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TRUSTS - SPENDTHRIFT TRUSTS - BENEFICIAL INTEREST HELD NOT ATTACHABLE TO MAKE GOOD LIABILITY AS TRUSTEE

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TRUSTS — SPENDTHRIFT TRUSTS — BENEFICIAL INTEREST HELD NOT ATTACHABLE TO MAKE GOOD LIABILITY AS TRUSTEE — Janet Jones was an inactive trustee and one of the beneficiaries of a spendthrift trust. Because of lack of good judgment on the part of her co-trustee, and without any moral fault on her part, Janet was charged with liability for a large sum. Her surety, who paid the succeeding trustee, took an assignment of the rights of the trust estate against Janet Jones and demanded that the trustee pay to it all the income, past, present and future, which the trust instrument gave to such beneficiary. The trustee brought this action for instructions. *Held*, as the trust estate was only a creditor of Janet Jones and the will precluded attachment of her beneficial interest by creditors, an exception will not be made in favor of the trust estate or its assignee. *Blakemore v. Jones*, (Mass. 1939) 22 N. E. (2d) 112.

The general rule is that the interest of a defaulting trustee who is also a beneficiary may be attached for the benefit of the trust estate or the other beneficiaries.[1] This rule is qualified in some states by a rule that a trustee is not liable for the default of a co-trustee unless he benefited from the default or was so negligent that it amounted to fraud.[2] There is also a rule that the interest

[1] 2 SCOTT, TRUSTS, § 257 (1939); 1 BOGERT, TRUSTS AND TRUSTEES, § 192 (1935); 1 TRUSTS RESTATEMENT, § 257 (1935); Cogswell v. Weston, 228 Mass. 219, 117 N. E. 37 (1917).

[2] "It is well settled, that a trustee is not responsible for the acts or misconduct of a co-trustee in which he has not joined, or to which he does not consent, or has not aided or made possible by his own neglect." Ashley v. Winkley, 209 Mass. 509 at 528, 95 N. E. 932 (1911); Nyce's Estate, 5 Watts & S. (Pa.) 254 (1843); Purdy v. Lynch, 145 N. Y. 462, 40 N. E. 232 (1895). But cf. Wiglesworth v. Wiglesworth, 16 Beav. 269, 51 Eng. Rep. 782 (1852). The cases are collected in 3 BOGERT, TRUSTS AND TRUSTEES, §§ 583, 584 (1935); 2 SCOTT, TRUSTS, § 224 (1939).

of the beneficiary of a spendthrift trust cannot be attached while in the possession of the trustee.[3] Some courts have made an exception to this rule in favor of persons with especially strong equities.[4] A New York case [5] involving facts very similar to the principal case, except that the spendthrift element was statutory,[6] laid down a contrary rule on the ground that the legislature did not intend to protect a fraudulent trustee. It would seem that a declaration by the legislature should be more strictly observed than the intent of the settlor of the trust. But the cases can be distinguished on their facts, since in the New York case the trustee-beneficiary acted fraudulently while in the principal case Janet Jones was inactive and did not participate in the default nor benefit from it. The texts tend to support the New York rule,[7] but they are probably influenced by other cases which have allowed the beneficiary's interest in a spendthrift trust to be attached by persons with strong equities. Few cases have been decided on the exact point, but, with the exception of the New York case, they seem in accord with the rule of the principal case.[8] The writer feels that this is the better rule because the settlor's purpose was to protect her interest from all claims by creditors. And why should an exception be made in favor of the trust estate for a default which in no way benefited the beneficiary? It may be that the court should, and would, follow a different line of reasoning if the trustee-beneficiary were actively fraudulent or participated in the default.

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[3] GRISWOLD, SPENDTHRIFT TRUSTS, § 267 (1936); 1 BOGERT, TRUSTS AND TRUSTEES, §§ 222, 227 (1935); 1 SCOTT, TRUSTS, §§ 151-152 (1939).

[4] This exception is often based on an implied intent of the testator. The cases are collected and analyzed in: GRISWOLD, SPENDTHRIFT TRUSTS, c. 5 (1936); 1 SCOTT, TRUSTS, § 157 (1939); 1 BOGERT, TRUSTS AND TRUSTEES, § 223 (1935).

[5] Matter of Burr's Estate, 143 Misc. 877, 257 N. Y. S. 654 (1932), affd. 239 App. Div. 774, 263 N. Y. S. 945 (1933).

[6] 40 N. Y. Consol. Laws (McKinney, 1938), § 15.

[7] 1 TRUSTS RESTATEMENT, § 253, comment c (1935); 2 SCOTT, TRUSTS, § 257.1 (1939). But cf. GRISWOLD, SPENDTHRIFT TRUSTS, § 362 (1936).

[8] Overman's Appeal, 88 Pa. St. 276 (1879); Dunglison's Estate, 201 Pa. 592, 51 A. 356 (1902); see also, Stanley v. Stanley, 7 Ch. D. 589 (1878).