

The rule against perpetuities forbids the tying up of property beyond a life or lives in being and twenty-one years and ten months (the period of gestation) thereafter.

Venable's Syllabus, page 12.

that is to say, the period prescribed by the rule for the vesting of contingent estates is a life or lives in being at the time of the commencement of the estate and twenty-one years and a fraction of a year thereafter.

Notes on Titles, Sec. 254.

The question is not determined by looking backward on events, but by looking forward, and if the contingency when the title is to vest may possibly not happen until after the time prescribed by the rule, then the devise or conveyance, so far as dependent on such remote contingency, is void.

Barnum vs. Barnum, 26 Md. 171,
 Thomas vs. Gregg, 76 Md. 169-175.
 Biscoe vs. Biscoe, 6 G. & J, 232-5,
 Pennington vs. Pennington, 70 Md. 418,
 Deford vs. Deford, 36 Md, 168,
 30 CYC, 1483.

Such was the common law of England as laid down by Lord Nottingham in the Duke of Norfolk's Case, 3 Ch. Case, page 1, and such has always been the law of this state. I find nothing in the Acts of 1908, Chapter 569, (Bagby's Code, 93, Sec. 321) to contravene this long established doctrine.

That act seems to have been intended to correct what was supposed to be an unnecessary hardship in the application of the rule to devises and bequests to charitable and educational objects. possibly as a consequence of the decision in Trinity Church vs. Baker, 91 Md. 539, though how far it has changed the doctrine laid down in that case, if at all, I need not stop to inquire.

According to the rule as long since departed the conditions existing at the time of the death of the testator or testatrix whose will is being construed, are to govern in its application.

4 Kent, 283, note 1.
 30 CYC, 1485.

Testimony was taken in this case and shows that at the time of the death of the testatrix, Susan Arnold, in 1883, the complainant, James J. Arnold, was not yet born, and of course, his two children, the defendants herein, were not born. The only life in being at the death of the testatrix, so far as the question is involved here is concerned, was her son, James Arnold, to whom the property in question was devised for life. A devise over to an unborn person that might possibly not vest for more than twenty-one years after the death of the life tenant would, according to the rule, be void. So far as James J. Arnold is concerned, the devise over to him was good, for he must take, if at all, immediately upon the death of the first taker or within nine or ten months thereafter, even if we assume that he might have been a posthumous child, born at the latest possible period after the death of his father. But as to these two defendants, the children of James J. Arnold, and the grandchildren of James Arnold, they might not have been born, until more than twenty-one years and ten months after the death of their grandfather, who was, as we have seen, the only person directly interested in these proceedings living at the death of the testatrix. It seems clear, therefore, that the limitation over after the death of James J. Arnold, who was himself born several years after the death of the testatrix, offends against the rule forbidding the creation of perpetuities, and is therefore void. The use of the word "revert" in the will, while inapt and inappropriate, does not change the rule of law, above mentioned, nor prevent its application, although as to an actual reverter, it is said, the rule does not apply.

30 CYC, 1473.
 Johnson vs. Edmond, 65 Conn. 492.

A reversion arises always by construction of law and never by deed or will.

Anderson Law Dic., 899.
 Venable's Syllabus, P. 74.

2. The devise to the grandchildren being void, the next question is whether the complainant gets a life estate only or a fee simple title by will. In "Notes on Title", page 272, sec. 260, it is stated that the part of the estate not effectually devised will descend to the heirs at law of the testator or testatrix, and several Maryland cases are cited in support of the proposition,