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# Correcting a Mistake in the Perpetuities and Accumulations Act 1964

When in 1965 J.D.Davies wrote a note in the Law Quarterly Review pointing out that the draftsman of the Perpetuities and Accumulations Act 1964 had fallen into an elementaryerror over the repeal of s.163 of the Law and Property Act 1925 (which used to save a disposition from remoteness arising out of a condition requiring the attainment of age exceeding 21 by reducing the age requirement to 21) he made various suggestions for overcoming the defect (81 L.Q.R. 346). These did not include the obvious one of direct amendment by Parliament, perhaps because of the well known difficulty of securing such amendments. However, 10 years later, by a provision tucked away in a schedule to the Children Act 1975, Parliament has made the necessary amendment. As the draftsman at fault I am grateful. By way of atonement I propose to explain the error, and how it has been put right.

## Section 4 (1) of the 1964 Act

Section 4 (1) of the 1964 Act provides as follows:

Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding twenty- one years, and it is apparent at the time the disposition is made or becomes apparent at a subsequent time -

(a) that the disposition would, apart from this section be void for remoteness, but

(b) that it would not be so void if the specified age had been twenty-one years,

the disposition shall be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to that age which would, if specified instead, have prevented the disposition from being so void.

This was an improvement on s.163 of the 1925 Act because it allowed the donor's intention to be more nearly realised. If a gift is limited to a vest in a person on his attainment of the age of 30 and, under the wait and see rule introduced by s.3 of the 1964 Act, it becomes clear that the perpetuity period will expire while he is still only 28, s.4 (1) will lower the required age to 28, whereas a s.163 would have lowered it to 21 in every case.

Section 163 having thus been superseded, it was quite properly repealed by the 1964 Act. This was where the draftsman made his error. It seemed natural and helpful to insert the repeal in the very section whose existence called for it, s.4. There accordingly it was put, as subs (6) right at the end. Alas, that was the one place in the Act where the repeal should not have been put. Normally it does not matter whereabouts in an Act a repeal is placed. Here it mattered a great deal, because of those fatal words in s.4 (1), apart from this section.

Apart from s.4, s.163 would not be repealed. Apart from s.4 therefore, the disposition would not be void for remoteness because s.163 would save it. Therefore s.4 (1) would not save it. But, back in the real world away from statutory hypotheses, s.163 has long vanished and cannot save anything. So, by remorseless logic the gift fails - against all the obvious intentions of Parliament. Furthermore, where the only vice is an excessive age restriction s.3 would also be affected, on similar reasoning, so that the wait and see rule would be prevented by the drafting error from saving dispositions of this kind, even where the operation of s.4 (or the repealed s.163) was not needed.

## Mischief rule a solution?

True, the courts might have been prevailed upon to come to the rescue. In his note in the Law Quarterly Review, J.D.Davies asked -

Can the 'mischief' or 'absurdity' rules of statutory interpretation help? It cannot have been the intention of the Act to bring about the failure of an interest that would previously have been valid, and it is manifestly absurd that the wait and see and cutting down of excessive ages rules should be operative in some cases and not in others. The demise of s.163 was intended to be complete and final. Perhaps the courts could treat s.4 (6), which brings about the demise, as if it were a separate section of the Act; or perhaps they could point to the 'would be void' phraseology in ss. 3 (1) and 4 (1) as indicating a voidness in the future, namely a time in which s.163 was no more. Since both the mischief and absurdity are apparent, one may hope that a solution along these lines will be found.

Happily such desperate expedients will now not be necessary, and it may be of interest to students of our parliamentary processes to explain why.

The 1964 Act was one of the last I drafted before having a spell away from Whitehall which lasted until 1973. It would be an exaggeration to say that throughout that period I lay awake at nights worrying about my error. However it did trouble me, and on returning to the Parliamentary Counsel Office in 1973 I sent for the papers and set about trying to put it right. The obvious vehicle seemed to be a Statute Law Reform (Repeals) Bill which was being prepared by the Law Commission. The matter required a small piece of statute law reform, and the defect concerned a misplaced repeal, so what more natural home could be found for it? Alas, the Law Commission, with some piece of arcane reasoning the details of which I forget, took a different view. I had to think again.

Then I was asked to draft the Children Bill. The widespread changes introduced by this called for a mass of 'minor and consequential amendments', as they are called. These are now collected in sched. 3 to the Children Act 1975, which contains 83 paragraphs. One of the paragraphs, no.43, amends s.4 of the Perpetuities and Accumulations Act 1964.

Now in the House of Commons at least a bill is not allowed to contain just anything its promoters fancy. Its contents have to be within the 'scope' of the bill, and the doctrine of scope is a difficult one. The long title is taken as a guide to the scope, and the long title of the Children Bill reads simply: 'a Bill to make further provision for children'. I reasoned, perhaps a little speciously, that s.4 of the 1964 Act, being concerned with age restrictions in settlements inserted to prevent those of tender age succeeding, was 'a provision for children' and the powers-that-be did not dissent. So para. 43 went in. It adds a new subsection to s.4, as follows:

'(7) For the avoidance of doubt it is hereby declared that a question arising under section 3 of the Act or subsection (1) (a) above of whether a disposition would be void apart from this section is to be determined as if subsection (6) above had been a separate section of this Act'.

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