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# TRUSTS - TERMINATION BY CONSENT OF BENEFICIARIES - WHO ARE BENEFICIARIES - ACCELERATION OF EQUITABLE REMAINDERS

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TRUSTS — TERMINATION BY CONSENT OF BENEFICIARIES — WHO ARE BENEFICIARIES — ACCELERATION OF EQUITABLE REMAINDERS — According to the English cases, the only condition upon the right of beneficiaries to have a trust terminated is that all of them consent and none be under an incapacity.[1] In this country, under the doctrine commonly associated with the case of *Claflin v. Claflin*,[2] another condition is put upon that right—namely, that the settlor shall not have indicated an intention that the trust remain indestructible.[3] A practical difficulty in applying the *Claflin* doctrine is that frequently the settlor does not express his intention with respect to destructibility, unless we assume that provision for a trust period is an expression of his inten-

[1] Brandon v. Robinson, 18 Ves. Jun. 429, 34 Eng. Rep. 379 (1811); Saunders v. Vautier, 4 Beav. 115, 49 Eng. Rep. 282 (1841); Wharton v. Masterman, [1895] A. C. 186; In re Ussher, [1922] 2 Ch. 321. See 1 BOGERT, TRUSTS AND TRUSTEES, § 221 (1935).

[2] 149 Mass. 19, 20 N. E. 454 (1889).

[3] See Cleary, "Indestructible Testamentary Trusts," 43 YALE L. J. 393 at 395-397 (1934); Evans, "Termination of Trusts," 37 YALE L. J. 1070 at 1076-1081 (1928); Scott, "Fifty Years of Trusts," 50 HARV. L. REV. 60 at 73-74 (1936).

tion that the trust be indestructible until the end of that period, an assumption which the courts have declined to make. When confronted with this situation, the courts have assumed that the settlor never considered the question whether the trust should be indestructible; and in applying the doctrine they have sought to effectuate his "general intention." In other words, where the settlor has not expressed his intention with respect to destructibility, the *Claflin* doctrine amounts to this: equity will not terminate a trust where its continuation is necessary to accomplishment of the settlor's purpose. Per contra, where the settlor's purpose has been accomplished or can be accomplished as well without the trust, equity will terminate the trust (provided, of course, that all beneficiaries consent and none is under an incapacity).[4] Undoubtedly the courts might have taken every provision for a trust period literally, had they been so inclined. Perhaps the reason this method was not adopted is not that it would necessarily do violence to the settlor's intention—what his intention was we can never know—but that it would result in the indestructibility of almost every trust. Though the courts in this country generally have accepted the *Claflin* doctrine,[5] they probably have not looked upon indestructible trusts with favor.

It is the purpose of this comment to consider the destructibility of trusts for successive beneficiaries where the settlor has not expressed his intention with respect to the matter. It will appear that two questions are involved: First, what is the settlor's purpose for the trust? Second, who are beneficiaries?

I.

Even if we define the *Claflin* doctrine in terms of the settlor's purpose, rather than in terms of his intention, the difficulties in applying the doctrine are not ended. In the usual case the settlor's purpose is not set out in the instrument; the trust is neither spendthrift nor discretionary; and there is no evidence of circumstances surrounding the creation of the trust to aid us in establishing the purpose.[6] Under these

[4] See 4 BOGERT, TRUSTS AND TRUSTEES, § 1002 (1935); 2 TRUSTS RESTATEMENT, § 337 (1935).

[5] It has been suggested that "the majority of American courts" have recognized the Claflin doctrine. 4 BOGERT, TRUSTS AND TRUSTEES, § 1002 at p. 2934 (1935). It must not inferred from this that there is also a "minority view" in this country. The few American cases which have allowed termination of trusts, seemingly in contravention of the doctrine, appear to have overlooked rather than to have rejected it. Cases are collected in 4 BOGERT, ibid., p. 2934; and in 45 A. L. R. 743 (1926).

[6] See 2 TRUSTS RESTATEMENT, § 337, comment e (1935), with respect to evidence as to the purpose of the trust. See also Van Leer v. Van Leer, 221 Pa. 195, 70 A. 716 (1908); Rowley v. American Trust Co., 144 Va. 375, 132 S. E. 347 (1926); L'Hommedieu v. L'Hommedieu, 98 N. J. Eq. 554, 131 A. 302 (1925). Cf. Taber v. Bailey, 22 Cal. App. 617, 135 P. 975 (1913).

conditions the settlor's purpose must be inferred from the general provisions of the trust. Since these provisions usually give rise to conflicting inferences, the courts have been forced to indulge in certain presumptions.[7]

A trust for a sole beneficiary is frequently held to be indestructible. This conclusion is probably reached by a presumption that the settlor's purpose is to deprive the beneficiary of enjoyment of the corpus, that otherwise he would have made an outright gift.[8] On the other hand, where a trust is for successive beneficiaries, there is probably a presumption that the settlor's purpose is to provide for the beneficiaries, not to deprive them of enjoyment of the corpus;[9] and, if all beneficiaries consent and none is under an incapacity, they can have the

[7] See Cleary, "Indestructible Testamentary Trusts," 43 YALE L. J. 393 at 406-410 (1934).

[8] See 2 TRUSTS RESTATEMENT, § 337, comment j (1935). Trusts for a sole beneficiary have been held indestructible in the following cases: (a) Trusts to pay the income to *A* for a term of years, and then to pay over the principal to *A*. Claflin v. Claflin, 149 Mass. 19, 20 N. E. 454 (1889); Shelton v. King, 229 U. S. 90, 33 S. Ct. 686 (1913); In re Yates' Estate, 170 Cal. 254, 149 P. 555 (1915); De Ladson v. Crawford, 93 Conn. 402, 106 A. 326 (1919); Bennett v. Bennett, 217 Ill. 434, 75 N. E. 339 (1905); Lent v. Title & Trust Co., 137 Ore. 511, 3 P. (2d) 755 (1931). (b) Trust to pay the income to *A* for life, and on *A's* death to pay over the principal to *A's* estate. In re Will of Hamburger, 185 Wis. 270, 201 N. W. 267 (1924). (c) Trust to pay the income to *A* for the life of *B*, and on *B's* death to pay over the principal to *A*. Lanius v. Fletcher, 100 Tex. 550, 101 S. W. 1076 (1907) (trust for a married woman during life of her husband). See 2 TRUSTS RESTATEMENT, § 337, comment i (1935). (d) Testamentary trust to pay the income to *A* for life, and on *A's* death to pay over the principal to the heirs of the testator; *A* is sole heir. In re Simonin's Estate, 260 Pa. 395, 103 A. 927 (1918); Evans v. Rankin, 329 Mo. 411, 44 S. W. (2d) 644 (1931). (e) Testamentary trust to pay the income to *A*, for life; the future interest in the principal passes to *A* under the residuary clause of the will. Ackerman v. Union & New Haven Trust Co., 90 Conn. 63, 96 A. 149 (1915). *Contra*, Sears v. Choate, 146 Mass. 395, 15 N. E. 786 (1888); Dare v. New Brunswick Trust Co., 122 N. J. Eq. 349, 194 A. 61 (1937).

In Eakle v. Ingram, 142 Cal. 15, 75 P. 566 (1903), there was a testamentary trust to pay the income to *A* for life; the reversion descended as intestate property to *A*, who was heir to the testator. Held, *A* can have the trust terminated. It has been suggested with reference to this case, that the testator may not have been aware of the fact that there was the future interest in the principal, which he had not disposed of and which would descend to *A* as his heir, and his purpose for the trust may have been only to assure that some provision was made for *A*; or he may have been aware of it, and his purpose for the trust may have been to deprive *A* of enjoyment of the principal. Cleary, "Indestructible Testamentary Trusts," 43 YALE L. J. 393 at 409 (1934). Undoubtedly, where there is a testamentary trust to pay the income to *A* for life, and the remainder passes to *A* under the residuary clause of the will [case (e)], the testator may not have been fully aware of the fact that the remainder would pass to *A* under the residuary clause; and there is the same dilemma.

[9] See 2 TRUSTS RESTATEMENT, § 337, comment f (1935).

trust terminated. It would seem that this presumption prevails whether the interest in remainder is indefeasibly vested,[10] contingent or de-

[10] Trust to pay the income to *A* for life, and on *A's* death to pay over the principal to *B*. *A* and *B* can have the trust terminated. Bowditch v. Andrew, 8 Allen (90 Mass.) 339 (1864); Culbertson's Appeal, 76 Pa. St. 145 (1874); Spooner v. Dunlap, 87 N. H. 384, 180 A. 256 (1935); Riedlin's Guardian v. Cobb, 222 Ky. 654, 1 S. W. (2d) 1071 (1928); Rowley v. American Trust Co., 144 Va. 375, 132 S. E. 347 (1926); Armour v. Murray, 74 N. J. L. 351, 68 A. 164 (1907). Where *A* assigns to *B*, *B* can have the trust terminated. Inches v. Hill, 106 Mass. 575 (1871); Seipe's Estate, 11 Pa. Co. Ct. 27 (1892); Thompson's Estate, 10 Pa. Co. Ct. 472 (1891); In re Stafford's Will, 258 Pa. 595, 102 A. 222 (1917). Where *B* assigns to *A*, *A* can have the trust terminated. Gloyd v. Roff, 1 Ohio C. D. 472 (1887); Owen's Estate, 3 Pa. Dist. 331 (1894); Sharpless' Estate, 151 Pa. 214, 25 A. 44 (1892); Simmons v. Northwestern Trust Co., 136 Minn. 357, 162 N. W. 450 (1917); Thom's Exr. v. Thom, 95 Va. 413, 28 S. E. 583 (1897); Yerke's Appeal, 2 Chest. Co. Rep. (Pa.) 410 (1885). Where *A* inherits the remainder from *B*, *A* can have the trust terminated. Taylor v. Huber, 130 Ohio St. 288 (1862); Whall v. Converse, 146 Mass. 345, 15 N. E. 660 (1888). Where the trust is a testamentary one, and *A*, who is the testator's widow, renounces and elects to take her statutory share, it is held that *B's* remainder is accelerated and that *B* can have the trust terminated (at least if other legatees or devisees are not prejudiced by *A's* election). Mercantile Trust Co. v. Schloss, 165 Md. 18, 166 A. 599 (1933); Adams v. Legroo, 111 Me. 302, 89 A. 63 (1913); Beidman v. Sparks, 61 N. J. 226, 47 A. 811 (1901); In re McIlhattan's Will, 194 Wis. 113, 216 N. W. 130 (1927). Cf. Trustees of Kenyon College v. Cleveland Trust Co., 130 Ohio St. 107, 196 N. E. 784 (1935), where it was held that the remainder was not accelerated upon *A's* renunciation and that *B* could not have the trust terminated; that the income should be sequestered during *A's* life to compensate the disappointed residuary legatee. With reference to these cases where *A* has renounced, see 3 SIMES, FUTURE INTERESTS, §§ 757, 751 (1936).

Where there was a testamentary trust to pay the income to *A* for life, and *B* took the remainder as residuary legatee, held, *A* and *B* can have the trust terminated. Manders v. Mercantile Trust & Deposit Co., 147 Md. 448, 128 A. 145 (1925), noted 25 COL. L. REV. 978 (1925). Cf. Herrick v. Slocombe, 84 N. H. 413, 151 A. 81 (1931).

There was a testamentary trust to pay the income to *A* and *B*; *A* and *B* also took the future interest in the principal by descent. Held, *A* and *B* could have the trust terminated. Tilton v. Davidson, 98 Me. 55, 56 A. 215 (1903); In re Wood's Estate, 261 Pa. 480, 104 A. 673 (1918). Cf. Danahy v. Noonan, 176 Mass. 467, 57 N. E. 679 (1900).

Testamentary trust to pay the income to the testator's children (and to the issue of any deceased child), and on the death of the last surviving child to pay over the principal to the heirs of the testator; the testator's children are his only heirs. Held, they can have the trust terminated. In re Bechtel's Estate, 303 Pa. 107, 154 A. 366 (1931). Cf. In re Stewart's Estate, 253 Pa. 277, 98 A. 569 (1916).

The entire beneficial interest is bequeathed to *A* and *B*, both being minors; when *A* and *B* attain majority, they can have the trust terminated. Eastman v. First Nat. Bank, 87 N. H. 189, 177 A. 414 (1935); Soteldo v. Clements, 11 Ohio Dec. 802 (1893). See 2 TRUSTS RESTATEMENT, § 337, comment h (1935).

The cases listed above comprise all that the writer has found dealing with

feasible.[11] There is nothing inevitable about this presumption. Though it is reasonable to infer that the settlor's purpose is only to provide for the several beneficiaries, it is just as reasonable to infer that his purpose is to deprive the life cestui of enjoyment of the corpus, that otherwise he would have divided the corpus and have given the parcels outright to the beneficiaries.[12] The courts have entertained this presumption, probably because they have favored the destructibility of trusts. Considered in its most favorable light, it might be treated as a presumption founded not as much upon intention as upon some notion of public policy.[13]

2.

There is difficulty in determining who are beneficiaries only where the remainder interest of a trust for successive beneficiaries is contingent or defeasible. With the exception of cases where the settlor's widow has renounced her equitable life estate in a testamentary trust, the courts have determined the beneficiaries as of the end of the trust period; any person (other than the trustee) named in the instrument, whether living or unborn, who might possibly benefit if the trust were to continue until the end of the trust period, is deemed a beneficiary.[14]

trusts for successive beneficiaries, where the settlor had not expressed his intention with respect to destructibility nor his purpose for the trust and where there was no direction to accumulate income and the trust was not discretionary and not spendthrift either by express provision or by statute (as in New York) and where the interest in remainder was indefeasibly vested and all beneficiaries had consented to termination of the trust.

To the extent that it is as reasonable to infer that the settlor's purpose was to deprive the life cestui of enjoyment of the corpus, as it is to infer that his purpose was to provide for the beneficiaries, these cases, which hold that a trust for successive beneficiaries can be terminated, in effect recognize a presumption that the latter inference is the proper one. It should be observed, however, that the cases do not speak of the existence of such a presumption.

[11] The great majority of the cases have held trusts indestructible where the interest in remainder was contingent or defeasible, but generally the reason for this conclusion has been that there were possible unborn beneficiaries. Where this difficulty is eliminated, it has been held that trusts of this character are destructible. Cases of this latter sort are listed in note 15, infra. To the same effect are Eastern Trust & Banking Co. v. Edmunds, 133 Me. 450, 179 A. 716 (1935); White v. Weed, 87 N. H. 153, 175 A. 814 (1934), noted 34 MICH. L. REV. 453 (1936).

[12] "Under an express disposition of the interest in remainder to another person, the purpose of the trust may be to protect the remainderman against waste, or to protect the beneficiary against his own improvidence. Ordinarily no one purpose stands out; yet courts have generally assumed, in many instances probably without justification, that the sole object was to protect the remainderman against waste." Cleary, "Indestructible Testamentary Trusts," 43 YALE L. J. 393 at 410 (1934).

[13] As to purposes of rules of construction, see 2 SIMES, FUTURE INTERESTS, § 310 (1936).

[14] See generally, 4 BOGERT, TRUSTS AND TRUSTEES, § 1002 (1935); Evans,

For the sake of convenience, we shall consider this problem under three headings: (a) trusts involving vested remainders subject to be wholly divested; (b) trusts involving contingent remainders; (c) trusts involving vested remainders subject to open.

(a) Suppose there is a testamentary trust, to pay the income to *A*, the settlor's widow, for life, and upon *A's* death to pay over the principal to *B*, the settlor's only child, but if at *A's* death *B* is not living, then to pay over the principal to *C*. If *A* renounces and elects to take her statutory share, it is frequently held that *B's* remainder is accelerated and becomes a present interest as of the time of the settlor's death (at least if other legatees or devisees are not prejudiced by *A's* election), and that *B* alone can have the trust terminated.[15] *C* is not considered a beneficiary. The courts reach this conclusion by assuming that the settlor did not anticipate the widow's renunciation, and the question is what he would probably have intended had he anticipated it; they refuse to be bound by orthodox rules in construing technical language;[16] in effect they construe "at *A's* death," in the divesting condition, to mean at any termination of the life estate.[17] On the other

"Termination of Trusts," 37 YALE L. J. 1070 at 1090-1093 (1928); Cleary, "Indestructible Testamentary Trusts," 43 YALE L. J. 393 at 403-406 (1934).

The operation of the Rule in Shelley's Case and the rule that a remainder to the heirs of the conveyor is void, on this general problem, is outside the scope of this discussion. With respect to these rules, see 1 SIMES, FUTURE INTERESTS, cs. 7, 8 (1936); Evans, supra, 1071-1075, 1092; Merrell, "Revocation of Inter Vivos Trusts in New York," 14 N. Y. UNIV. L. Q. REV. 431 (1937).

[15] Northern Trust Co. v. Wheaton, 249 Ill. 606, 94 N. E. 980 (1902); Union Trust Co. v. Rossi, 180 Ark. 552, 22 S. W. (2d) 370 (1929); Randall v. Randall, 85 Md. 430, 37 A. 209 (1897); In re Disston's Estate, 257 Pa. 537, 101 A. 804 (1917); Fisch v. Fisch, 105 N. J. Eq. 746, 155 A. 146 (1929). In the following cases it was held that the remainder was not accelerated and that *B* could not have the trust terminated. In re Roger's Trust Estate, 97 Md. 674, 55 A. 679 (1903); Sawyer v. Freeman, 161 Mass. 543, 37 N. E. 942 (1894); Foreman Trust & Sav. Bank v. Seelenfreund, 329 Ill. 546, 161 N. E. 88 (1928). See 3 SIMES, FUTURE INTERESTS, §§ 758, 760 (1936), with collection of cases; and cases in 5 A. L. R. 460 (1920).

[16] According to general concepts of vested and contingent future interests, a vested remainder becomes a present interest immediately upon any termination of the life estate; death of the life tenant, the event upon which a vested remainder is expressly limited, does not have to occur. On the other hand, where a future interest is subject to a condition precedent, the precise event upon which that interest is limited must happen; otherwise the interest will never become vested. In the situation we are here considering, the future interest to *B* is a vested remainder; accordingly, under the first rule above, "on *A's* death," the event upon which *B's* interest is expressly limited, would be construed to mean "on any termination of the life estate." Similarly, the future interest to *C* is an executory interest; under the second rule above, "at *A's* death," in the condition upon which *C's* interest is limited, would be construed to mean *A's* actual death and no other event.

[17] See generally, Simes, "Acceleration of Future Interests," 41 YALE L. J. 659

hand, if *A* elects to take under the will, the courts have held, probably without exception, that *A* and *B* cannot have the trust terminated without *C's* consent.[18] *C* is considered a beneficiary. This follows inevitably from the fact that orthodox rules are thought to be controlling here; "at *A's* death," in the divesting condition, is taken to mean at *A's* actual death and no other event.[19]

From one point of view, the method of construction pursued by the courts where *A* elects to take under the will seems technical and devoid of common sense. If it is fair to say that the settlor would have intended *B* to be able to have the trust terminated where *A* has renounced, it is difficult to see why he would not have intended *A* and *B* together to be able to accomplish the same result where *A* has elected to take under the will. It is very probable that termination before the end of the trust period is a matter which the settlor did not consider. We have seen that the method of construction used in applying the *Claflin* doctrine is based on that assumption. It might be argued that the same assumption should be made here; that the proper method of construction is to find, not whom the settlor intended to be beneficiaries at the end of the trust period, but whom he would have intended to be beneficiaries in the event of an earlier termination of the trust; that orthodox rules should not be controlling. In short, the argument is that the executory interest should be construed "but if at any termination of the trust *B* is not living, then to *C*."

There is much truth in this argument, but it would probably be fruitless. The course of the decisions is perhaps too well fixed and the force of precedent too strong to be influenced by it. The courts still attach great importance to technical language and its common-law meaning. The freer method of construction employed in the case of the widow's renunciation remains the exception rather than the rule.[20]

(b) Suppose there is a testamentary trust, to pay the income to *A*, the settlor's widow, for life, and if on *A's* death the settlor's only child *B* is then living to pay over the principal to such child, and if at *A's* death *B* is not living, then to *C*. If *A* elects to take under the will, *A*

(1932); 3 SIMES, FUTURE INTERESTS, c. 48 (1936); 2 PROPERTY RESTATEMENT, § 232 (1936).

[18] Wenzel v. Powder, 100 Md. 36, 59 A. 194 (1904); Bayard's Estate, 19 Pa. Co. Ct. 317 (1897); Bennett v. Fidelity Union Trust Co., 122 N. J. Eq. 455, 194 A. 449 (1937).

[19] See 2 PROPERTY RESTATEMENT, § 238, comment e, § 239 (1936).

[20] However, use of this method involves a nice question of policy. "Undoubtedly, there is, and should be, a point beyond which courts will not go as a matter of construction. If that were not so, a testator could never have any assurance that any of the provisions of his will would be effectuated." 2 SIMES, FUTURE INTERESTS, § 311 (1936).

and *B* cannot have the trust terminated without *C's* consent.[21] Where *A* renounces, it has been held that *B* cannot have the trust terminated without *C's* consent.[22] But the renunciation cases have been few; given a proper case it is likely that the courts will hold that *B's* remainder is accelerated and that *C* is not a beneficiary, despite the orthodox rule that contingent remainders are never accelerated.[23]

(c) Suppose there is a testamentary trust, to pay the income to *A*, the testator's widow, and on *A's* death to pay over the principal to *B*, a living person. It is held that *A* and *B's* children, though none of them is under an incapacity, cannot have the trust terminated while *B* is living; that *B* may have children hereafter, and the interests of these possible children will be prejudiced by a present distribution of the corpus.[24] Even medical proof that *B* is no longer capable of having children might not alter the result; at least it would not under the old rule at common law that one is conclusively presumed capable of having children as long as he lives.[25] The writer has found no decision on the question whether *B's* children can have the trust terminated where *A* has renounced.[26]

[21] Lewis's Estate, 231 Pa. 60, 79 A. 921 (1911); Hunt v. Lawton, 76 Cal. App. 655, 245 P. 803 (1926); Scheuing v. May, 213 Ill. App. 143 (1919); In re Mowinkel's Estate, 130 Neb. 10, 263 N. W. 488 (1935).

[22] Compton v. Rixey's Exrs., 124 Va. 548, 98 S. E. 651 (1919); Brandenburg v. Thorndike, 139 Mass. 102, 28 N. E. 575 (1891). See also In re Byrne's Estate, 149 Misc. 449, 267 N. Y. S. 627 (1933); In re Loeb's Estate, 155 Misc. 863, 280 N. Y. S. 354 (1935).

[23] See Eastern Trust & Banking Co. v. Edmunds, 133 Me. 450, 179 A. 716 (1935); Christian v. Wilson's Exrs., 153 Va. 614, 151 S. E. 300 (1930); 3 SIMES, FUTURE INTERESTS, § 756 (1936). Cases are collected in 3 SIMES, ibid., § 756; 5 A. L. R. 473 (1920); 17 A. L. R. 314 (1922); 62 A. L. R. 206 (1929).

[24] Bailey's Trustee v. Bailey, 30 Ky. L. Rep. 127, 97 S. W. 810 (1906); Brown v. Owsley, 198 Ky. 344, 248 S. W. 889 (1923). Where *A* assigns to *B's* children, they cannot have the trust terminated. Re Washburn, 11 Cal. App. 735, 106 P. 415 (1909). Where *B's* children assign to *A*, *A* cannot have the trust terminated. Allen v. Allen's Trustee, 141 Ky. 689, 133 S. W. 543 (1911); May v. Walter's Exrs., 30 Ky. L. Rep. 59, 97 S. W. 423 (1906); May v. Bank of Hardinsburg & Trust Co., 150 Ky. 136, 150 S. W. 12 (1912); Sim's Estate, 130 Pa. 451, 18 A. 638 (1889).

In the following cases there were remainders, either vested or contingent, to a class subject to open, and it was held that living beneficiaries could not have the trust terminated. Underhill v. Trust Co., 227 Ky. 444, 13 S. W. (2d) 502 (1929); Carney v. Kain, 40 W. Va. 758, 23 S. E. 650 (1895); Godfrey v. Roberts, 65 N. J. Eq. 323, 55 A. 353 (1903); In re Shirk's Estate, 242 Pa. 95, 88 A. 873 (1913); Robbins v. Smith, 72 Ohio St. 1, 73 N. E. 1051 (1905); Kimball v. Blanchard, 101 Me. 383, 64 A. 645 (1903); In re Gibson, 42 Misc. 157, 85 N. Y. S. 1077 (1903); Re United States Trust Co., 175 N. Y. 304, 67 N. E. 614 (1903); Walker v. Sharpe, 68 N. C. 251 (1873); Zabriskie's Exrs. v. Wetmore, 26 N. J. Eq. 18 (1875).

[25] But see White v. Weed, 87 N. H. 153, 75 A. 814 (1934), noted 34 MICH. L. REV. 453 (1936).

[26] "It would seem that, in reconstruing language which would ordinarily create a remainder to a class following a life estate, any one of three possible constructions may

In conclusion, we can say that though the *Claflin* doctrine is a limitation upon the right to terminate a trust for successive beneficiaries in perhaps every jurisdiction, the courts are likely to limit its operation along the lines indicated. So limited, the doctrine is not very formidable. A more severe limitation upon the right of termination is the requirement that all beneficiaries consent and none be under an incapacity. Beneficiaries for this purpose will be determined as of the end of the trust period, except where the settlor's widow has renounced her equitable life estate in a testamentary trust. Though this method of determining beneficiaries is perhaps rooted too well in precedent to be overthrown now, the one argument to be made against it is that it is technical and likely to accomplish results the settlor would never have intended.

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be justified, depending upon the probable intent of the testator: (a) The limitations may be construed as a vested remainder which is accelerated, the class being closed as of the testator's death; (b) the limitations may be construed as a vested remainder which is accelerated, the class not being closed until the actual death of the person named as life tenant; (c) the limitations may be construed as an executory devise to a class which is not accelerated, the class not being closed until the actual death of the person named as life tenant." 3 SIMES, FUTURE INTERESTS, § 759 (1936).