner that the income thereof would be accumulated beyond the periods there indicated^v. It followed that it hit cases where, though there was no direction to accumulate beyond the permitted periods, there was power to trustees to do so, and where the trustees were in fact accumulating the income beyond the permitted periods or were contemplating doing so. It is submitted that this would not be the case in India where s 17 only prohibits directions providing for an accumulation of income beyond the permitted periods.

PERIOD:

The periods are expressed to be in the alternative so that an accumulation cannot be directed during a combination of two periods. The appropriate period is a question of construction, and is the one that best accords with the intention expressed in the instruments^{vi}.

EXCESSIVE ACCUMULATION:

If accumulation is directed to be for a longer time than that allowed by the section, it is invalid for the excess over the appropriate period, and that income for the excess period as well as the interest on the accumulated fund, belongs to persons, who would have been entitled, if there had been no direction to accumulate^{vii}.

FAILURE OF PURPOSE:

Where on a true construction of the instrument directing accumulation and investment, the purpose or object to which that accumulation and investment is directed entirely fails, the provision cannot be enforced and the direction for accumulation cannot be read as an independent provision. Thus, where a testator after bequeathing an annuity to his mother directed his trustees out of the income of his residuary estate to pay an annuity to his wife and to accumulate the surplus income during the life of his wife or for 21 years from his death (whichever was the shorter) and directed that at the end of the period of accumulation, the residuary estate including the accumulation for his

children should be held on trust for his children, but died without issue, it was held that the testator having died without issue, there was no effective disposal by his will within the meaning of s 49 of the administration of estate act 1925, of the residuary estate, and that the direction for accumulation was not a direction to which the property not effectively disposed off by the will was subject. The direction for accumulation here came to an end by reason of the failure of its object and purpose, and the widow becomes entitled to the surplus income as on intestacy^{viii}.

EXCEPTIONS:

The first two exceptions closely those in s 164 of the law of property act 1925. The third exception is not in the English act, but follows the case of *vine v raleigh*^{ix}.

EXCEPTION (I)- PAYMENT OF DEBTS:

A provision for the payment of debts, not being of the transferor, but payable on a contingency which might happen outside the perpetuity period would be void as infringing the rule against perpetuities. So also, a transfer contingent on the payment of specified debts for the debts might have not is paid within the perpetuity period.^x . However, directions for the payment of debts or provisions for accumulation of income for that purpose, for however long a period, are not only exempt from the statutory restriction on accumulation, but do not infringe the rule against perpetuities. Such a provision does not tie up property absolutely so as to prevent its being transferred absolutely because the creditor may at any time insist on payment, or the person indebted can at any time discharge the debt^{xi}

A trust or direction to pay a debt is, therefore, if possible construed as a charge for the payment of debts, and the transferee is considered as taking a vested interest subject to the charge. Thus, on an assignment of a lease for 99 years, a trust to accumulate half the rent for the whole term, for the payment of the debts of the transferor, would be valid as creating a charge on the lessee's interest. A direction for the payment of debts has been held to be valid even when it is annexed to and forms part of a series of limitations, all or some of which infringe the rule against perpetuities.

The debts may be existing debts, or contingent liabilities to arise in future. If the debts are paid out of income, but out of capital, the exception ceases to apply and the trust for accumulation of income to recoup capital is valid for one of the statutory periods^{xii}. If the provision is not made in

good faith the exception will not apply^{xiii}. So a provision to accumulate income against a liability that is not likely to become a debt, or to retain and set apart income to create a reserve fund against future liabilities in business is subject to the statutory periods. In order, however, that such a provision falls within the exception, the provision must not be a provision which might or might not be used for the payment of such debts at the discretion of some third person; it ought to be a provision which must be applied for that purpose^{xiv}.

The English exception is wider for it includes the debts of the grantor, settlor, testator, or any person and it has been held that the other person may be a stranger^{xv}.

EXCEPTION (II)- PROVISION OF PORTIONS:

The word portion ordinarily means a share and points to the something out of something else for the benefit of some children. It does not apply to the making of additions of income to capital in order to increase the capital for the person to whom it is given^{xvi}. The exception only applies to provisions which must be applied for the provision of portions; and cannot save provisions which must be applied for the provision of portions; and cannot save provisions which may or may not be so applied at the discretion of some third person.

EXCEPTION (III)- PRESERVATION AND MAINTENANCE:

The third exception is not in the English act, but it has no doubt, been suggested by the case of *vine v raleigh*^{xvii}, where a trust out of income to maintain houses in good repair was held to be outside the *thellusson* act. A fund provided to meet dilapidations repair at the end of a lease is within the exception. A direction which simply keeps the property at its present value is not affected by the rule restricting accumulation of income.

(11) INDIAN SUCCESSION ACT:

A similar amendment has been made in the corresponding s 117 of Indian succession act 1925^{xviii}.

(12) HINDU LAW:

As stated above, a direction for accumulation for the benefit of the donee was under Hindu law repugnant to an absolute gift. The section is not inconsistent with any rule of Hindu law, and is made applicable to Hindus by the amendment of s 2.

The direction is valid, unless the conditions are so unreasonable as to be against public policy, or unless it is given for an illegal object or its effect is inconsistent with Hindu law. Thus, in *krishnaramani v ananda krishna*^{xix} there was a trust of surplus income to be accumulated, and every time the accumulations amounted to three lakhs, they were to be divided among the sons and descendants per stripes. Justice macpherson said that the when the trust for accumulation is not accompanied with any disposition of the corpus of the property. A direction to accumulate surplus income for the benefit of a son to be adopted, or for the payment of debts or the benefit of the minor donee, or for the marriage expenses of the testators son, ^{xx} has been held to be valid.

THELLUSSON V. WOODFORD (1798), 4 VES. 227:

Thellusson v Woodford (1799) 4 Ves 227 is an English trusts law case. It was a lawsuit resulting from the will of Peter Thellusson, an English merchant (1737–1797).

Facts

Peter Thellusson directed the income of his property, consisting of real estate of the annual value of about £5000 and personal estate amounting to over £600,000, to be accumulated during the lives of his children, grandchildren and great-grandchildren, living at the time of his death, and the survivor of them. The property so accumulated, which, it is estimated, would have amounted to over £14,000,000, was to be divided among such descendants as might be alive on the death of the survivor of those lives during which the accumulation was to continue.

To gave by will all his property to trustees upon trust to accumulate the income during the lives of his sons A, B, and C, and of all their descendants who might be living at his death, and after the death of the last survivor of them, the whole to be held on trust in equal thirds for the eldest male descendants of A, B, and C.

Held, although the funds might accumulate at the lowest computation to nineteen millions sterling and no person could enjoy it for perhaps 80 years, yet the trusts were valid^{xxi}.

By an Act of 1799 (a), usually called the *Thellusson* Act because it was passed in consequence of this case, accumulations may not be directed for longer than one of the following periods.

(i.) during the life of the grantor, or

(a) 39 & 40 Geo. III. c. 98.

(ii.) for 21 years after the death of the grantor or testator, or

(iii.) during the minority of any person or persons living at the death of the grantor or testator, or

(iv.) during the minority of any person or persons who would have been entitled to the income if it had not been directed to accumulate.

This last period may include the minority of some person who is not living at the death of the grantor.

JUDGEMENT:

The bequest was held valid. In 1856, there was a protracted lawsuit as to who were the actual heirs. It was decided by the House of Lords (9 June 1859) in favour of Lord Rendlesham and Charles Sabine Augustus Thellusson. Owing, however, to the heavy expenses, the amount inherited was not much larger than that originally bequeathed.

In *amrito lall v surnomoye*^{xxii}, J jenkins said that for the period of accumulation under Hindu law the limit must be that which determines the period during which the course or devolution of property can be directed and controlled by the testator. In

Gosavi shivgar v rivett- carnac^{xxiii}, where the devise was to a minor disciple for whom as portion of the income was to be accumulated until he was of the age of 30, it was held that he was entitled to all the income after he attained majority. In the absence of any direction to the contrary, the rule of Hindu law is that accumulations of income go with the capital^{xxiv}.

The rule against accumulation determines how long the income can be directed to accumulate at compound interest, in such a way as to prevent its being received and enjoyed by any one.

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SUGGESTION:

A direction which separates the income from the ownership of property so as to form a separate fund, or so as to postpone the beneficial enjoyment of property, is a direction for accumulation. The rule against perpetuities has for its object, the

circumscription of the period during which the property might be tied up in such a way as to prevent its being transferred absolutely.

BOOKS REFERRED:

1. The tranfer of property act 1882
2. Sec 17 the direction og accumulaltion
3. Commentary on The tranfer of property act 1882 Dr. sir hari singh gour's
4. B.B mithra & senguptam The tranfer of property act 1882.
5. Mulla The tranfer of property act 1882

ⁱ *Tench v cheese* [1855] 6 De GM and G 453, pp 462, 473.

ⁱⁱ *Cally nath v chunder nath* (1882) ILR 8 cal 378; *mokoonda lal v ganesh chandra* (1876) ILR I cal 104; *srinati bramamayi v joges chander* (1871) 8 beng LR 400.

ⁱⁱⁱ See notes enjoyment postponed and accumulaltion of income under s 19

^{iv} *Tench v chesse* [1855] 6 de GM and G 453 p 463 (CA)

^v *Re robb s will trusts* [1953] ch 459, [1953] 1 ALL ER 920

^{vi} *Re errington, errington- turbutt v errington* (1897) 76 LT 716

^{vii} *Griffiths v vere* [1903] 9 ves 127; *re walpole public trustee v canterbury* [1933] ch 431. [1933] all ER rep 988

^{viii} *Re thornber, crabter v thornber* [1937] ch 29, [1936] 2 all ER 1594

^{ix} [1891] 2 ch 13

^x *Re bewick ryle v ryle* [1911] 1 ch 116

^{xi} *Briggs v oxford (earl)* [a1852] De GM and G 363, p 370

^{xii} *Re heathcote, heathcote v tench* [1904] 1 ch 224.

^{xiii} *Mathews v keble* [1868] 3 ch app 691.

^{xiv} *Re bournes settlement tusts* 1946 1 all ER 411, 117, LT 281, 62 TLR 269(CA)

^{xv} *Barrington (viscount) v liddell* [1852] 2 deg M & G 480 p 497

^{xvi} *Re elliot public trustee v pinder* 1918 2 ch 150, [1918-9] all ER rep 1151 dissenting from *middleton v losh* 1852 1 sm& griff 61.

^{xvii} 1891 2 ch 13.

^{xviii} *Re gardiner, gardiner v amith* [1901] 1 ch 697, p 701.

^{xix} 1872 4 beng LR 231

^{xx} *Nafar chander v ratan* (1910) 15 cal WN 66 7 IC 921

^{xxi}

http://en.wikipedia.org/wiki/Thellusson_v_Woodford

^{xxii} (1897) ILR 24 cal 589.

^{xxiii} (1889) ILR 13 bom 463; husenbhoy v ahmedbhoy (1902)

ILR 26 born 319.

^{xxiv} Bissonauth v barnasoondry (1867) 12 MIA 41, p 60; sonatun
bv juggustsoondree(1859) 8 MIA 66