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Insurance--Trust Agreements--Use of Accumulation Prior to Agreed Time (In re Nires, 290 N.Y. 78 (1943))

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reasonable, especially inasmuch as it did not appear that discrimination between the peddling which was useful, and that which was harmful, was impractical. In so holding, the Court of Appeals has extended the doctrine that peddling, unless it constitute an interference with traffic,[7] cannot be prohibited by a municipal ordinance. It has been held that a city cannot by ordinance prohibit peddling in certain sections thereof when conditions in the restricted section are not dissimilar from those existing in many other areas and where the ordinance bears no relation to the welfare of the public but is designed for the convenience and interest of a special class.[8] Hawking and peddling have long been subject to regulation.[9] As such, the city of New York had the right to impose reasonable and just regulations, but did not have the right to impose a broad prohibition on a legitimate business. Moreover, the city of New York did not have the power to prohibit peddling as an incidental right of its power over the use of the streets granted it by the Home Rule Law, Section 11.

Three justices in a dissenting opinion written by Finch, J., contended that the Local Law was a reasonable regulation of a purely local problem and therefore constitutional. The minority view was that the Local Law did not force the peddlers and hawkers to abandon their trade but rather to confine themselves to the public markets where adequate facilities had been provided. The use of the facilities in the public market would result in proper supervision both as to the safeguarding of food and as to short weighting and other problems which at present are difficult to enforce. The decision in the principal case is an affirmation of the rule that peddling is a legitimate business and is subject to regulation but not prohibition.

T. K.

INSURANCE—TRUST AGREEMENTS—USE OF ACCUMULATION PRIOR TO AGREED TIME.—Widowed mother of three children seeks to have an alleged trust agreement set aside, so that interest being accumulated for three minor children may be used to pay for the children's education. Petitioner's husband was insured by five life insurance companies. By the terms of the policies, the benefits accruing on the death of the insured would be divided equally among decedent's three minor children. The rights of the beneficiaries were

[7] Bus Depot Holding Corp. v. Valentine, 288 N. Y. 115, 41 N. E. (2d) 913 (1942).

[8] People v. Cohen, 272 N. Y. 319, 5 N. E. (2d) 835 (1936); People v. Klinge, 276 N. Y. 292, 12 N. E. (2d) 161 (1938).

[9] N. Y. Laws 1909, c. 26, § 20, subd. 13. Subject to the constitution and general laws of this state, every city is empowered to maintain order, enforce the laws, protect property and preserve and care for the safety, health, comfort and general welfare of the inhabitants of the city and visitors thereto; and for any of said purposes to regulate and license occupations and businesses.

evidenced by so-called certificates of deposit, or trust agreements. Two of the insurance companies agreed to hold the monies as "trustees." The income from the "trust" was to be accumulated until the children reached the age of twenty-one, when the interest then accrued was to be paid in one lump sum. Future interest was to be paid in stated installments. In the event one of the beneficiaries would die before reaching the age of thirty years, the benefits were to be paid to the survivor or survivors, and then to the estate of insured. Decedent's widow, general guardian of two of the infant beneficiaries, now alleges that she is without funds to support the two children, and prays that the insurance companies be directed to pay over to her suitable sums from the accumulated income to support the children and provide for their education. *Held,* petition denied. In re *Nires,* 290 N. Y. 78, 48 N. E. (2d) 268 (1943).

Section 17 of the New York Personal Property Law gives authority to the Supreme Court to invade trust agreements where there is an accumulation of income for the benefit of minors, where those charged with support of the children are not able to do so. The court may direct so much of the accumulated interest be paid over to the guardian as may be necessary for the children's support.[1] However, here there is no trust within the meaning of this statute. The accumulation of income is not a result of a direction by the grantor. The accumulation is the result of a contractual agreement between the grantor and the insurance companies, and there is no trust, but a debt.[2] Nor is there a *res* from which the income must be paid, as is the case in a trust, but the interest is of a fixed rate, regardless of the earnings of the company. Further, Section 15 of the New York Personal Property Law provides that payments such as those involved here, may not be changed by the courts.[3] The mere fact that there is an accumulation of interest does not justify

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[1] N. Y. PERSONAL PROPERTY LAW § 17. "When a minor, for whose benefit a valid accumulation of the income of personal property has been directed, shall be destitute of other sufficient means of support or education, the supreme court, at special term in any case, or, if such accumulation shall have been directed by a will, the surrogate's court of the county in which such will shall have been admitted to probate, may, on the application of such minor or guardian, cause a suitable sum to be taken from the moneys accumulated or directed to be accumulated, to be applied for the support or education of such minor."

Matter of King, 121 Misc. 298, 200 N. Y. Supp. 829 (1923); Matter of Wagner, 81 App. Div. 163, 80 N. Y. Supp. 785 (1903).

[2] Holmes v. John Hancock Mutual Life Ins. Co., 288 N. Y. 106, 41 N. E. (2d) 909 (1942); Latterman v. Guardian Life Ins. Co., 280 N. Y. 102, 19 N. E. (2d) 978 (1939); Crossman Co. v. Rauch, 263 N. Y. 264, 188 N. E. 748 (1934).

[3] N. Y. PERSONAL PROPERTY LAW § 15. ". . . . Provided, however, that when the proceeds of a life insurance policy, becoming a claim by the death of the insured, are left with the insurance company under a trust or other agreement, the benefits accruing thereunder after the death of the insured shall not be . . . subject to commutation or incumbrance, nor to legal process except in an action to *recover* for necessaries . . . ." (Emphasis supplied.)

Crossman v. Rauch, 263 N. Y. 264, 188 N. E. 748 (1934).

the court's invasion of the contract.[4] The right of the court under Section 17 seems to be based on inherent equity powers to regulate trusts, and this power is expressly forbidden to be exercised as against such accumulations in policies of insurance.[5]

F. G.

WAR—CONSTITUTIONAL LAW.—Plaintiff brought suit against the defendant, the Alien Property Custodian under Section 9a of the Trading With the Enemy Act of 1917, as amended,[1] to recover its property that was seized and was being liquidated by the defendant. Plaintiff made a motion for an order directing defendant to retain in his custody until final judgment the property seized and to permit the plaintiff to carry on its business. The defendant countered with a motion to dismiss the entire complaint on the ground that the court has no jurisdiction over this seizure and that the defendant has determined that the plaintiff corporation and its president were nationals of a designated enemy country and cloaking for German interests in Germany and that the interests of the United States require the liquidation of the corporation. *Held,* motion to dismiss the complaint denied. The court has jurisdiction over all seizures under the Trading With the Enemy Act so long as the plaintiff is not an "enemy" or "ally of enemy" within the meaning of those terms in the Act.[2] Defendant shall not liquidate the corporation or sell the stock until it is decided whether the plaintiffs are "nationals of a designated enemy country." *Draeger Shipping Co. Inc.* et al. *v. Crowley, Alien Property Custodian,* 49 F. Supp. 215 (S. D. N. Y. 1943).

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[4] Pierowich v. Metropolitan Life Ins. Co., 282 Mich. 118, 275 N. W. 789 (1937).

[5] *In re* Howland, 37 Misc. 114, 74 N. Y. Supp. 950 (1902), *rev'd on other grounds,* 75 App. Div. 207, 77 N. Y. Supp. 1025 (1902); Matter of Muller, 29 Hun 418 (N. Y. 1883); Matter of Kane, 2 Barb. Ch. 375 (N. Y. 1847); Matter of Bostwick, 4 Johns. Ch. 100 (N. Y. 1819).
See N. Y. PERSONAL PROPERTY LAW § 15.

[1] 40 STAT. 411, 50 U. S. C. A. App. (1917).

[2] 40 STAT. 411, § 9 (1917), permits suit to review seizure by the Alien Property Custodian but does not allow one who is an enemy or ally of an enemy to bring suit. *Id.* § 2, defines an enemy as: "(a) Any individual, partnership, or other body of individuals of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory." The phrase "ally of enemy" has a similar definition with reference to nations which are allies of nations with which the United States is at war.