outstanding power may be as objectionable to the rule as a springing use or an executory devise.61 The powers of the honorary trustee may be what Mr. Kales calls special powers as distinguished from real powers,62 but that fact alone cannot save them from the operation of the rule.63 It will not suffice to say that the first of the powers considered is given by law and not intestated and therefore comes within the principle on which the American courts have taken possibilities of revocation and rights of entry for condition broken out of the rule,64 or to say that the trustee is not privileged to exercise this power and it is, therefore, not within the rule. Without taking issue with either argument, and one might perhaps take issue with them both, one may still urge the application of the rule on the basis of the other power which cannot be thus explained away. This power, of continuous appropriation of an accruing income, differs from the powers with which the rule is most frequently concerned, namely, powers to terminate a present by vesting a future interest in the land or other subject matter involved; but how does it differ for the present purpose, for example, from a power to cut the trees from lands for the payment of legacies or incubumates, a power held to be within the rule?65

In conclusion, it is believed that the courts, in saying that such trusts, created for an indefinite time, are invalid as a violation of the rule against perpetuities, whether they have thus reasoned the result or not, are using those terms and applying that rule in a technically accurate sense, and that there is no occasion for the caution of those who would attribute their invalidity, not to the rule against perpetuities, but to another and analogous but new and distinct rule created for the purpose.

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* supra note 33.
* Future Interests, (2d ed. 1921) § 614.
* Palbert & Livingston, supra note 57.
* supra note 41.