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TRUSTS-SPENDTHRIFT TRUSTS-RESTRICTIONS ON ALIENATION AS A CONSTITUTIONALLY PROTECTED PROPERTY RIGHT OF THE DONOR

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TRUSTS—SPENDTHRIFT TRUSTS—RESTRICTIONS ON ALIENATION AS A CONSTITUTIONALLY PROTECTED PROPERTY RIGHT OF THE DONOR—The beneficiary of a spendthrift trust, created in 1921, sought to renounce and terminate her life interest, thereby vesting the fee simple of the trust res in her son, as remainderman, free of the spendthrift provisions. A Pennsylvania statute,¹ passed in 1945, authorized anyone with any interest in real or personal property to disclaim such interest, irrespective of any so-called spendthrift trust provisions. *Held*, prayer for termination denied on the ground that the statute, as it applied to spendthrift trusts created before its passage, was a violation of the donor-settlor's property rights under the Pennsylvania Constitution.² To allow the beneficiary to disclaim her interest, and thus accelerate the interest of the remainderman, would be contrary to the intent of the settlor and would allow by indirection that which had never been allowed directly: enjoyment of the gift in trust without the restrictions placed on it by the settlor. *In re Borsch's Estate*, (Pa. 1949) 67 A. (2d) 119.

The fact that the beneficiary in the principal case sought to terminate completely her life interest long after her acceptance, and not simply to continue to enjoy the benefits of the trust without its restrictions, would seem insignificant in view of the decisions which hold that such a disclaimer is as much in violation of the settlor's intent as any other alienation by the beneficiary.³ The essential question, therefore, is whether the Pennsylvania statute could operate in contravention of the settlor's intent as to trusts created prior to its passage. The validity of the spendthrift trust in Pennsylvania has frequently been upheld on the ground that the owner of property has the right to dispose of it in the manner in which he should desire.⁴ The necessary implication is that this right of disposition includes not only the right to select the object of one's bounty, but also to control, in some measure, the enjoyment of the property subsequent to the disposition. It is submitted that while this reasoning has often appeared in the decisions, such an analysis will not stand under careful examination.⁵ The ability of a settlor to

¹ 68 Pa. Ann. Stat. (Purdon, 1940) §581.

² Art. 1, §9. "Nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land."

³ Cases holding that a spendthrift trust could not be terminated after acceptance are *Blackwell v. Virginia Trust Co.*, 177 Va. 299, 14 S.E. (2d) 301 (1941); *Malatesta's Estate*, 29 Pa. Dist. Rep. 113 (1919).

⁴ *Holdship v. Patterson*, 7 Watts (Pa.) 547 (1838); *Morgan's Estate*, 223 Pa. 228, 72 A. 498 (1909); *Riverside Trust Co. v. Twitchell*, 342 Pa. 558, 20 A. (2d) 768 (1941).

⁵ See 3 SCOTT, TRUSTS 1844 (1939); GRISWOLD, SPENDTHRIFT TRUSTS, 2d ed., 487 (1947). See also *Breary School, Ltd. v. Ward*, 201 N.Y. 358, 94 N.E. 1001 (1911).

control the beneficial enjoyment of property, after the disposition, should rather rest on broad considerations of public policy and the desirability of enforcing the settlor's intent. If the settlor's ability be regarded as a property right, in whom does it vest upon his death? It has never been suggested that it descends to the settlor's heirs or devisees, who might often be the beneficiaries. Indeed, any theory that such a right might pass to another would be inconsistent with the usual holding that only subsequent consent by the settlor himself may permit a beneficiary to take in spite of spendthrift provisions, assuming that no other interests are involved.⁶ If the right should be said to cease at the time of the disposition, it cannot be maintained that there remains any duty to enforce the trust. Therefore, as the settlor's ability to create a spendthrift trust can be logically justified only on grounds of public policy, the legislature should be empowered to declare a change in such policy which will be operative on prior created trusts.⁷ In so far as they restrict involuntary alienation by the beneficiary, spendthrift trusts may be compared with exemption statutes, where there is no doubt that legislatures may constitutionally diminish exemptions.⁸ There would appear to be no reason why the legislature could not operate retroactively in dealing with voluntary, as well as involuntary, alienation. Thus, while there is authority for the Pennsylvania court's position,⁹ the view of the New York court, which upheld a statute under both the federal and state constitutions, even though it operated retroactively to allow creditors greater freedom in regard to reaching spendthrift trust income, would seem more reasonable.¹⁰

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⁶ When all the beneficiaries join to terminate a trust, and the interest of one or more is subject to spendthrift trust provisions, the termination is ineffective. See *Clemenson v. Rebsamen*, 205 Ark. 123, 168 S.W. (2d) 195 (1943); *Chance's Estate*, 29 D. & C. (Pa.) 586 (1937); *Lent v. Howard*, 89 N.Y. 169 (1882). Where the settlor created a trust for her own benefit, with remainder to her son, the settlor was allowed to terminate the spendthrift trust after the son assigned his interest to her. *Bowers' Trust Estate*, 346 Pa. 85, 29 A. (2d) 519 (1943).

⁷ In *State v. Caldwell*, 181 Tenn. 74, 178 S.W. (2d) 624 (1944), the court distinguishes between spendthrift trusts arising from statute and those originally a product of judicial decision, holding the latter to be a result of property rights in the donor which were protected by the Constitution.

⁸ See *GRISWOLD, SPENDTHRIFT TRUSTS*, 2d ed., 483 (1947) and cases therein.

⁹ *State v. Caldwell*, *supra*, note 7. See also 151 A.L.R. 1410 (1944).

¹⁰ *Brearley School, Ltd. v. Ward*, *supra*, note 5. In discussing whether any rights of the donor had been invaded, the New York court is primarily concerned with Article 1, Section 10, of the Federal Constitution, protecting contract rights. See also *Everhart v. Everhart*, 87 Pa. Super. 184 (1926).