

It may be argued that the rationale of the California and the Massachusetts courts has unduly enlarged the scope of the injunction and may lead to abuse as in the early history of labor law. Although use of the injunction deprives the defendant of a jury trial, and although punishment for contempt is sadly lacking in definite standards, the scope of injunctive relief should not be restricted by an arbitrary distinction between property rights and personal rights in an important and growing class of cases where such relief is often the sole remedy. The other criteria for equitable relief, if adhered to, provide adequate safeguards against abuse. In the instant case a substantial right was clearly threatened. The asked-for relief was practicable and endangered no constitutional freedoms. The remedy at law could not adequately recompense the plaintiff for the mental injury suffered in being ejected from the turf club.

The holding of the California Court that personal rights in proper cases are entitled to the protection of equity in view of the inappropriate nature of the remedy at law provides an important precedent in cases involving discrimination against minority groups.

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#### ENFORCEABLE OBLIGATION AS REQUIREMENT FOR VALID TRUST

The plaintiff executed a trust deed conveying real property to himself as trustee for the benefit of his wife and children. As trustee he had full discretion over the use and disposition of the property, including the privilege of reconveying the property to himself personally after his youngest child reached the age of twenty-one. The beneficiaries were to enjoy only such benefits as he chose to confer on them at his discretion. Subsequently, a divorce decree awarded part of the real property involved in the trust deed to the plaintiff's wife. The plaintiff brought an action to quiet title in himself as trustee, claiming that the court in the divorce action lacked jurisdiction over the property because the trustee was not before the court. Because the trust deed imposed no enforceable obligation on the trustee and gave him absolute and unconditional discretion with respect to the property, it was held that it was invalid, and that no trust was created. *Ponzelino v. Ponzelino*.<sup>1</sup>

A valid trust requires a division of the interests in the trust property between a trustee, who usually holds legal title, and one or more beneficiaries, whose interests in the property, under the trust instrument, are enforceable by a court of

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pressed by the plaintiff's suggestion that if equity would safeguard their right to sell bananas it ought to be at least equally solicitous of their personal liberties guaranteed by the Constitution. We believe the true rule to be that equity will protect personal rights by injunction upon the same conditions upon which it will protect property rights by injunction. . . ." *Kenyon v. City of Chicopee*, 70 N.E. 2d 241, 244 (Mass., 1946).

<sup>1</sup> 26 N.W. 2d 330 (Iowa, 1947).

equity.<sup>2</sup> Even where the requirements as to certainty of the beneficiaries<sup>3</sup> and subject matter<sup>4</sup> are met, and the intention to establish a trust is clear,<sup>5</sup> the absence of words imposing an enforceable duty upon the trustee will cause the trust to fail.<sup>6</sup>

However, the line of demarcation between words which create an enforceable obligation and those which do not is not well defined. Discretionary powers in the trustee are not in themselves indicative of the absence of enforceable obligations.<sup>7</sup> A trustee's discretion to designate who and how much any one of a class of beneficiaries will receive will not cause a trust to fail.<sup>8</sup> Nor will his discretion as to the use of the trust property and the allowances made to the beneficiaries in a spendthrift trust lead to the conclusion that his duties are unenforceable.<sup>9</sup> But a court will not enforce a trust which the trustee is to administer according to secret instructions which he may not divulge,<sup>10</sup> and the mere designation of a party as "trustee," or of the property as left "in trust," will not suffice to impose the necessary obligation upon the trustee.<sup>11</sup>

In those cases in which the settlor makes himself trustee, he cannot assert the existence of an enforceable obligation, so as to defeat other claims against the trust property, where the enforceable interests of beneficiaries are so remote or illusory as to give the trustee immediate control, tantamount to full ownership, over the use and disposition of the property and the income therefrom.<sup>12</sup> Where, as in the instant case, the settlor-trustee failed to include words showing that the discretionary powers of the trustee were limited by enforceable obligations, the trust also fails.<sup>13</sup> Thus it appears that an enforceable obligation is found only where the words creating the trust clearly indicate some purpose for which the

<sup>2</sup> 1 Bogert, *Trusts and Trustees* § 1 (1935).

<sup>3</sup> *Seran v. Davis*, 174 Okla. 433, 50 P. 2d 662 (1935); *Hodgson v. Dorsey*, 230 Iowa 730, 298 N.W. 895 (1941); *In re Perkins' Will*, 68 N.Y. Misc. 255, 124 N.Y. Supp. 998 (1910); *Tilden v. Green*, 130 N.Y. 29, 28 N.E. 880 (1891).

<sup>4</sup> *Glover v. Baker*, 76 N.H. 393, 83 Atl. 916 (1912); 1 Bogert, *Trusts and Trustees* § 111 (1935); 1 Rest., *Trusts* § 66 (1935).

<sup>5</sup> *Deakins v. Webb*, 19 Tenn. App. 182, 84 S.W. 2d 367 (1935); *Burns v. Nolette*, 83 N.H. 489, 144 Atl. 848 (1929); *In re Newark Shoe Stores*, 3 F. Supp. 293 (Md., 1933); 1 Rest., *Trusts* § 23 (1935).

<sup>6</sup> 1 Bogert, *Trusts and Trustees* § 1 (1935).

<sup>7</sup> *Whelan v. Reilly*, 3 W. Va. 597 (1869). See 1, 3 Bogert, *Trusts and Trustees* §§ 221, 560 (1935).

<sup>8</sup> *Moskowitz v. Federman*, 72 Ohio App. 149, 51 N.E. 2d 48 (1943); *In re Dewey's Estate*, 45 Utah 98, 143 Pac. 124 (1914); 1 Rest., *Trusts* § 121 (1935).

<sup>9</sup> *Sheridan v. Krause*, 161 Va. 873, 172 S.E. 508 (1934).

<sup>10</sup> *Sibenaler v. Weiderholt*, 54 Okla. 16, 153 Pac. 683 (1915). But see *James v. Joseph*, 156 Tenn. 417, 1 S.W. 2d 1017 (1928).

<sup>11</sup> *In re Tunnell's Estate*, 325 Pa. 554, 190 Atl. 906 (1937); *Dunn v. Poncelor*, 230 Ala. 375, 161 So. 450 (1935); *Lossie v. Central Trust Co.*, 219 Ky. 1, 292 S.W. 338 (1927).

<sup>12</sup> *Morsman v. Commissioner of Internal Revenue*, 90 F. 2d 18 (C.C.A. 8th, 1937); *Board of Directors of Theological Seminary v. Lowrance*, 126 S.C. 89, 119 S.E. 383 (1923).

<sup>13</sup> *Gueutal v. Gueutal*, 113 App. Div. 310, 98 N.Y. Supp. 1002 (1906).

trust is to be administered, which is beneficial to a party other than the trustee, and which is sufficiently definite to form the basis of a beneficiary's suit to compel specific performance by the trustee.

These criteria of an enforceable obligation, however, frequently work hardships, especially in those cases in which a testator has died with the belief, usually written into the will, that the devisee will provide for other designated individuals.<sup>14</sup> In such a case, the failure of a court to find a trust relationship results in the violation of the testator's intent if the devisee does not fulfill his moral obligation. This result seems especially harsh in view of the fact that the weight of authority indicates that the testator's insertion of a few words to the effect that the devisee was to use the property for the care and maintenance,<sup>15</sup> or for the education,<sup>16</sup> of the non-inheriting survivors, would operate to establish an enforceable trust.

Nevertheless, the general rule requiring an enforceable obligation in a trust relation seems desirable in that it spares the courts the burdensome problem of defining moral obligations in concrete, pecuniary terms which are enforceable. Furthermore, as applied in the *Ponzelino* case, the rule effectively bars the creation of mock legal entities and relationships which can be used to insure a property owner the full beneficial use of his property, while putting it beyond the grasp of creditors and tax collectors.

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#### DISCHARGE FOR DUAL UNIONISM UNDER THE WAGNER ACT

On April 1 the CIO petitioned the National Labor Relations Board for investigation and certification of representation at the respondent's plant. A prior closed-shop contract between the AFL and the respondent automatically renewed itself for an additional year on May 3. On June 23 the Board held an election<sup>1</sup> among the respondent's employees at which the AFL was chosen over the CIO as majority representative. Thereafter, an employee who had served as an observer for the CIO at the election was expelled from the AFL for his activities in promoting the rival union. At the demand of the AFL, and pursuant to the existing closed-shop contract, the respondent, with full knowledge

<sup>14</sup> *Annis v. Huggins*, 35 S.D. 300, 152 N.W. 114 (1915); *Axtell v. Coons*, 82 Fla. 158, 89 So. 419 (1921); *Floyd v. Smith*, 59 Fla. 485, 51 So. 537 (1910). Cf. *Braubaker v. Lauver*, 322 Pa. 461, 185 Atl. 848 (1936); *Bliss v. Bliss*, 20 Idaho 467, 119 Pac. 451 (1911).

<sup>15</sup> *Colton v. Colton*, 127 U.S. 300 (1888); *Burke v. Burke*, 259 Ill. 262, 102 N.E. 293 (1913); *Gibson v. Gibson*, 25 Ky. 1332, 77 S.W. 928 (1904).

<sup>16</sup> *Parks v. Lefeber*, 162 Okla. 265, 20 P. 2d 179 (1933); *Hill v. Clark*, 74 Pa. Super. Ct. 181 (1920); *Mackenzie v. Los Angeles Trust & Savings Bank*, 39 Cal. App. 247, 178 Pac. 557 (1919); *Hoyt v. Bliss*, 93 Conn. 344, 105 Atl. 699 (1919).

<sup>1</sup> The CIO had given timely notice of its representation claim, and the Board did not consider the contract a bar to representation proceedings. Cf. *Matter of American Woolen Mills*, 57 N.L.R.B. 647 (1944).