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MODERNIZATION OF THE LAW OF TRUSTS IN ILLINOIS

LOUIS A. KOHN AND GEORGE T. BOGERT

IN THE past two decades, there has been much legislation and not a little case law dealing with the administration of trusts in Illinois. The reasons for the growth and use of the trust device historically have been its flexibility and adaptability to meet changing conditions in the rearrangement and disposition of property. It is the purpose of this article to highlight the more significant developments in this period with emphasis on those which indicate a trend toward relaxation or liberalization of some of the rules governing the administration of trusts.

In considering these developments, it is necessary to consider briefly the social and economic background of these changes and developments. During the last two decades, the United States has gone through a cycle of an economic depression, and then a war, on into a period of unparalleled prosperity. The year 1940 marked the end of a severe economic depression period in this country and the beginning of a defense mobilization effort culminating in a period of war. The coming of war meant higher taxes and inflation with radical consequences to trusts and their beneficiaries. While the inflationary trend generally resulted in increased income yields from stocks, trust investments under the law at that time were for the most part confined to

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government and corporate bonds rather than common stocks. Trust income was considerably diminished by the relatively reduced yield from bonds and by increased expenses of trust administration. In addition, interest rates decreased markedly during this period. Together with higher personal income taxes and increases in the cost of living, these economic developments made it increasingly difficult for the income beneficiaries of a trust, particularly where access to trust principal was either denied or severely restricted. We are now in a period of prosperity, and taxes, costs and expenses remain high.

In view of these great economic changes during the last twenty years it might be well to consider their impact upon both the statutory and case law in Illinois relating to trusts.¹

With that in view a somewhat arbitrary division of the subject matter has been made to analyze the significant developments in this period.

TRUST INVESTMENTS

Prior to 1945, trustees in the absence of a specific delegation of authority as to particular investments were limited in the kind of investments in which trust funds could be made. The governing statute dating from 1905 could best be described as a legal list though in a permissive form.² Where broad investment powers or full discretion was given the trustee by the creator of the trust, the Illinois courts had required a trustee in investing trust funds to exercise the care and diligence of a prudent man. But where the trust instrument contained no reference to the trustee's powers of investment or restricted him to legal investments, the restrictive effect of the legal list was more keenly felt.³ While the trustee was not excused from liability for losses from improper investments because of declining security prices

¹ For developments in the law of trusts throughout the nation for 1942-1954, see Annual Survey of American Law published by New York University School of Law each year. Also see Fratcher, *A Half Century of Trust Law*, 93 *Trusts and Estates* 275 (1954). The author begins as follows: "The most striking developments in the law of trusts of the last fifty years are the vastly increased influence of Federal law and the growing extent to which state law has become statutory. The Federal Revenue Acts which created the income tax in 1913, the estate tax in 1916 and the gift tax in 1924, have had an enormous impact upon the purposes for which trusts are created, the terms of trust instruments and the work of trust administration.

"They have, moreover, influenced changes in state law. State legislatures and courts have recognized the undesirability of local rules which subject their citizens to disadvantages under the Federal tax laws."

² *Merchants' Loan & Trust Co. v. Northern Trust Co.*, 250 Ill. 86, 95 N.E. 59 (1911).

³ *Ibid.*

due to the economic depression,⁴ occasionally judicial notice of the depression was taken in order to relieve the trustee of liability for investment losses.⁵ However, the trustee was not relieved of the duty to exercise sound judgment within the requirements of the investment statute. So, one trustee investing in so-called split mortgages under the authority of a Probate Court order was held not liable for subsequent depreciation even though the security held by him did not give him an exclusive lien,⁶ while another trustee was surcharged for losses resulting from this type of investment where the notes purchased were either in default at the time of purchase or did not have prior maturities.⁷ Investments in loans to the business of the testator-creator of a trust were held improper and an abuse of the trustee's discretion where made at a time when the business was in financial difficulties and prior notes remained in default.⁸ An exchange by the trustee of preferred stock for common in the testator's company was held proper where the exchange was in accord with the wishes of the testator's widow who was a co-trustee, judicial notice having been taken that real estate mortgages at that time were not the best investment.⁹ Where authorized by the terms of the trust to retain bank stock purchased by the testator, a trustee was held not to be liable for losses resulting from what the court called an honest mistake in judgment by its predecessor in the retention of the stock in a declining market.¹⁰

However the above cases would be decided today under the Prudent Investor Statute now in force in Illinois, certain kinds of investments were believed to be forbidden unless specifically authorized. These included common stocks¹¹ and investments in common trust funds. Common stocks were usually considered speculative and imprudent investments, while investments in common trust funds vio-

⁴ In re Estate of Busby, 288 Ill. App. 500, 6 N.E. 2d 451 (1937).

⁵ Conant v. Lansden, 409 Ill. 149, 98 N.E. 2d 773 (1951); Hatfield v. First National Bank of Danville, 317 Ill. App. 169, 46 N.E. 2d 94 (1942); Pank v. Chicago Title & Trust, 314 Ill. App. 53, 40 N.E. 2d 787 (1942).

⁶ In re Lalla, 362 Ill. 621, 1 N.E. 2d 50 (1936).

⁷ Merchants National Bank v. Frazier, 329 Ill. App. 191, 67 N.E. 2d 611 (1943).

⁸ Conant v. Lansden, 409 Ill. 149, 98 N.E. 2d 773 (1951); Nonnast v. Northern Trust Co., 374 Ill. 248, 29 N.E. 2d 251 (1940); Humpa v. Hedstrom, 345 Ill. App. 289, 102 N.E. 2d 686 (1951).

⁹ Pank v. Chicago Title & Trust, 314 Ill. App. 53, 40 N.E. 2d 787 (1942).

¹⁰ Hatfield v. First National Bank of Danville, 317 Ill. App. 169, 46 N.E. 2d 92 (1942).

¹¹ White v. Sherman, 168 Ill. 589, 48 N.E. 128 (1897); People v. Canton National Bank, 288 Ill. App. 418, 6 N.E. 2d 220 (1937).

lated traditional principles requiring the segregation or earmarking of the trust fund.

In 1945, the Prudent Man Rule was adopted in Illinois.¹² It extended the field of investments available to a trustee by recognizing corporate obligations including preferred or common stocks as proper investments. Under the new law trustees are authorized to retain any part of the trust estate received by them even though it may not be of a class suitable for original purchase.¹³ It requires that a trustee not limited to legal or specified investments by the terms of the trust need exercise the judgment and care of men of prudence in the management of their own affairs in exercising its discretion in making investments.¹⁴ In giving a trustee who has discretionary powers of investment a wider choice of possible investments, the statute has permitted trustees to adapt and adjust investments to meet changing economic conditions, for example, to purchase common stocks as a hedge against inflation.

In 1943, the Common Trust Fund Act was adopted.¹⁵ Prior to its enactment, the problem of finding good investments for trusts of smaller size had grown increasingly difficult for corporate fiduciaries. Authorized investments were in great demand as the volume of trusts being administered continued to grow and the larger trusts were better able to compete for these investments. The new act permitted any corporate fiduciary to establish and invest in common trust funds where the trust fund held for investment could properly be invested in the investments to become a part of the common trust fund. In 1953, common trust certificates were classified as securities exempt from the registration requirements of the Illinois Securities Law.¹⁶

To facilitate the sale of securities and other property in situations where speed in consummation of the sale is important, a trustee has had the power since 1951 to cause the stocks or the property to be registered and held in the name of a nominee without mention of the trust in the instrument of title.¹⁷

¹² Ill. Rev. Stat. (1953) c. 148, § 32. For a detailed discussion of the statute and the state of the prior law, see the excellent article by Dillon, *The Illinois Prudent Man Investment Statute*, 24 Chi.-Kent L. Rev. 103 (1946).

¹³ Ill. Rev. Stat. (1953) c. 148, § 32.

¹⁴ In *Fidelity Union Trust Co. v. Price*, 11 N.J. 90, 93 A. 2d 321 (1952), the New Jersey statute was held constitutional although applied retroactively to a pre-existing trust.

¹⁵ Ill. Rev. Stat. (1953) c. 16½, §§ 57-63 as amended S.H.A. (Supp., 1955) c. 16½, § 60.

¹⁶ Ill. Rev. Stat. (1953) c. 16½, §§ 59-63.

¹⁷ Ill. Rev. Stat. (1953) c. 148, § 36.

TRUST ACCOUNTING

In 1941, a modified form of the Uniform Principal and Income Act was adopted in Illinois.¹⁸ While its provisions in many cases represent the common law previously established by judicial decision in Illinois, its purpose was to set forth rules to guide trustees in determining some of the difficult questions with respect to income and principal and the apportionment and allocation of receipts and disbursements between income and principal. Although applicable only where the creation of the trust fails either to specify the trustee's duties in these matters or to leave it to the trustee's discretion, the rules do tend by their authority to establish uniformity in accounting practices and in the administration of trusts, and to maintain impartial and equitable treatment between the interests of the life tenant and that of the remainderman. As a result of the codification of these rules, trust administration has become, if not easier for the trustee and less expensive for the trust and its beneficiaries, perhaps fairer to the beneficiaries. The act was amended to provide that after the effective date of an amendment, premium on bonds purchased by trustees need not be amortized out of income but may be charged to principal.¹⁹

TRUSTEE'S POWERS

In addition to the increased powers of investment given trustees by statute, there have been both legislative, drafting and case law trends toward enlargement of the express and (as to case law) implied powers of trustees in the administration of trusts. In 1935, it was provided by statute that a majority of all trustees may act in all cases where two or more trustees are required to execute a trust, provided written notice has been given to each trustee at least 5 days in advance of the contemplated action.²⁰ By statute in 1947 trustees were given the power to grant options, to contract to sell, to sell at public auction or private sale and to convert any or all trust property, real or personal, in such manner and upon terms and conditions as deemed best for the trust.²¹ A trustee has the further power under the 1947 amend-

¹⁸ Ill. Rev. Stat. (1953) c. 30, §§ 159-176, discussed at length by Bogert, *The Illinois Principal and Income Act of 1941*, 9 *Univ. Chi. L. Rev.* 30 (1941), also commented on in 21 *Univ. Chi. L. Rev.* 454 (1954).

¹⁹ Ill. Rev. Stat. (1953) c. 30, § 165(4).

²⁰ Ill. Rev. Stat. (1953) c. 148, § 33; see *Atwood v. Commercial National Bank*, 336 Ill. App. 275, 83 N.E. 2d 362 (1949).

²¹ Ill. Rev. Stat. (1953) c. 148, § 35.

ment to execute proxies to vote corporate stock. Other provisions of this amendment give the remaining trustee during the period of a vacancy in the trusteeship all rights and powers, discretionary or otherwise, of all the trustees and give successor trustees the rights and powers, discretionary or otherwise, of the original trustee. Reference has been made to the power of a trustee to hold trust property in the name of a nominee without mention of the trust in the record or evidence of title to the property.²²

Even without express statutory sanction the Illinois courts have, by fair implication, in many instances encouraged the proliferation and development of the powers of a trustee. The trustee's power of sale given him in the trust instrument has been held to include the power to sell trust realty not for cash alone, but in exchange for stock and bonds of the purchasing corporation.²³ A trustee with the broad powers to improve, develop, lease, sell, or otherwise dispose of property to the end that a cemetery might be established had the power to engage in the business of buying and selling monuments and markers.²⁴ Where the will did not direct the trustee to sell realty immediately, the trustee had the power to enter into an oil lease rather than sell at a sacrifice.²⁵ A power of sale in a trustee during the term of the trust continues for a reasonable period of time necessary to wind up the trust.²⁶ A trustee selling property may give one bidder the right to meet other bids made within a limited period even if other bidders did not acquire such a right.²⁷ These cases indicate a willingness on the part of the courts to construe the trustee's power to sell, whether by direction or statutory authorization, as broadly as the trust purposes warrant.

This "liberal" construction applies to other powers, such as the power to carry on the testator's business,²⁸ to contract with third per-

²² *Ibid.*, § 36.

²³ *Sarasin v. Live Stock National Bank of Chicago*, 412 Ill. 88, 105 N.E. 2d 752 (1952); *Plast v. Metropolitan Trust Co.*, 401 Ill. 302, 82 N.E. 2d 155 (1948).

²⁴ *Decatur Monument Co. v. New Graceland Cemetery Association*, 342 Ill. App. 692, 97 N.E. 2d 570 (1951).

²⁵ *Heyl v. Northern Trust Co.*, 312 Ill. App. 207, 38 N.E. 2d 374 (1941).

²⁶ *Breen v. Breen*, 411 Ill. 206, 103 N.E. 2d 625 (1952); see note, *Trust Administration upon Termination*, 32 *Chi.-Kent L. Rev.* 307 (1954).

²⁷ *Koenig v. Bickel*, 338 Ill. App. 21, 86 N.E. 2d 827 (1949).

²⁸ *Conant v. Lansden*, 341 Ill. App. 488, 94 N.E. 2d 594 (1950), *aff'd* on this point in 409 Ill. 149, 98 N.E. 2d 251. *Cf. Nonnast v. Northern Trust Co.*, 374 Ill. 248, 29 N.E. 2d 251 (1940), where no express authority was shown to permit the trustee to carry on a corporate business in which the testator had been the principal officer.

sons,²⁹ and the implied power to employ a real estate broker.³⁰ The provisions of the Uniform Stock Transfer Act³¹ as to requirements for the transfer of title to stock were held not to be applicable in a case involving a suit against the settlor by the trustee.³² There have been several interesting cases applying the provisions of Section 2 of the Fiduciary Obligations Act³³ intended to protect third parties making payments to trustees.³⁴ The courts have required more than negligence on the part of the person paying money to a fiduciary to hold such person liable for the resulting loss; proof of knowledge or facts showing bad faith are necessary.³⁵

DEVIATION AND INVASION OF CORPUS

The rapid and complex changes in our economic life and the resulting increase in the types of property available for trust investment either have required legislation, as in the areas of trust investment and accounting, or have called for an adaptation and flexible interpretation of traditional powers as expressed in (or implied from) the customary language in trust instruments. Where changed circumstances have met head-on with well-established rules of construction or with express provisions of the trust instrument, the resulting dilemma often could not be solved by legislative means or by liberal construction of the language used by the creator of the trust. It then becomes a question of whether a court of equity supervising the administration of the trust will act to grant relief in the face of the express terms or well established rules.

While the general principles to guide the court in its discretion are well known, such considerations as the intent of the settlor, the hardship involved and the effect upon other beneficiaries help determine the court's decision whether to exercise its discretion and permit deviation from the terms of the trust instrument. Involved here are situations where the trust terms permit no liberal construction nor implication of powers to the trustees, as in the cases referred to previously in

²⁹ *Barrett v. Hennebry*, 322 Ill. App. 703, 54 N.E. 2d 647 (1944) (abstract opinion).

³⁰ *Newby v. Kingman*, 309 Ill. App. 36, 32 N.E. 2d 647 (1941).

³¹ Ill. Rev. Stat. (1953) c. 32, §§ 416-439.

³² *Home for Destitute Crippled Children v. Boomer*, 308 Ill. App. 170, 31 N.E. 2d 812 (1941).

³³ Ill. Rev. Stat. (1953) c. 98, § 235.

³⁴ See, for example, *Callahan v. Holsman*, 351 Ill. App. 1, 113 N.E. 2d 483 (1953).

³⁵ *Ibid.*

consideration of the trustee's powers. The guiding principles as well as the cases have been well summarized elsewhere.³⁶ A corollary question is as to the circumstances under which a court will authorize invasion of principal for the benefit of income or remaindermen beneficiaries.

Again, changing economic and even political conditions have left their mark. A residence in a once prosperous residential neighborhood may lose its value because of the movement to the suburbs or the influx of industry. Income from investments specified by the testator may be inadequate to accomplish the testator's objective of care and support of his family or other income beneficiaries. For these and many other reasons³⁷ deviation from the express terms of the trust may be sought.

It should be noted that under the Prudent Investor Statute of 1945, the court is granted the power to authorize a deviation from the investment provisions of the trust. As has been pointed out in the article by Wentworth³⁸ the courts in this country have been more ready to permit deviations from the administrative provisions of trusts, such as powers of sale, investment and general administrative matters, than from substantive or distributive provisions affecting the rights of trust beneficiaries.

Two cases involving somewhat similar considerations were decided differently by the Supreme Court of Illinois in the last decade. In the case of *Stough v. Brach* decided in 1947³⁹ a trust of a residence for the benefit of the settlor's wife was created upon their separation. The trust provided that the property should not be sold for less than a fixed price without the consent of the settlor. Later the wife sought a decree for the sale of the residence without her husband's consent on the grounds that sale was necessary to prevent destruction of the trust res, that the market value had greatly decreased and that rental income would not pay for taxes and repairs. The court held that there had been no showing of an emergency so as to justify a sale contrary to the terms of the trust, as for example, the court said, a showing that the property would be lost even if the wife had complied with her obligation to pay taxes and for repairs.

³⁶ Wentworth, *Deviation from Terms of Will*, 92 *Trusts & Estates* 720 (1953); 35 *Ill. Bar J.* 417 (1947).

³⁷ See the discussion of reasons including "unanticipated changes" in Wentworth, *Deviation from Terms of Will*, 92 *Trusts & Estates* 720, 721 (1953).

³⁸ *Ibid.*

³⁹ 395 *Ill.* 544, 70 *N.E.* 2d 585 (1947).

In the case of *Dyer v. Paddock*,⁴⁰ a trust of residential property had been created in 1906 with the direction to retain the property until the death of the testator's wife and death or marriage of all his daughters and then to divide the estate among his daughters or their issue. On proof that the neighborhood had changed from a residential to a commercial one and the residence had thereby become deteriorated and obsolete the court directed a sale to a commercial buyer. The decision appeared to be based both upon the inherent power of a court of equity to act in such a situation⁴¹ and upon the power of a court of equity to authorize a sale under section 50 of the Chancery Act.⁴²

Where increased amounts of income or principal are sought by trust beneficiaries the Illinois courts have remained unwilling to permit deviation from the trust provisions except upon the showing of emergency or extreme hardship circumstances usually involving a danger to the purpose of the trust and the intent of the settlor.⁴³

REVOCABLE AND SPENDTHRIFT TRUSTS

In two other important fields there have been significant developments in the case law of Illinois.

The validity of revocable trusts reserving substantial rights to the settlor has been upheld through the years in Illinois.⁴⁴ A case decided in 1944 by the Appellate Court caused some new thinking about the universal validity of this type of trust. In the case of *Smith v. Northern Trust Co.*⁴⁵ the settlor transferred virtually his entire estate in trust with income to be paid to himself for life reserving the power of revocation, the right to request principal from the trustee and a veto power over investments. Following the death of the settlor, the trust was held to be illusory and fraudulent as to the settlor's widow with respect to her statutory rights to her husband's estate. Recent discussion of revocable trusts has centered about the rights of the wife and creditors of the settlor to set aside the trust or to secure payment

⁴⁰ 395 Ill. 288, 70 N.E. 2d 49 (1946).

⁴¹ Board of Education v. City of Rockford, 372 Ill. 442, 24 N.E. 2d 366 (1939).

⁴² Ill. Rev. Stat. (1953) c. 22, § 50; see also *Clarke v. Chicago Title and Trust Co.*, 393 Ill. 419, 66 N.E. 2d 379 (1946).

⁴³ For an interesting case in which invasion of corpus was denied, see *Tree v. Rives*, 347 Ill. App. 358, 106 N.E. 2d 870 (1952).

⁴⁴ *Gurnett v. Mutual Life Insurance Co.*, 356 Ill. 612, 191 N.E. 250 (1934); *Bear v. Milliken Trust Co.*, 336 Ill. 366, 168 N.E. 349 (1929); *Kelly v. Parker*, 181 Ill. 49, 54 N.E. 615 (1899).

⁴⁵ 322 Ill. App. 168, 54 N.E. 2d 75 (1944).

of debts from the trust income or principal.⁴⁶ How far can a settlor go in retaining income, power of revocation, and powers of control as well as powers of administration normally exercised by the trustee?

The recent case of *Farkas v. Williams*⁴⁷ is significant in answering this question. There the settlor had stock in an investment corporation issued to himself as trustee for another. There were detailed provisions in the stock certificate reserving to the trustee during his lifetime all dividends, the powers to vote the stock, revoke and amend the trust and change the beneficiaries, among other things. The trust was held valid and not illusory on the grounds that the beneficiary had acquired an immediate interest and that the retention of substantial control did not make the trust an invalid testamentary disposition.

Spendthrift trusts have been accepted as valid in Illinois. The questions arising in the past two decades in Illinois have concerned the rights of creditors of a beneficiary of a spendthrift trust to reach income payable to such beneficiary. Here again, social policy considerations require a balancing of the wishes of the settlor against the legitimate demands of creditors. To what extent will the settlor's scheme for the administration of the trust income be violated? Is there a trend away from strict enforcement of spendthrift clauses in trusts toward more liberal treatment of creditors? Section 49 of the Chancery Act provides for a creditor's bill in equity to reach the interest of a trust beneficiary where execution on a judgment at law has been returned unsatisfied.⁴⁸ It has been held that the income from a spendthrift trust could be reached in a suit to enforce payment of alimony.⁴⁹ However, in 1943, the Supreme Court decided that garnishment could not be maintained against the trustees by the creditors of a trust beneficiary of a non-spendthrift testamentary trust under section 49 of the Chancery Act where the trust is created by someone other than the beneficiary.⁵⁰ The court in part relied on the federal court's decision in *Baumgarden v. Reconstruction Finance Corporation*⁵¹ which had held

⁴⁶ See, for example, Hayes, Illinois Dower and the "Illusory" Trust, 2 De Paul L. Rev. 1 (1952); 43 Ill. Bar J. (1954).

⁴⁷ 5 Ill. 2d 417, 125 N.E. 2d 600 (1955) reversing 3 Ill. App. 2d 248, 121 N.E. 2d 344 (1954), noted *infra* page 153.

⁴⁸ Ill. Rev. Stat. (1953) c. 22, § 49.

⁴⁹ Keller v. Keller, 284 Ill. App. 198, 1 N.E. 2d 773 (1936).

⁵⁰ Dunham v. Kaufman, 385 Ill. 79, 52 N.E. 2d 143 (1944); accord: Baumgarden v. American National Bank and Trust Co., 322 Ill. App. 135, 54 N.E. 2d 86 (1944).

⁵¹ 131 F. 2d 741 (C.A. 7th, 1942).

that income payable to a beneficiary could not be reached by garnishment on a judgment against a beneficiary even though there was no spendthrift provision in the trust instrument. Both the *Dunham* and *Baumgarden* cases have been severely criticized as socially undesirable and wrongly decided under prior case law and the statute.⁵²

Other cases indicate how carefully the *Dunham* rule is applied. The prohibition does not apply to a trust created by the beneficiary for himself or to income from property held in trust for a beneficiary who had purchased his interest,⁵³ nor does it prevent a trustee-executor from setting off a claim arising out of a debt owing the settlor by the beneficiary against the interest of the beneficiary.⁵⁴ Furthermore, where the interest of the debtor-beneficiary is voluntarily alienable the trustee in bankruptcy for his estate is entitled to it as an asset of his estate under section 70 of the Federal Bankruptcy Act.⁵⁵

OTHER DEVELOPMENTS

There have been other significant developments in the past twenty years. The law as to the right of foreign trust companies to act in Illinois was clarified in 1953 and corporate trustees from other states are now allowed to act here if Illinois corporations are given the same privilege in the other states.⁵⁶ The accumulations statute has been revised to permit accumulations for the period of the common law rule against perpetuities.⁵⁷ The recently enacted "pour-over" statute enables a testator to dispose of his property under his will in accordance with the provisions of an inter vivos trust.⁵⁸ Pension and profit sharing trusts were exempted from the restrictions of the rule against accumulations⁵⁹ and from those of the common law rule against perpe-

⁵² Porter, *Statutory Spendthrift Trusts*, 79 *Trusts & Estates* 173 (1944); 38 *Ill. L. Rev.* 335, 408 (1944).

⁵³ *Balaban v. Willett*, 305 *Ill. App.* 388, 27 *N.E. 2d* 612 (1940).

⁵⁴ *McKeown v. Pridmore*, 310 *Ill. App.* 634, 35 *N.E. 2d* 376 (1941).

⁵⁵ *Young v. Handwork*, 179 *F. 2d* 70 (C.A. 7th, 1950); cf. *Hummel v. Cardwell*, 390 *Ill.* 526, 62 *N.E. 2d* 433 (1945), where the trustee in bankruptcy was held not entitled to a bill of review to question the sale of his debtor's beneficial interest. See comment, *Availability of Trust Interests to Beneficiary's Creditors or Trustee in Bankruptcy*, 41 *Ill. L. Rev.* 214 (1946).

⁵⁶ *Ill. Rev. Stat.* (1953) c. 32, § 304.1-5.

⁵⁷ *Ill. Rev. Stat.* (1953) c. 30, § 153.

⁵⁸ *S.H.A. (Supp., 1955) c. 3, § 194a*. See article by Fleming, *The New Pour-Over Bill*, 43 *Ill. Bar J.* 906 (1955).

⁵⁹ *Ill. Rev. Stat.* (1953) c. 30, § 153.

tuities.⁶⁰ During the war legislation was enacted empowering certain courts to appoint temporary trustees to preserve the property of persons in military service.⁶¹ While the courts generally adhered to the rule requiring a trustee to give his undivided loyalty to the trust⁶² an apparent relaxation of the rule was sanctioned in allowing trust managers to personally acquire beneficial interests in the trust property.⁶³

In the field of charitable trusts, several interesting cases were noted making liberal application of the *Cy Pres* doctrine.⁶⁴ However it is in the regulatory aspects and supervision of charitable trusts that important developments can be expected in the next few years. The tax exempt status of vast private foundations and other charitable organizations and the wide publicity given instances of abuses have focused widespread attention on this entire subject and it will no doubt receive greater public scrutiny in the future.⁶⁵ The growing recognition of the need for stricter state supervision and enforcement and greater accountability has resulted in agitation for appropriate legislation. In several states legislation has already been adopted enlarging the powers of the Attorney General and requiring the filing of reports⁶⁶ and the Commissioners on Uniform State Laws in 1954 promulgated the proposed "Uniform Supervision of Charitable Trust Act" with the same ends in view.⁶⁷ This Uniform Act was introduced in the Illinois legis-

⁶⁰ Ill. Rev. Stat. (1953) c. 48, § 39t.

⁶¹ Ill. Rev. Stat. (1953) c. 148, § 41-47.

⁶² *Taussig v. Chicago Title & Trust Co.*, 171 F. 2d 553 (C.A. 7th, 1949); *Stone v. Baldwin*, 414 Ill. 257, 111 N.E. 2d 97 (1953); *Glasser v. Essaness Theatres Corp.*, 414 Ill. 180, 111 N.E. 2d 124 (1953); *Holyoke v. Continental Ill. Nat'l Bank & Trust Co.*, 346 Ill. App. 284, 104 N.E. 2d 838 (1952) (trustee-creditor cannot allocate trust property to itself in payment); *Continental Ill. Nat'l Bank v. Kelley*, 333 Ill. App. 119, 76 N.E. 2d 820 (1948).

⁶³ *Victor v. Hillebrecht*, 405 Ill. 264, 90 N.E. 2d 751 (1950).

⁶⁴ *First National Bank of Chicago v. Elliott*, 406 Ill. 44, 92 N.E. 2d 66 (1950); *Continental Ill. Nat'l Bank of Chicago v. Sever*, 393 Ill. 81, 65 N.E. 2d 385 (1946); *First National Bank of Chicago v. King Edward's Hospital Fund*, 1 Ill. App. 2d 338, 117 N.E. 2d 656 (1954) (testamentary gift to English hospitals upheld although hospitals had been nationalized).

⁶⁵ See Taylor, *Public Accountability of Foundations and Charitable Trusts* (1953) published by the Russell Sage Foundation, reviewed by Curran, 3 De Paul L. Rev. 304 (1954); Bogert, *The Community Trust: A Service Opportunity for Lawyers*, 41 A.B.A.J. 587 (1955).

⁶⁶ Massachusetts, New Hampshire, Ohio, Rhode Island and South Carolina.

⁶⁷ For discussion of this act, see Bogert, *Proposed Legislation Regarding State Supervision of Charities*, 52 Mich. L. Rev. 633 (1954).

lature in 1955.⁶⁸ While it failed of passage it led to the establishment of a Charitable Trust Laws Commission made up of ten members of the General Assembly "to make a thorough study to determine whether a need exists for legislation in relation to the supervision and enforcement of public charitable trusts."⁶⁹ The commission is requested to make its report and submit drafts of proposed legislation by March 15, 1957 and is empowered to conduct hearings and subpoena witnesses and to compel production of documents.

This legislation is further evidence of the deep public interest in the honest and efficient administration of the huge sums held in charitable trusts and the growing realization that the community is entitled to some degree of accountability from these privileged organizations.

It is hoped that the Commission in making its recommendations will keep before it the following objectives:

In return for such solid advantages, and also in view of the fact that the ultimate beneficiary is society itself, however particularly the gift may be directed, it seems wholly proper that the foundation or trust should be held accountable for its stewardship. The availability of the new social asset should be made known promptly, at least to public authorities and possibly widely. Society should have the means of protecting itself against theft, squandering, or unreasonable withholding of this promised benefit. Finally, the operations of the exempt organization should be fully and regularly reported, with adequate provision for review by a public authority possessing power to correct abuses.⁷⁰

By adhering to such a standard, a monumental step will have been taken in Illinois to utilize the trust device in one of its most important functions today for the maximum public benefit, and will be another landmark in the definite trend that we have seen towards modernization and improved administration in the law of trusts in this state.

⁶⁸ The Uniform Act was adopted in California in 1955 with some changes such as adding a provision for exempting banks and trust companies as well as hospitals and religious and educational institutions provided for in the Uniform Act.

⁶⁹ Ill. S.B. 742 (1955).

⁷⁰ Introduction by F. Emerson Andrews of The Russell Sage Foundation to Taylor, Public Accountability of Foundations and Charitable Trusts 5 (1953).