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The Right to Enjoin Collection of Taxes

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NOTES AND COMMENT

THE RIGHT TO ENJOIN COLLECTION OF TAXES. By Chapter 62, Laws of 1931, an attempt is made by the legislature to change the rule heretofore existing in this state relative to injunction against assessment and collection of taxes. From the early case of *Andrews v. King County*[1] to the recent case of *Willapa Elec. Co. v. Pacific County*[2] the right of the courts of this state to enjoin the collection of taxes has been again and again reiterated.

Chapter 62, Laws of 1931, prohibits enjoining the collection of taxes except in two cases, viz., where the law under which the tax is levied is illegal, and where the property upon which it is levied is tax-free. In all other cases provision is made for payment under protest, and suit to recover back the excess paid in the Superior Courts, and if judgment is there obtained satisfaction thereof is to be had by warrant issued upon a fund specified and created by the statute known as the Tax Refund Fund, in which there will be no funds to meet the warrants until the next assessment, at which time levy will be made to cover outstanding judgments and interest thereon.

In construing that statute the Supreme Court in *Casco Co. v. Thurston County*,[3] speaking through Chief Justice Tolman, said that there was

> "—no encroachment upon the constitutional power of the courts, but simply and solely a legislative attempt to provide an adequate legal remedy where, if a legal remedy before existed, it was a doubtful or inadequate one, so that the courts, while retaining to the full all of the equitable powers inherent in them, will find only lessened occasions for the use of such powers."

The doubtful or inadequate remedy referred to is no doubt the remedy of paying the assessment under protest and suing to recover back the excess[4] which remedy was open to the taxpayer, but was not exclusive. Since there was no specific provision for the satisfaction of a judgment in such cases recovery was usually from the general fund of the county or state.

That such remedy was not considered an adequate, complete and sufficiently speedy one by the courts of this state is witnessed by the fact that the courts in numerous cases granted injunction

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[1] 1 Wash. 46, 23 Pac. 409, 22 A. S. R. 136 (1890)

[2] 160 Wash. 412, 295 Pac. 152 (1931)

[3] 63 Wash. Dec. 527, 2 Pac. (2d) 677 (1931)

[4] *Carlisle v. Chehalis County*, 32 Wash. 284, 73 Pac. 349 (1903) *Tozer v. Skagit County*, 34 Wash. 147, 75 Pac. 638 (1904) *Owings v. Olympia*, 88 Wash. 289, 162 Pac. 1019 (1915) *Byram v. Thurston County*, 141 Wash. 28, 251 Pac. 103 (1926) *Northern Pac. Ry. Co. v. Yakima County*, 141 Wash. 47, 251 Pac. 110 (1926) *National Bank of Commerce v. King County*, 153 Wash. 375, 280 Pac. 25 (1929) *Spokane & Eastern Trust Co. v. Spokane County*, 153 Wash. 332, 280 Pac. 34 (1929).

against the collection of excessive or exorbitant taxes.[5] The court in the *Casco case, supra,* held that the remedy provided by the statute was an adequate one, and in support of this contention cited some twelve or thirteen jurisdictions wherein it was held that the remedy provided by statute was adequate and that injunction could not be had.

It becomes necessary, since the decision is apparently based upon the strength of these cases, to analyze them carefully, and see just what the remedy which was held adequate consisted of.

Although in the Federal Courts injunctions against the assessment or collection of any tax are prohibited by Rev. Statutes 3224, U. S. C. A., Title 26, sec. 154, there is an adequate and speedy remedy provided by Rev Statutes 3226 and 3227, U. S. C. A., Title 26, secs. 156 and 157, and Rev. Statutes 3220, U. S. C. A., Title 26, sec. 149, provides that the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected. It appears, therefore, that in so far as the federal government is concerned, a judgment in a suit at law for the recovery of taxes can be immediately satisfied if the procedure provided for is complied with.

In *Union Pacific R. R. Co. v. County Commissioners of Weld County,*[6] the statute which was held to give an adequate remedy[7] provides.

> "—in all cases where any person shall pay any tax, interest or costs, or any portion thereof, that shall thereafter be found to be erroneous or illegal, whether the same be owing to erroneous assessment, to improper or irregular levying of the tax, or clerical or other errors or irregularities, the board of county commissioners shall refund the same without abatement or discount to the taxpayer."

The court in interpreting this statute and a later one[8] providing that no abatement, rebate or refund of taxes shall be allowed by the county commissioners, unless certain procedure is complied with, and the approval of the Colorado tax commission is obtained, said.

> "In the circumstances it cannot be said that the company certainly or plainly has an adequate and complete remedy at law. On the contrary, the existence of such a remedy is debatable and uncertain."

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[5] Typical are: *Andrews v. King County* (note 1, *supra*) *Benn v. Chehalis County,* 11 Wash. 134, 39 Pac. 365 (1895) *Phelan v. Smith,* 22 Wash. 397, 61 Pac. 31 (1900) *Spokane & Eastern Trust Co. v. Spokane County,* 70 Wash. 48, 126 Pac. 54 (1912) *State ex rel Northern Pac. Ry. Co. v. State Board,* 140 Wash. 243, 248 Pac. 793 (1926) *Willapa Elec. Co. v. Pacific County* (note 2 *supra*) *Washington Mutual Savings Bank v. Chase,* 157 Wash. 698, 289 Pac. 555 (1930).

[6] 247 U. S. 282, 38 S. Ct. 510, 62 L. Ed. 1110 (1917)

[7] Laws of Colorado 1870, p. 123, sec. 106- 2 Mills Ann. Stats., sec. 6463; Laws 1902, c 3, sec. 202, Rev. Stats. 1908, sec. 5750.

[8] Laws of Colorado 1913, c. 134, sec. 5.

The decree of the lower court denying injunction was reversed and the case remanded. The Supreme Court of Colorado[9] without referring to the later statute[10] held the remedy provided by the earlier statute[11] was an adequate one, and therefore refused injunction.

The Indiana statute which was held to be adequate by the United States Supreme Court in *Indiana Manufacturing Co. v. Koehne*[12] provided that payment, upon procedure prescribed, was to be made as on any claim against the treasury, and the treasurer directed to pay the same out of any moneys not otherwise appropriated.[13] The procedure prescribed is an appearance before the board of commissioners of any county wherein the allegedly excessive tax was collected, and their certification to the auditor of the state for money paid by them to the state. The statute further provided for an appeal from the refusal of the board to repay the tax.[14]

In each of the three cases cited in support of the adequacy of the remedy provided by the Massachusetts statute[15] the only point upon which the question of adequacy hinged was whether the limitation as to time within which the action was permitted thereby made the remedy inadequate. The statute, however, did provide for immediate repayment upon success of the plaintiff's suit.[16]

The remedy given by the Michigan statute[17] which was sustained in *Eddy v. Township of Lee*,[18] merely says that the taxpayer may pay under protest and within 30 days sue the township for the amount paid, and recover if the tax is shown to be illegal for the reasons specified in such protest.

The Montana statute[19] which the court says seems to be in effect exactly like our own and which was upheld in *Montana Ore Purchasing Co. v. Maher*,[20] provides that a tax paid under protest shall be held by the county treasurer until the determination of any action brought for recovery thereof, and provides a limitation as to time in which such action may be brought. A further statute[21] provides that a warrant shall be drawn on the treasury of that county or municipality for the amount recovered by said judgment in favor of the legal holder thereof, *which warrant shall be paid in preference to any other class drawn on such treasurer*

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[9] *Kendrick v. A. Y. and Minnie Min. & Mill. Co.*, 63 Colo. 214, 164 Pac. 1161 (1917).

[10] Note 8, *supra.*

[11] Note 7, *supra.*

[12] 188 U. S. 681, 23 S. Ct. 452, 47 L. Ed. 651 (1902).

[13] Rev. Stat. ed. of 1894, sec. 7915.

[14] Rev. Stat. ed. of 1894, sec. 7916.

[15] *Long v. Norman*, 289 Fed. 5 (1923) *Fourth Atl. Natl. Bank of Boston v. City of Boston*, 300 Fed. 29 (1924) *Burrill v. Locomobile Co.*, 258 U. S. 34, 42 S. Ct. 256, 66 L. Ed. 450 (1922)

[16] Statutes of Massachusetts 1909, c. 490, part 2, secs. 74 and 88.

[17] Sec. 107 of Act. No. 153 of the Public Acts of 1885.

[18] 73 Mich. 123, 40 N. W 792 (1888).

[19] Secs. 4023, 4025, 4026 (now secs. 2268, 2269) Political Code.

[20] 32 Mont. 480, 81 Pac. 13 (1905).

[21] Sec. 4025 Political Code of 1895.

The Nebraska statute[22] upheld in the case of *Darr v. Dawson County,*[23] provides that no injunction shall issue for any tax except that levied for an illegal or unauthorized purpose. If the property is taxfree, or twice assessed, the taxpayer must pay under protest and sue to recover, the treasurer retaining the amount of the tax until final disposition of the case, with appeal allowed from the decisions of the county board where such action is instituted. If he seeks to recover for any other reason he may, when he has paid as though the tax were legal and valid, within thirty days, in writing, demand the same, and if not refunded in ninety days, sue, and if successful, judgment shall be rendered and the same collected as in other cases.

The North Carolina statute[24] interpreted in the case of *Raleigh & G R. Co. v. Lewis*[25] is substantially like the Nebraska statute *supra.*

The Oklahoma case of *Black v. Geissler*[26] holds that a 1915 statute[27] provides an adequate remedy, and the case of *Blake v. Young*[28] sustains the adequacy of a 1921 statute.[29] Both of these statutes provide that the payment shall be made under protest and the treasurer shall hold the money so paid under protest for thirty days, and if summons is served within the thirty days, he shall hold it until determination of the suit, and if the tax is therein found to be excessive he shall pay back the tax so collected upon judgment rendered.

The South Carolina statute[30] declared to provide an adequate remedy in the cases of *Fleming v. Power*[31] and *National Loan & Exchange Bank of Greenwood v. Jones,*[32] like the Montana statute *supra,* provides for repayment by warrant, which shall be paid in preference to other claims against the treasury

The South Dakota statute[33] upon which the case of *Zimmerman v. Corson County*[34] was decided provides for payment and suit within thirty days, and if judgment is recovered then payment or refund be made, which shall be paid in preference to other claims upon the treasury, upon the final determination of the action, on appeal or otherwise.

The Tennessee statute[35] held adequate in *Louisville & Nashville R. R. Co. v. State,*[36] like the Montana and South Carolina statutes

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[22] C. S. 1911, c. 77 art 1, sec. 77-1923 (1929) which is (1903 p. 447 Am. 11061, Comp. 5083; R. S. 1913, 6491, C. S. 6018).
[23] 93 Neb. 92, 139 N. W 852 (1913).
[24] Act N. C. 1887, c. 137, sec. 84.
[25] 99 N. C. 62, 5 S. E. 82 (1888).
[26] 58 Okla. 335, 159 Pac. 1124 (1916).
[27] Sec. 7, Ch. 107, Session Laws of 1915.
[28] 128 Okla. 153, 261 Pac. 923 (1927).
[29] Sec. 9971, Comp. Stat 1921.
[30] Civil Code 1902, sec. 413.
[31] 77 S. C. 528, 58 S. E. 430 (1907).
[32] *Natl. Loan & Exchange Bank of Greenwood v. Jones,* 103 S. C. 80, 87 S. E. 482 (1915).
[33] Chap. 289, Laws 1915.
[34] 39 S. D. 167, 163 N. W 711 (1917).
[35] Sec. 1, Act 1873, c. 44.
[36] 55 Tenn. 663 (1874).

supra, provides for payment by warrant, which shall be paid in preference to other claims on the treasury

The court in the *Casco* case says that it seems to be conceded that the complaint states what would be a cause of action but for Chapter 62, Laws of 1931, p. 201, and when in its construction of the statute it holds that the remedy provided therein is an adequate one and cites in support of that construction cases which, upon analysis, show that the statutes held to provide an adequate remedy at law, differ greatly from our own with respect to the manner in which satisfaction of a judgment obtained may be had, it seems a little difficult to justify that conclusion.

That the remedy at law must be as plain, complete, and adequate as the remedy in equity before injunction will be denied in a proper case is an equitable principle of universal application. Because of the necessity of assuring the government of a sufficient amount of money to carry out the governmental functions, especially in view of the current system of budgeting anticipated expenditures, it becomes necesssary to further restrict the application of that principle, and it is therefore held in a number of jurisdictions that injunction against the collection of taxes will not lie, even where the tax is assessed under a clearly illegal law There is, however, in every such case a remedy provided which is plain, complete and adequate.

If the construction given this section of the statute by the court is to stand, it would seem the conception of what is an adequate remedy must change. Under that construction, a taxpayer, even where the tax assessed is clearly exorbitant and excessive, and the payment thereof would greatly embarrass him, destroy his business, and otherwise work irreparable injury, would still be called upon to pay the tax and sue in the Superior Court to recover. If after a lengthy litigation he should obtain a judgment, he can only satisfy it by a warrant on a tax refund fund, in which there will not be enough money to pay his warrant until the payment of the following year's assessments. By construing the statute as giving an adequate remedy the court has in effect overruled all prior cases in this state relative to this point.[37] The presumption seems in-

[37] In *Benn v. Chehalis County*, 11 Wash. 134, 39 Pac. 365 (1895), Chief Justice Hoyt, relative to the contention that a statutory provision for objection to excessive taxes to be urged against a rendition of judgment therefor, said: "The result of its being sustained by the courts would be to leave the property of a taxpayer for two years subject to an apparent lien for taxes which by reason of the illegality of the assessment did not in fact constitute a lien. From the time the taxes are spread upon the tax roll until paid or set aside by a decree of the court, they are a substantial cloud upon the title to the property Hence, to compel a taxpayer to deal with his property subject to such cloud for two years, when by going into a court of equity the same substantial justice can be done, as upon objections to the rendition of judgment for such taxes, is to impose a hardship which courts of equity are specially construed to prevent." In *Phelan v. Smith*, 22 Wash. 397, 61 Pac. 31 (1900), where injunction was sought to restrain the sale of personal property in satisfaction of a tax levied thereon, and the adequacy of the legal remedy was urged against it, Dunbar, J., said. "Incompleteness and inadequacy of the legal remedy are what determine the right to the equitable remedy of injunction. Nor would any good purpose be subserved by allowing this property to be wrested from the possession of the respondent, and relegating him to an action for damages, or by compelling him to pay the taxes as a basis of a suit for damages."

escapable that the court reached its result relying upon the legislative intent, and thereby permitted the legislature to encroach upon the equity powers of the court, and substitute a remedy which is not as adequate as the so-called doubtful or inadequate one which it supplants.

Assuming that the construction given the statute will not be changed, a question is raised whether the taxpayer can go into a federal equity court and enjoin the collection of an excessive assessment. It is common knowledge that the federal courts adhere to the rule that collection of taxes will not be enjoined, even when the law upon which the tax is based is clearly illegal. The apparent severity of the rule is tempered, however, by the qualification that the rule applies where the relief sought is only on the grounds that the tax is excessive or illegal.[38] If the foundation of the suit is one of the well recognized fields of equitable relief, such as fraud ,multiplicity of suits, inadequacy of the remedy at law, a denial of due process of law, or a denial of the equal protection of the laws, then the federal courts do not hesitate to take jurisdiction, and, in a proper case, grant relief.[39]

In *Smyth v. Ames*[40] it was said that one who is entitled to sue in the federal courts may invoke their jurisdiction in equity whenever the established principles and rules of equity permit such a suit in those courts, and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of action. In *Wallace v. Hines*[41] it was held that in the absence of an adequate remedy at law, plainly allowed against the state, equity has jurisdiction to restrain state officials from enforcing an illegal tax, the effect of which if not paid would be to cloud plaintiff's title and subject him to pecuniary penalties. Federal jurisdiction does not depend upon whether the bill makes a claim that is well founded. If the bill or declaration makes a claim that *if* well founded is within the jurisdiction of the court, it is within that jurisdiction whether well founded or not.[42]

The aid of the federal equity courts has been most frequently invoked on the grounds of a violation of the Fourteenth Amendment to the Constitution of the United States. On the grounds that they were being deprived of property without due process of law[43]

[38] *Singer Sewing Machine Co. of New Jersey v. Benedict*, 179 Fed. 628, 103 C. C. A. 186, affd. 229 U. S. 481, 33 S. Ct. 942, 57 L. Ed. 1288 (1912).

[39] *Johnson v. Wells Fargo Co.*, 239 U. S. 234, 36 S. Ct. 62, 60 L. Ed. 243 (1915) *Gammill Lbr Co. v. Board of Sup'rs*, 274 Fed. 630 (1921) fraud. *Western Union Telegraph Co. v. Tax Commission of Ohio*, 21 Fed (2d) 355 (1927) *Southern California Tel. Co. v. Hopkins*, 13 Fed (2d) 814 (1926) affd. 275 U. S. 393, 48 S. Ct. 180, 72 L. Ed. 329 (1928) multiplicity of suits *Wallace v. Hines*, 253 U. S. 66, 40 S. Ct. 435, 62 L. Ed. 782 (1920) Porto Rico Tax Appeals, 16 Fed. (2d) 545 (1927), inadequacy of remedy. *Cumberland Pipe Line Co. v. Lewis*, 17 Fed (2d) 167 (1926), denial of due process of law. *Connecting Gas Co. v. Imes*, 11 Fed (2d) 191 (1926), denial of equal protection of the laws.

[40] 169 U. S. 466, 18 S. Ct. 418, 42 L. Ed. 819 (1898).

[41] 253 U. S. 66, 40 S. Ct. 435, 64 L. Ed. 782 (1920).

[42] *E. C. Atkins & Co. v. Dunn*, 28 Fed. (2d) 5 (1928).

[43] *City Ry Co. v. Beard*, 283 Fed. 313 (1922) *Raymond v. Chicago Traction Co.*, 207 U. S. 20, 28 S. Ct. 7, 52 L Ed. 78 (1907) *Wallace v. Hines, supra, Cumberland Pipe Line Co. v. Lewis, supra.*

or that they were denied the equal protection of the laws,[44] taxpayers have frequently obtained relief in the federal courts where discriminatory assessments or wrongful use of valuation methods have been made. The federal question raised must not, of course, be merely colorable or be set up for the sole purpose of giving federal jurisdiction, but that jurisdiction having been invoked upon some substantial grounds the court has the power to decide all questions, whether resting on state or federal law, or, in fact, whether the decision of the federal question be adverse to the plaintiff, or the question be not decided at all[45]

It has further been said[46] that the provisions of the Fourteenth Amendment are not confined to the action of the state through its legislative, executive, or judicial authority, but relates to all instrumentalities through which the state acts. If this be so, then when an assessor discriminates against a taxpayer by intentionally assessing his property at a higher rate than all other property of that class in his district, or when a board of equalization refuses to adjust the invalid assessment, or when a board of tax commissioners refuses to change a method of valuation, the taxpayer may, provided such action violates a right given him under the federal constitution and laws, invoke federal aid whether the state gives him a remedy or not, and even though he has not exhausted the remedies given under the state law And it has so been held.[47] And federal aid having once been invoked, the question of complainant's remedy at law being adequate is determined not upon the remedy available in the state court, but upon the adequacy of the provided remedy in the federal courts.[48]

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[44] *Johnson v. Wells Fargo Co., supra; Cummings v. National Bank*, 101 U. S. 153, 25 L. Ed. 903 (1879) *Bohler v. Callaway*, 267 U. S. 479, 45 S. Ct. 431, 69 L. Ed. 743 (1925) *Raymond v. Chicago Traction Co., supra, Chicago G. W Ry. v. Kendall*, 266 U. S. 94, 45 S. Ct. 55, 69 L. Ed. 183 (1924) *Gammill Lbr Co. v Board of Sup'rs, supra, Connecting Gas Co. v. Imes, supra, Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441, 43 S. Ct. 190, 67 L. Ed. 340 (1923)

[45] *Siler v. Louisville & Nashville R. R. Co.*, 213 U. S. 175, 29 S. Ct. 451, 53 L. Ed. 753 (1909) *Ohio Tax Cases*, 232 U. S. 576, 34 S. Ct. 372, 58 L. Ed. 737 (1914) *Western Union Telegraph Co. v. Tax Commission of Ohio, supra, Henrietta Mills v. Rutherford County, N C.*, 32 Fed. (2d) 570 (1929) *Conn v. Ringer* 32 Fed. (2d) 639 (1929) *Green v. Louisiana & Interurban R. R. Co.*, 244 U. S. 499, 37 S. Ct. 673, 61 L. Ed. 1280 (1917) *Louisville & Nashville R. R. Co. v. Greene*, 244 U. S. 522, 37 S. Ct. 683, 61 L. Ed. 129 (1917).

[46] *Raymond v. Chicago Traction Co., supra.*

[47] *City Ry. Co. v. Beard, supra, Cummings v. National Bank, supra; Risty v. Chicago, R. I. & Pac. Ry. Co.*, 270 U. S. 378, 46 S. Ct. 236, 70 L. Ed. 641 (1926) *Gammill Lbr Co. v. Board of Sup'rs, supra*; *Bacon v. Rutland R. R. Co.*, 232 U. S. 134, 34 S. Ct. 283, 58 L. Ed. 538 (1914) *Southern Calif. Tel. Co. v. Hopkins, supra, Taylor v. Louisville & Nashville R. Co.*, 88 Fed. 350 (1898)

[48] *Risty v. Chicago R. I. & Pac. Ry. Co., supra, Pokegama Sugar Pine L. Co. v. Klamath River L. & Imp Co.*, 96 Fed. 34 (1899) *National Surety Co. v. State Bank*, 120 Fed 593 (1903) *Barber Asphalt Pav Co. v. Morris*, 132 Fed. 945 (1904) *Borden's Condensed Milk Co. v. Baker* 177 Fed. 906 (1910) *Standard Oil Co. v. Atl. Coast Line R. Co.*, 13 Fed (2d) 633 (1926) *Wrigley Pharmaceutical Co. v. Cameron*, 16 Fed. (2d) 290 (1926) *Munn v. Des Moines Natl. Bank*, 18 Fed. (2d) 269 (1927) *Southern Ry. Co. v. Query*, 21 Fed. (2d) 333 (1927) *North Pacific S. S. Co. v. Industrial Acci-*

A conclusion drawn from the authorities cited seems to leave the court with two alternatives. It may recede from the position taken in the *Caso* case and declare the remedy provided by Chapter 62, Laws of 1931, to be inadequate, or it may adhere to that position thereby adopting a view opposed to that heretofore accepted in this state. The result of adopting the latter alternative would seem to be to drive litigants into the federal courts.

SAUL D. HERMAN.

THE RULE AGAINST PERPETUITIES AND POWERS OF SALE. The rule against perpetuities is usually stated as prohibiting the creation of future interests or estates, which by possibility may not become vested within a life or lives in being and twenty-one years, together with the period of gestation, where the latter is necessary to cover cases of posthumous birth.[1] It is not enough that the estate may possibly or even probably vest within the time limited by the rule, but the court must be able to see by looking at the document creating the estate that the estate will necessarily vest within the time.[2] The Rule against Perpetuities applies in the case of equitable as well as legal interests. Therefore, the creation of a trust or equitable interest, which may not vest in the object of the trust within the time limited by law for the vesting of legal estates, will be nugatory [3] It is also well settled that the Rule against Perpetuities applies as well to powers over property as to interests and estates therein.[4] It is the purpose of this note to discuss some of the problems involved in applying the Rule against Perpetuities to the case where a trust has been created by will by which the trustees are given a power of sale.[5] In an effort to eliminate much of the confusion and inconsistencies which seem to have invaded this branch of the law,

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dent Commission, 23 Fed (2d) 109 (1918) *Hall City Ry. Co. v. Youngquist*, 32 Fed. (2d) 819 (1929) *Robinson v. Campbell*, 16 U. S. 212, 4 L. Ed. 372 (1818) *Boyle v. Zacharie*, 31 U. S. 648, 8 L. Ed. 532 (1832) *McConehay v. Wright*, 121 U. S. 201, 7 S. Ct. 94, 30 L. Ed. 932 (1887) *Chicago, B & Q. Ry. v. Osborne*, 265 U. S. 14, 44 S. Ct. 431, 68 L. Ed. 878 (1924).

[1] 21 R. C. L. 282; 48 C. J. 937 for a historical review of the rule, see Gray on the Rule Against Perpetuities (3rd ed.) secs. 123-200, and Perry on Trusts (7th ed.) Vol 1, page 632. This rule has been altered by statute in many states, and, generally speaking, statutory additions and substitutions have been in the direction of increased stringency, 48 C. J. 1000. See Tiffany on Real Property (2nd ed.), Vol 1, sec. 189, for an outline of these statutory changes. The rule is not changed by statute in Washington.

21 R. C. L. 289; Foulke on Perpetuities, sec. 342; 48 C. J. 942.

[3] Perry on Trusts (7th ed.), Vol. 1, page 639; *Norfolk's Case*, 1 Vern. 164, *O'Hare v. Johnston*, 273 Ill. 458, 113 N. E. 127 (1916) *Andrews v. Lincoln*, 95 Me. 541, 50 Atl. 898 (1901) *Clossett v. Burtchaell*, 112 Ore. 585, 230 Pac. 554 (1924).

[4] 48 C. J. 977 *Larence's Estate*, 136 Pa. 354, 80 Atl. 85, 20 Am. St. Rep. 925, 11 L. R. A. 185 (1891) Gray on the Rule Against Perpetuities (3rd ed.), sec. 474a, says: "Sometimes a power is spoken of as too remote; this is a natural, but it is not an exact, mode of expression, it is not the power which is too remote, but the estate or interest appointed by it." To like effect see 16 Col. L. Rev. 537.

[5] The rule has still wider application in the case of powers of appointment. See 49 C. J. 1261.