



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 36
Issue 1 *Dickinson Law Review - Volume 36,*
1931-1932

10-1-1931

Spendthrift Trusts in Pennsylvania

Nicholas Unkovic

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Nicholas Unkovic, *Spendthrift Trusts in Pennsylvania*, 36 DICK. L. REV. 45 (1931).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol36/iss1/8>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

SPENDTHRIFT TRUSTS IN PENNSYLVANIA
A. ORIGIN OF SPENDTHRIFT TRUSTS

Spendthrift trusts have long been favorites of the Pennsylvania courts and it was in Pennsylvania that they had their origin.¹ Not only was it the first jurisdiction to recognize this type of trust, but, with a single exception hereinafter noted, it has consistently upheld them in their entirety.² The age-old tendency at common law has been to frown upon restraints on alienation,³ and it has become axiomatic in the law that where one holds a title in fee or for life he may not enjoy the benefits flowing therefrom without the necessarily attendant burden of liability to his creditors.⁴ Since the incidents which attach to the legal title also apply to an absolute equitable interest,⁵ the doctrine of spendthrift trusts, although definitely established in the law of Pennsylvania and other states, has never found favor in England and the English courts do not recognize such trusts.⁶

It has been noted that the doctrine of spendthrift trusts originated in Pennsylvania.⁷ The particular case in which it was first enunciated is *Fisher v. Taylor*.⁸ In this case a father made a gift in trust for his son for life without liability for his debts with remainder over to his heirs. The son's equitable interest was taken in execution by the sheriff and sold by him. The purchaser at the sheriff's sale

¹Gray, *Restraints on Alienation of Property* (2d. ed. 1895) 214-235. (References are to paragraphs).

²Gray, *supra*, 214-235; 76 U. Pa. Law Rev. 220.

³Gray, *supra*, 4.

⁴2 Coke, Littleton 30; Lewin, *Trusts* (12th ed. 1911); *Brandon v. Robinson*, 18 Ves. Jr., 429 (Eng., 1811); 74 U. Pa. Law Rev. 496.

⁵1 Perry on Trusts 386a (1911).

⁶74 U. Pa. Law Rev. 496. But it should be noted that the English courts have developed the separate use trust, if plainly expressed in the instrument, for the protection of married women; Lewin, *supra*, note 2, p. 986 et seq., and *Tullett v. Armstrong*, 4 Myl. & Cr. 377 (Eng. 1840). See also *Jackson v. Hobhouse*, 2 Mer. 483, 487 (Eng. 1817).

⁷See note 1, *supra*.

⁸2Rawle 33 (Pa.-1829).

brought an action of ejectment against the trustees. In this action it is to be noted that the purchaser could not succeed for his rights could rise no higher than his debtor's and the debtor had only an equitable interest in this active trust.⁹ In the course of his opinion, Mr. Justice Smith by way of dictum stated that a man had a right to dispose of his property in any manner he pleased, and consequently had a right to make a provision for his son which could not be taken away from him for the payment of any debts that he might contract, and, moreover, that there was no rule of law which prohibited such disposition of the parent's estate. The court lost sight of the fact that there was a positive rule of law that covered just such a case, to-wit, the acts making all property liable for debts.¹⁰ From this loose dictum has grown up in Pennsylvania and other states the doctrine of spendthrift trusts.

An interesting theory explaining the origin of this type of trust in Pennsylvania has been advanced by Mr. Gray.¹¹ According to this theory, spendthrift trusts first made their appearance in Pennsylvania because of the fact that, since originally there were no courts of equity in this state, there was no method by which equitable rights could be enforced. Thus in order to give such a remedy, many equitable rights were turned into legal rights by the following means: first, by extending the operation of the statute of uses to a use of personal property;¹² and, second, by considering as executed trusts some which in other states would be considered as active, and therefore not executed by the Statute of Uses.¹³ Mr. Gray then proceeds by stating that equitable rights in land could be taken on execution by legal process, but when spendthrift trusts made their appearance, the courts were hesitant to permit the taking of the compli-

⁹Foulke, *Rules Against Perpetuities, Restraints on Alienation and Restraints on Enjoyment* (1909) 291-3. (References are to paragraphs).

¹⁰Foulke, *supra*, 291-3.

¹¹Gray, *supra*, 214 et seq.

¹²For the expression of a contrary view by a Pennsylvania author see Foulke, *supra*, 123.

¹³See Foulke, *supra*, 132, 133.

cated interests of the cestui que trust under legal process. When equitable jurisdiction was finally established in 1836 the doctrine of spendthrift trusts was too strong to be shaken off. This theory has been the subject of criticism.¹⁴

B. DEVELOPMENT OF SPENDTHRIFT TRUSTS * IN PENNSYLVANIA

*Fisher v. Taylor*¹⁵ was the forerunner of numerous decisions in Pennsylvania, all of which seized upon the dictum of that famous case to develop the doctrine of spendthrift trusts. Some of the more important of these cases will be noted here.

Chief Justice Gibson in *Holdship v. Patterson*¹⁶ ruled that a benefactor may provide a trust for a friend without exposing said bounty to the debts or improvidence of the beneficiary and that the beneficiary has an individual right of property in the execution of the trust of which he cannot be deprived by an execution against the trustee. With such an authority as Chief Justice Gibson favoring the doctrine of spendthrift trusts it is no wonder that later Pennsylvania judges viewed such trusts with favor.

Another interesting case is that of *Ashhurst v. Given*.¹⁷ Here the court held that a spendthrift trust in the hands of the trustee was not subject to execution for the debts of the improvident son contracted previous to the devise creating the trust fund. The next year in *Vaux v. Parke*,¹⁸ Mr. Justice Sergeant stated that where land was devised by a father to certain trustees in trust for his spendthrift son, such a son had no interest in the land which could be seized and sold by execution on a judgment obtained against him.

The Pennsylvania Supreme Court in *Girard v. Chambers*¹⁹ held that in order for a restriction upon alienation,

¹⁴Foulke, *supra*, 123 et seq.

¹⁵2 Rawle 33 (Pa.-1829).

¹⁶7 Watts 547 (Pa.-1838).

¹⁷5 W. & S. 323 (Pa.-1843).

¹⁸7 W. & S. 19 (Pa.-1844).

¹⁹46 Pa. 485 (1864). See also *Holdship v. Patterson*, *supra*;

such as exists in a spendthrift trust, to be effective it had to be expressed in the instrument creating the trust. For a generation this strict rule was followed. However, in 1890 in the case of *Stambaugh's Estate*,²⁰ the rule of the *Girard* case was departed from completely. It is with this case that the doctrine of spendthrift trusts in Pennsylvania reached its full flower, the Supreme Court going so far as to say that even though the instrument itself does not give evidence of an intention to create a spendthrift trust, nevertheless, if from the surrounding circumstances a reasonable inference may be gathered that such was the object of the testator, that inference will govern the court.

In this case, evidence of the insolvency of the beneficiary at the time the trust was created was admitted by the court and this fact was held to be sufficient evidence of an intention to create a spendthrift trust. To quote from the court at page 597:

"It is said, however, that we must search only for the intent of a testator within the four corners of the will. This is true, but, when we come to consider the will and interpret its meaning, we must do so in the light of all the circumstances by which the testator was surrounded when he made it, and by which he was probably influenced."

Later Pennsylvania cases repudiate the rule of the *Stambaugh* case, and in *Shoup's Estate*,²¹ the court criticises the holding. In the latter case the court held that the mere fact that a testator left a portion of his estate to a daughter absolutely and another portion to a son in trust to receive the income only, raises no presumption that he intended to create a spendthrift trust for the son, nor in such a case will evidence be admitted, in order to establish

Shankland's Appeal, 47 Pa. 113 (1865); *Still v. Spear*, 45 Pa. 168 (1863); *Dean Trickett on Spendthrift Trusts for Their Creators*, 12 Dick. L. Rev. 265; *Creation of a Spendthrift Trust*, 74 U. Pa. L. Rev. 496 (1925-6).

²⁰135 Pa. 585, 19 Atl. 1058 (1890).

²¹31 Pa. Super. Ct. 162 (1906).

a spendthrift trust, that the son was insolvent and incapable of making a living for himself.

Today, the rule of the *Stambaugh* case is not followed as noted in the case of *Shoup's Estate*.²² This is further emphasized by the holding of the court in *McCurdy v. Bellefonte*,²³ wherein there was a will by a mother creating a trust for her son, but it contained no suggestion that the trust fund should be exempt from the reach of the son's creditors, or that he had any creditors except the testatrix, or that he was improvident and a spendthrift. Mr. Justice Walling in view of these facts held that the court would not construe the will so as to create a spendthrift trust.

"Spendthrift trusts are not regarded with disfavor, yet they are not looked upon with such special favor as to warrant the courts in construing a trust to pay the income of a fund to the testator's son for life, without more, to be a spendthrift trust."²⁴

The rule in Pennsylvania today, to use the court's language again, is that:

"A trust will not be construed of the spendthrift kind, unless the language of the instrument by which it is created warrants the construction."²⁵

Thus over half a century later the Pennsylvania Supreme Court iterates the rule of the case of *Girard v. Chambers*,²⁶ and reinstates it as the law.

C. REACHING THE INTEREST OF THE BENEFICIARY

Spendthrift trusts in Pennsylvania have been sustained upon the theory that the donor has a right to control the

²²Supra, note 21.

²³292 Pa. 407, 141 Atl. 247 (1928).

²⁴Ibid. at pp. 410-411.

²⁵Ibid. at p. 411.

²⁶Supra. note 19.

disposition of his property.²⁷ This viewpoint loses sight of the fact that ordinarily all property is liable for debts.²⁸ The control of the donor over the disposition of his property is exemplified in the case of *Mehaffey's Estate*,²⁹ wherein a testator created certain spendthrift trusts and the question arose as to what were the rights of a creditor of the cestui que trust as against the trust property. Mr. Justice Sterrett said:

"It is well settled by an unbroken line of cases commencing with *Fisher v. Taylor*, 2 Rawle 33, that, by using apt words, a parent may create a special trust for the benefit of an unfortunate or a spendthrift child, without exposing his bounty to liability for any debts, contracts, or engagements of the beneficiary."³⁰

The very purpose of a spendthrift trust is to provide a source of income or a principal fund for a beneficiary which cannot be reached by his creditors. In Pennsylvania this purpose has been accomplished with but one notable exception, to be noted later. A review of some of the cases on this point readily discloses the efficacy of such a type of trust. It has often been held that the principal and income of a spendthrift trust cannot be attached,³¹ nor is a legacy

²⁷*Morgan's Estate*, No. 1, 223 Pa. 228, 72 Atl. 498, 25 L. R. A. (N.S.) 236 (1909); *Thackara v. Mintzer*, 100 Pa. 151 (1882); *Holdship v. Patterson*, 7 Watts 547 (Pa.-1838). See also *Beck's Estate*, 133 Pa. 51, 19 Atl. 302, 2 A. L. R. 859, 59 A. L. R. 790 (1890); *Goe's Estate*, 146 Pa. 431, 23 Atl. 383, 2 A. L. R. 860 (1891); and *Prentice v. Pleasanton*, 8 Atl. 842, (Pa.-1887).

²⁸See *supra*, note 10.

²⁹139 Pa. 276, 20 Atl. 1056 (1890).

³⁰*Ibid.*, at p. 281.

³¹*Ellwanger v. Moore*, 206 Pa. 234, 55 Atl. 66 (1903); *Thackara v. Mintzer*, 100 Pa. 151 (1882); *Seitzinger's Estate*, 170 Pa. 500, 32 Atl. 1097 (1895)—this latter case reviews many of the earlier decisions on this subject at pp. 514-519. See also *Wright's Estate*, 12 District 321 (Pa.-1903); *Root's Estate*, 8 Lancaster Rev. 153 (Pa.-1891); *Kreamer's Executors v. Showalter et al.*, 1 C. C. 453 (Pa. 1886); *Overman's Appeal*, 88 Pa. 276 (1878); *Philadelphia v. Lockard*, 198 Pa. 572, 48 Atl. 496 (1901); 2 *Troubat & Haly on Pennsylvania Practice*, p. 1642; *Schmidt's Estate*, 5 D. & C. 470 (Pa.-1924);

attachable in the hands of an executor where it is given upon the express condition that it shall not be attached or seized for the debts of the legatee.³² In the case of *Thackara v. Mintzer*³³ it was ruled that attachment execution would not lie to recover income due the cestui que trust.

The earlier Pennsylvania cases were not in accord as to whether the court could apply the interest of a beneficiary of a spendthrift trust for the support of his wife and children.³⁴ At the turn of the century the rule appeared to be established that the beneficiary's interest in such a trust was not subject to alienability for the support of his wife and children.³⁵ The remedy for such a situation lay in legislation³⁶ and in 1913 an act was passed for support arrears with this in view.³⁷ In 1917 a section of the Wills Act was devoted to providing that spendthrift trusts were subject to attachment for the support and maintenance of the wife and minor children of the beneficiary.³⁸

Davies v. Harrison, 3 D. & C. 481 (Pa.-1923).

³²Beck's Estate, 133 Pa. 51, 19 Atl. 302, 2 A. L. R. 859, 59 A. L. R. 790 (1890); Goe's Estate, 146 Pa. 431, 23 Atl. 383, 2 A. L. R. 860 (1891); and Prentice v. Pleasanton, 8 Atl. 842, (Pa.-1887).

³³100 Pa. 151, 35 A. L. R. 1036, 59 A. L. R. 790 (1882).

³⁴Recovery allowed in: Board of Charities v. Moore, 6 Pa. C. C. 66 (1888); Board of Charities v. Kennedy, 3 Pa. District 231 (1894). See also Decker v. Poor Directors, 120 Pa. 272, 13 Atl. 925 (1888). Recovery denied in *Thackara v. Mintzer*, 100 Pa. 151, 35 A. L. R. 1036, 59 A. L. R. 790 (1882).

³⁵Board of Charities v. Lockard, 198 Pa. 572, 48 Atl. 496 (1901), reversing Philadelphia v. Lockard, 13 Pa. Super. Ct. 569 (1900).

³⁶See 74 U. Pa. L. Rev. 496 (1925-6), Creation of a Spendthrift Trust.

³⁷Act of April 15, 1913, P. L. 72 amending Section 2 of the Act of March 5, 1907, P. L. 6.

³⁸Wills Act of June 7, 1917, P. L. 403, sec. 19 (20 P. S. 243).

The Note of the Commissioners appointed to Codify and Revise the Law of Decedents Estates to this section (see page 72 of their Report) is enlightening. It is as follows:

"The Commissioners have been impressed with the evil arising from the abuse of the doctrine of spendthrift trusts in this Commonwealth. The decisions of the courts hold it legal for a testator in disposing of his own property to bequeath it in trust so that it shall not

The next statutory expression occurred in 1921, when the Assembly passed an act providing for the alienability of spendthrift trusts for the support of the beneficiary's wife or children or both.³⁹

With these statutes and with the comparatively recent decision of the Supreme Court in *Moorhead's Estate*,⁴⁰ the law on this point at the present time may definitely be stated to be that the beneficiary's interest in a spendthrift trust may be reached for the support of his wife and children.

A spendthrift trust created by a beneficiary for his own benefit was able to be reached for the support of his wife even before the passage of the aforementioned statutes.⁴¹

Spendthrift trusts because of their very nature are generally active trusts,⁴² and a creditor's claim against a spendthrift trust for the tort of the beneficiary is no better

be liable for the debts of the beneficiary; but it is believed that this protection should not be afforded to prevent the application of the income to the support and maintenance of the family of the beneficiary, and enable him to escape his marital and parental duties.

"Since the present act is to apply only to the estates of persons dying after its approval, this section does not fall within the opinion in *Commonwealth v. Thomas*, 65 Pa. Super. Ct. 275 (1916), holding the Act of 1913 invalid as to the estates of testators dying before the date of that act." Cf. *Com. v. Cozens*, 25 District 177 (Pa.-1916).

³⁹Act of May 10, 1921, P. L. 434, 48 P. S. 136. This Act held constitutional in *Everhart v. Everhart*, 87 Pa. Super. Ct. 184 (126). The fact that the Act is retroactive does not make it unconstitutional: *Moorhead v. Watt*, 75 Pitts. L. J. 249 (Pa.-1927) affirmed in 289 Pa. 542 without discussion of this point; but see *Weightman v. Weightman*, 4 D. & C. 252 (Pa.-1924) for a contrary view.

⁴⁰289 Pa. 542, 137 Atl. 802, 52 A. L. R. 1259 (1927), affirming 75 Pitts. L. J. 249 (Pa.-1927). See also (1928) 41 Harv. Law Rev. 409; (1928) 76 U. Pa. Law Rev. 220; (1929) 43 Harv. Law Rev. 63-5.

⁴¹*Philadelphia v. Meredith*, 49 Pa. Super. Ct. 600 (1910), affirming 20 District 22 (Pa.-1910). Cf. *Young's Estate*, 17 District 597 (Pa.-1907).

⁴²*Shower's Estate*, 211 Pa. 297, 60 Atl. 789 (1905); *Minnich's Estate*, 206 Pa. 405, 55 Atl. 1067 (1903); and *Winthrop v. Clinton*, 196 Pa. 472, 46 Atl. (1882).

than that of a creditor whose claim is founded on contract.⁴⁵ A dictum in *Thackara v. Mintzer*⁴⁴ states that:

“Whether the judgment be for breach of contract or for a tort matters not. The testator recognized no such distinction.”⁴⁵

In addition to the wife and children of the beneficiary, others who have been able to reach spendthrift trusts have been the state,⁴⁶ the trustee,⁴⁷ the executor of the settlor,⁴⁸ and various persons who may be representatives of the

⁴⁵*Thackara v. Mintzer*, 100 Pa. 151 (1882).

⁴⁴*Ibid.*

⁴⁵*Ibid.*, pp. 154-155. See also *Wright's Estate*, 12 District 321 (Pa.-1903); *Davies v. Harrison*, 3 D. & C. 481 (Pa.-1923). For a criticism of this viewpoint see 43 *Harv. L. Rev.* 63 at 80, 81.

⁴⁶*Walter's Case*, 278 Pa. 421, 123 Atl. 408 (1924), in which a lunatic who was supported by the Commonwealth had a spendthrift trust established for his benefit, with the power given to the trustee to expend principal or income if necessary, for his care and benefit. The court held that the Commonwealth was entitled to reimbursement for moneys paid on his behalf from the fund so created, but only from the outlays made from the date of the creation of the trust and not for the periods prior thereto. See also *In Re Spangler*, 3 D. & C. 616 (Pa.-1923).

⁴⁷It has been held that the trustee may reimburse himself out of the income of a spendthrift for a considerable expense incurred in the administration of the trust at the instance of the beneficiary; *Thaw's Estate*, 252 Pa. 99, 97 Atl. 108 (1916). In *McCurdy's Estate*, 3 D. & C. 735 (Pa.-1923) the trustee was permitted to set off against the executor of the beneficiary the amount due the trustee on a judgment against the beneficiary; moreover, a trustee may take credit in his accounts for advancements to the beneficiary before the income has actually accrued in the trustee's hands: *King's Estate*, 147 Pa. 410, 23 Atl. 603, (1892); *Keen's Estate*, 293 Pa. 267, 142 Atl. 209 (1928); *Jones Estate*, 199 Pa. 143, 48 Atl. 865 (1901); *Shuster's Estate*, 26 District 232 (Pa.-1917).

⁴⁸*Sharp v. Wightman*, 205 Pa. 285, 54 Atl. 888 (1903); *Elwart's Estate*, 52 Pa. Super. Ct. 321 (1913).

cestui que trust, such as his guardian,⁴⁹ administrator,⁵⁰ receiver,⁵¹ or trustee in bankruptcy.⁵²

D. CONCLUSION

It may therefore be said with a degree of certainty that the doctrine of spendthrift trusts exists in Pennsylvania today not quite in its entirety, but nearly so. The notable exception is that such a trust may be reached for the support of the wife and children of the beneficiary. Other scattered exceptions have been mentioned above. No longer do the Pennsylvania courts look to extrinsic circumstances to determine whether or not the creator intended to make a spendthrift trust, but, on the contrary, a restriction upon alienation such as exists in a spendthrift trust to be effective must be expressed in the instrument creating the trust.

NICHOLAS UNKOVIC.

⁴⁹Everhart's Estate, 296 Pa. 94, 145 Atl. 702 (1929).

⁵⁰McCurdy's Estate, 3 D. & C. 735 (Pa.-1923), holding that the income after it has been paid to the executor of the beneficiary was liable for the beneficiary's debts.

⁵¹Mintzer v. Mintzer, 15 Phila. 161 (Pa.-1881).

⁵²See cases cited in 43 Harv. Law Rev. 63, at p. 73 et seq.