University of Pennsylvania Law Review

FOUNDED 1852

Formerly
American Law Register

VOL. 96.

FEBRUARY, 1948

No. 3.

TERMINATION OF TRUSTS IN PENNSYLVANIA

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I. INTRODUCTION *

Within the past fifteen years the courts have frequently been called upon to consider the problem of termination of trusts. The increased activity in this phase of the law of trusts has been due largely to the financial depression of the 1930's and the consequent decrease in the productivity of trust estates. Trusts, which at the time of their creation seemed certain to produce a comfortable income for the beneficiaries, suffered so severe a diminution of their income-producing capacity that the beneficiaries found themselves burdened rather than benefited by the continued existence of the trusts.¹ The numerous attempts of beneficiaries to obtain relief from such unproductive trusts have focused attention sharply upon the problem of termination.

The general law on this subject is comprehensively set forth in the Restatement of the Law of Trusts.² Responding to the demands

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* The author gratefully acknowledges the assistance in the preparation of this article rendered by Bernard J. Smolens, member of the Philadelphia Bar.

1. For example, *Rehr v. Fidelity-Philadelphia Trust Co.*, 37 D. & C. 324 (Pa. C. P. 1940). In that case, settlor created a \$200,000 spendthrift trust in 1928, with income to herself for life and remainder as she would appoint by will, or, in default of appointment, to her next of kin. By 1939, the original income of \$8,000 per year had fallen to \$393. Creditors had attached "the cream of the investments." She was aged, ill, needed medical attention, and faced dependency for support on private or governmental charity.

2. *RESTATEMENT, TRUSTS* §§ 330-347 (1935).

of the depressed economy of the times, the Pennsylvania courts have gone far toward bringing the law of Pennsylvania into harmony with the rules adopted in the Restatement.³ Section 2 of the Estates Act of 1947⁴ represents an effort by the Pennsylvania Legislature to extend this phase of the law of trusts so as more freely to permit termination of trusts in hardship cases and otherwise to solve the problem of the oppressive and purposeless trust.⁵

II. THE PROBLEM

It frequently occurs that subsequent to the creation of a trust (whether inter vivos or testamentary) circumstances arise which induce an attempt by the interested parties to revoke or terminate it prior to the expiration of the stated term. Such an attempt may be made by the settlor seeking to rescind the trust he created, or by one or more of those whom the trust was designed to benefit. Various circumstances make such an effort seem expedient. Probably the most frequent inducement is economic in nature, involving a shrinkage of the trust corpus and/or a decrease in its productivity or, conversely, an increase in the financial requirements of the petitioning beneficiary. Trusts which at the time of their creation seemed certain to produce income adequate for the needs of the beneficiaries often become insufficiently productive to achieve their purpose.⁶ Life tenants and even remaindermen, who have normally been able to support themselves on their current income, are often confronted with a financial emergency from which resort to the trust corpus apparently offers the sole means of escape. Need for relief from such unproductive, inadequate, and oppressive trusts drew legislative attention to this problem.

The words "revocation" and "termination" are often used interchangeably. However, there is at least a theoretical difference between revocation and termination, each of which provides for removal of trust property from the restrictions of the trust instrument. Revocation generally signifies an act of the settlor whereby he exercises a power reserved in the trust instrument or conferred by law to rescind

3. 91 U. OF PA. L. REV. 672 (1943).

4. PA. STAT. ANN., tit. 20, § 301.2 (Purdon, Supp. June, 1947) (effective January 1, 1948).

5. The purpose of § 2 is not to restrict the existing law of termination, but to provide additional means for accomplishing this end. See note 10 *infra*.

6. For example, in Auchu's Estate, 38 D. & C. 33 (Pa. Or. Ct. 1939), Testator at the time he wrote his will had a large estate. When Testator died, his estate was inventoried at approximately \$370,000. Nevertheless, by the time the testamentary trust he created for his daughter was set up, the trust amounted to barely \$1,000. For that reason, she sought termination.

or cancel the trust.⁷ Termination, on the other hand, presupposes the existence of a valid irrevocable trust and is the means by which such a trust is brought to an end, either by the expiration of its term, the accomplishment of its purpose, or (prior thereto) by agreement of the parties or order of court.⁸ Actually, the difference between revocation and termination is primarily one of terminology and tends at times to become indistinct and unimportant.⁹

The problem to which we shall address ourselves in this article is a determination of the circumstances and conditions under which a trust may be terminated: (a) under existing law (which is expressly preserved by the new Act);¹⁰ and (b) under the Estates Act of 1947.

III. EXISTING LAW

A trust instrument, which is silent as to revocability, is irrevocable.¹¹ However, where the settlor of an inter vivos trust reserves to himself a power of revocation, that power may be exercised by him,¹² subject to the proviso that the exercise comply strictly with the terms of the reservation.¹³ Likewise, a trust, whether inter vivos or testamentary, which contains a grant to the beneficiaries of a power of termination may be terminated in compliance with the terms of the grant.¹⁴

But even where there has been neither a reservation nor a grant of such power, the courts have under certain circumstances decreed the

7. Revocation is "the annulment or cancellation of the instrument . . . by or on behalf of the party who made it." 54 C. J. 772.

8. That "termination" is properly applicable to valid and irrevocable trusts is indicated in RESTATEMENT, TRUSTS § 339, comment *a* (1935).

9. In *Mellon v. Driscoll*, 117 F. 2d 477 (C. C. A. 3rd 1941), the court said at 479: "A power to terminate capable of being so exercised as to revert in the decedent the ownership of the transferred property or an interest therein, or as otherwise to inure to his benefit or the benefit of his estate, is, to that extent, the equivalent of a power to 'revoke' . . ."

And in *Svenson's Trust Estate*, 25 Erie 14 (Pa. 1942), the court decreed "termination" of a trust upon the exercise by the settlor of her power of "revocation."

10. Section 2(c) of the ESTATES ACT OF 1947 provides: "Nothing in this section shall limit any power of the court to terminate or reform a trust under existing law." PA. STAT. ANN. tit. 20, § 301.2(c) (Purdon, Supp. June, 1947).

11. *Fry v. Mercantile Trust Co.*, 207 Pa. 640, 57 Atl. 43 (1904); *Rynd v. Baker*, 193 Pa. 486, 44 Atl. 551 (1899); RESTATEMENT, TRUSTS § 330(2) (1935). If, however, a power to revoke was omitted through ignorance or inadvertence, the trust may be revoked in spite of that omission: *Bristor v. Tasker*, 135 Pa. 110, 19 Atl. 851 (1890); *Rick's Appeal*, 105 Pa. 528 (1884); RESTATEMENT, TRUSTS § 332 (1935).

12. Ordinarily no intervention of the court is necessary. Settlor merely gives notice of revocation to the trustee.

13. *In re Reese's Estate*, 317 Pa. 473, 177 Atl. 792 (1935) (revocation ineffective because settlor died prior to expiration of required 60-day period after giving notice of termination); RESTATEMENT, TRUSTS § 330, comment *j* (1935). However, a settlor who reserves to himself a general testamentary power of appointment may, upon the death of the life tenant release that power by *inter vivos* deed and terminate the trust: *Jackson's Estate*, 50 D. & C. 292 (Pa. Or. Ct. 1944).

14. 4 BOGERT, TRUSTS AND TRUSTEES § 1000 (1934). Cf. *In re Stewart's Estate*, 253 Pa. 277, 98 Atl. 569 (1916).

termination of both inter vivos and testamentary trusts.¹⁵ Thus, termination has been ordered where the purpose of the trust was illegal or impossible of accomplishment,¹⁶ where the trust was created under a mistake of fact,¹⁷ or under duress,¹⁸ or through undue influence.¹⁹

The doctrine of impossibility of fulfillment, which was originally applied to cases wherein a testamentary scheme was upset by the election of the widow to take against the will,²⁰ has recently been extended by a number of lower courts to permit termination in certain hardship cases. Thus, where it can be shown that the productivity of the trust estate has become inadequate for the needs of the beneficiaries, termination may be decreed.²¹ This so-called "failure of purpose" doctrine is an equitable and flexible device seized upon by the courts as a means of affording relief in those cases where continued enforcement of the trust would be a burden to those intended thereby to be benefited. In employing the doctrine to strike down an oppressive trust, the courts ascribe to the settlor a general intention to make adequate financial provisions for the beneficiary and, when continuance of the trust would jeopardize fulfillment of that intention, employ their equitable powers to terminate.²²

15. See Lefever, *Trusts-Termination*, FIDUCIARY REVIEW (May, 1946).

16. *In re Devlin's Trust Estate*, 284 Pa. 11, 130 Atl. 238 (1925) (trust terminated because of illegal requirement that settlor's son be reared in the Roman Catholic faith); *Loew's Estate*, 291 Pa. 22, 139 Atl. 582 (1927) (trust terminated because widow's election made accomplishment of trust impossible); RESTATEMENT, TRUSTS § 335 (1935). It is immaterial that the object of the trust was legal *ab initio* if subsequently it becomes illegal: *In re Morse*, 247 N. Y. 290, 160 N. E. 374 (1928).

17. *Rick's Appeal*, 105 Pa. 528 (1884); RESTATEMENT, TRUSTS § 333, comments *a* and *e* (1935). But the mistake to be ground for termination must be one of fact and not one of law: *Peter v. Peter*, 136 Md. 157, 110 Atl. 211 (1920).

18. RESTATEMENT, TRUSTS § 333, comment *e* (1935); cf. *Fountain v. Bigham*, 235 Pa. 35, 84 Atl. 131 (1912).

19. *More v. People's Bank & Trust Co.*, 297 Pa. 252, 146 Atl. 896 (1929); RESTATEMENT, TRUSTS § 333, comments *a* and *e* (1935).

20. *Loew's Estate*, 291 Pa. 22, 139 Atl. 582 (1927); *In re Disston's Estate*, 257 Pa. 537, 101 Atl. 804 (1917).

21. *Auchu's Estate*, 38 D. & C. 33 (Pa. Or. Ct. 1939); *Tomlinson v. Land Title Bank & Trust Co.*, Philadelphia C. P. No. 2, December Term, 1938, No. 2144 (unreported); *Reimer v. Provident Trust Co.*, Phila. C. P. No. 4, December Term, 1936, No. 1295 (unreported). This is substantially the rule adopted in RESTATEMENT, TRUSTS § 336 (1935), wherein it is stated, "If . . . continuance of the trust would defeat or substantially impair the accomplishment of the trust, the court will . . . permit . . . termination." As stated in *Rehr v. Fidelity-Philadelphia Trust Co.*, 37 D. & C. 324, 327 (Pa. C. P. 1940), the basis for these holdings is, ". . . the trust has failed of its purpose . . . and it should now be terminated. . . ." To the same effect, see *Posey's Estate*, 52 D. & C. 127 (Pa. Or. Ct. 1944). In *Goodell's Estate*, 53 D. & C. 13 (Pa. Or. Ct. 1945), the court upon petition of the living beneficiaries, terminated a trust and awarded the corpus and undistributed income to the settlor on the ground that shrinkage of the trust income caused the trust purpose to fail. Distribution was made to the settlor despite the fact that the trust instrument expressly forbade the settlor to appoint to himself.

22. *Auchu's Estate*, 38 D. & C. 33 (Pa. Or. Ct. 1939); *Posey's Estate*, 52 D. & C. 127 (Pa. Or. Ct. 1944). It may be that in *Auchu's Estate*, *supra*, the inferred intention differed slightly from the actual intention. A reading of the applicable portions of the trust instrument suggests that the settlor may have intended merely to place his daughter's portion of his estate, whatever it might be, beyond her husband's

The law in Pennsylvania is not clear as to whether all parties in interest may terminate a trust whose purposes have not been fulfilled. It has frequently been stated that under such circumstances termination will be decreed;²³ the source of that statement is apparently *Culbertson's Appeal*.²⁴ In that case, however, the court found that "the purposes of the trust have been fulfilled."²⁵ Consequently, the statement that termination may be decreed regardless of the non-fulfillment of a trust purpose was merely dictum. Similarly, in none of the cases which have followed *Culbertson's Appeal* and approved the indicated principle, was there any trust purpose remaining to be fulfilled.²⁶ Indeed, some jurists, when quoting from *Culbertson's Appeal*, have deleted the words "and although all its purposes may not have been accomplished."²⁷ Actually, despite the above dictum, the law in Pennsylvania appears to be that all parties in interest may *not* compel the termination of a trust whose purposes are not fulfilled,²⁸ and have not failed.²⁹ This is in accord with the Restatement, if "parties in interest" are restricted to beneficiaries and do not include the settlor.³⁰

According to the Restatement,³¹ the settlor and all beneficiaries can compel termination of a trust regardless of the non-fulfillment of a

control. The difficult problem of inferring an intention is not present in those cases where the settlor is alive and participates in the termination proceedings: *Goodell's Estate*, 53 D. & C. 13 (Pa. Or. Ct. 1945); *Rehr v. Fidelity-Philadelphia Trust Co.*, 37 D. & C. 324 (Pa. C. P. 1940).

23. 2 HUNTER, PENNSYLVANIA ORPHANS' COURT COMMONPLACE BOOK 1303 (1939). The same statement is contained in 39 VALE, PENNSYLVANIA DIGEST, TRUSTS, § 61(1) with cases cited in support. For some of the cases declaring this principle, see note 26 *infra*.

24. 76 Pa. 145 (1874). In that case the court stated: ". . . although a trust may not have ceased by expiration of time, and although all its purposes may not have been accomplished, yet if all the parties who are or who may be interested in the trust property are in existence and are *sui juris*, and if they all consent and agree thereto, courts of equity may decree the determination of the trust. . . ." *Id.* at 148.

25. *Id.* at 149.

26. *Price's Estate*, 21 D. & C. 542 (Pa. Or. Ct. 1934); *Behringer's Estate*, 265 Pa. 111, 108 Atl. 414 (1919); *Harrar's Estate*, 244 Pa. 542, 91 Atl. 503 (1914). In *Johnson v. Provident Trust Co.*, 280 Pa. 255, 124 Atl. 436 (1924) the court analyzed *Harrar's Estate* and found it not to be authority for the proposition set forth in *Culbertson's Appeal*, *supra* note 24.

27. *Simmon's Estate*, 3 D. & C. 323 (Pa. Or. Ct. 1923); *Stafford's Estate*, 258 Pa. 595, 102 Atl. 222 (1917). See also, 1 REMICK, PENNSYLVANIA ORPHANS' COURT PRACTICE 721, n. 63a (4th ed. 1946).

28. *Henderson's Estate*, 258 Pa. 510, 102 Atl. 217 (1917); *Stewart's Estate*, 253 Pa. 277, 98 Atl. 569 (1916). *Contra*: *Foyle's Estate*, 26 Dist. 751 (Pa. Or. Ct. 1917). Conversely all parties in interest can compel termination of trust whose purposes have been fulfilled. *Musser's Estate*, 341 Pa. 1, 17 A. 2d 411 (1941).

29. It is necessary to qualify the general principle by adding "and have not failed" in order to accommodate the "failure of purpose" cases. See *Haines' Estate*, Court of Common Pleas No. 6, Philadelphia County, December Term, 1944, No. 598 (unreported).

30. "If the continuance of the trust is necessary to carry out a material purpose of the trust, the beneficiaries cannot compel its termination": RESTATEMENT, TRUSTS § 337(2) (1935).

31. § 338.

trust purpose. The law of Pennsylvania has been declared to be in accord with this principle.³² However, some of the cases cited as establishing the alignment of Pennsylvania law with the Restatement do not accomplish that end.³³

Conversely, until recently there has been positive authority to the effect that a settlor and all beneficiaries cannot compel termination of a trust whose purpose remains unfulfilled.³⁴ However, if the only unfulfilled purpose is that which a spendthrift trust is designed to accomplish, a recent decision, *Bowers' Trust Estate*,³⁵ holds that a settlor and all beneficiaries may now compel termination. Furthermore, the language in that decision is sufficiently broad to warrant termination of any trust upon consent of the settlor and all beneficiaries, and regardless of any unfulfilled purpose.³⁶

However, even where circumstances sufficiently compelling to warrant termination of a trust are present, there exists a serious restriction upon the court's exercise of that power, namely, the requirement that all persons interested in the trust consent thereto.³⁷ This requirement must be met whether the trust be inter vivos or testamentary; whether the settlor be alive or dead; or whether all trust purposes be fulfilled or not. The persons whose consent is necessary must represent trust interests whose sum total is equivalent to an absolute fee. Those persons include the life tenant, all remaindermen, whether vested or contingent, ascertained or unascertained, living or unborn;³⁸ and probably the settlor, if living.

32. See RESTATEMENT, TRUSTS, PA. ANNOT. § 338 (1939).

33. *Culbertson's Appeal*, 76 Pa. 145 (1874), wherein the trust purpose had been fulfilled; *Murray's Trust Estate*, 121 Pa. Super. 55, 182 Atl. 736 (1936), wherein settlor predeceased attempt at termination; *Brown v. Williamson*, 13 D. & C. 503 (Pa. C. P. 1930), wherein the trust purpose ceased to exist.

34. *Rehr v. Fidelity-Philadelphia Trust Co.*, 310 Pa. 301, 165 Atl. 380 (1933); *Appeal of Twining*, 97 Pa. 36 (1881).

35. 346 Pa. 85, 29 A. 2d 519 (1943).

36. Actually petitioners were life tenants of a sole and separate use trust who had acquired the remainder interest.

Although the court based its decision upon the power of settlor and all beneficiaries to compel termination despite the existence of a trust purpose, it could have relied on the failure of purpose doctrine since the annual income shrank from \$1800 to \$400.

The court accepted the distinction made by the RESTATEMENT (but previously ignored by the courts in Pennsylvania) between cases in which the settlor is deceased and those in which he is alive.

37. *Haines' Estate*, Court of Common Pleas No. 6, Philadelphia County, Dec. Term, 1944, No. 598 (unreported); *Bowers' Trust Estate*, 346 Pa. 85, 29 A. 2d 519 (1943); *In re Donnan's Trust*, 339 Pa. 43, 13 A. 2d 55 (1940); *Jones' Trust Estate*, 284 Pa. 90, 130 Atl. 314 (1925); *King v. York Trust Co.*, 278 Pa. 141, 122 Atl. 227 (1923).

38. In *Johnson v. Provident Trust Co.*, 4 D. & C. 248 (Pa. C. P. 1924), the court held the consent of contingent remaindermen unnecessary, stating, "... a provision in favor of contingent . . . remaindermen . . . does not prevent a termination of the trust on the application and agreement of all persons having vested interests" (citing cases). This holding was reversed on appeal, 280 Pa. 255, 124 Atl. 436 (1924). However, in *Auchu's Estate*, 38 D. & C. 33 (Pa. Or. Ct. 1939) and *Goodell's Estate*, 53 D. & C. 13 (Pa. Or. Ct. 1945), termination was decreed over the objection of the guardian *ad litem* representing unborn remaindermen.

An analysis of that obstacle reveals its far reaching effects: (a) the requirement that all persons who have or might have a beneficial interest in an estate must consent to termination permits an attempted termination to be frustrated by persons with only a remotely contingent interest; (b) the requirement that the consent of unborn or unascertained remaindermen is essential to termination makes termination impossible in a large number of cases.

The requirement of consent of unborn or unascertained remaindermen becomes more burdensome due to the traditional presumption that a woman is legally capable of bearing children regardless of her age or physical condition.³⁹ Although that presumption has recently been forced to yield to medical testimony to the contrary,⁴⁰ it still constitutes a serious handicap in many termination proceedings.⁴¹

The restrictive effect of this requirement is unfortunate in that it permits the remote objects of the conveyer's bounty to frustrate the enjoyment of the estate by the immediate objects of his bounty. For it has been said that the life beneficiaries are generally those for whom the trust is primarily designed.⁴²

The inequity of such a result is demonstrated by the fact that the remainders whose existence could frustrate the termination may well have been created solely in order to divest a settlor of all of his reversionary interest for tax purposes, or merely for the purpose of naming some ultimate remaindermen after the death of all of the primary objects of the bounty of the settlor.

The problem of revocation or termination of trusts has received legislative attention in several sister states.⁴³ In some, statutory provision has been made to mitigate the harshness of the rule requiring the consent of all beneficiaries. The North Carolina statute permits a settlor to revoke contingent interests in persons not born or ascertained without the consent of any beneficiary.⁴⁴ In Oklahoma any

39. *List v. Rodney*, 83 Pa. 483 (1877); *Daly's Estate*, 26 Dist. 299 (Pa. Or. Ct. 1917). See *Austin's Estate*, 315 Pa. 449, 173 Atl. 278 (1934).

40. *Leonard's Estate*, 60 D. & C. 42 (Pa. Or. Ct. 1947); *Barnsley's Estate*, 59 D. & C. 653 (Pa. Or. Ct. 1947). Although there appear to be no reported cases in which the court has recognized a rebuttal of the presumption of the procreative ability of a man, in at least one unreported decision weight was given to evidence tending to prove sterility.

41. Because of the fact that the ability to bear children may theoretically persist beyond the age at which, according to common experience, sterility occurs, the quantum of proof necessary to overcome the presumption is great. See *Austin's Estate*, 315 Pa. 449, 173 Atl. 278 (1934).

42. " . . . in nearly all instances of long continuing trusts, the life tenants are the primary objects of the bounty of testators . . .": *Nirdlinger's Estate* (No. 2), 327 Pa. 171, 173, 193 Atl. 30, 32 (1937). To the same effect, see *Goodell's Estate*, 53 D. & C. 13, 21 (Pa. Or. Ct. 1945).

43. Statutes dealing with the problem are in effect in California, New York, Oklahoma and Texas.

44. "The grantor . . . who has heretofore created or may hereafter create a voluntary trust . . . with a future contingent interest to some person or persons

trust which is silent as to revocability may be revoked by the settlor alone; if expressly irrevocable, it may be revoked with the consent of *living persons* having vested or contingent interests.⁴⁵ "Contingent interests," as defined in that statute, are only those interests which a beneficiary may take as purchaser under the trust instrument, and not those which pass by descent. Consequently, a limitation to a cestui for life and thereafter to his testamentary appointees or next of kin may be revoked by the settlor and life beneficiary without the consent of next of kin, the latter taking by descent and not by purchase.

A similar result has been reached in cases arising under Section 23 of the New York Personal Property Law,⁴⁶ which provides for revocation by the settlor with the consent of "all persons beneficially interested in a trust . . ." Although the New York statute does not expressly so provide, it has been construed to require only the consent of living beneficiaries who take as purchasers.⁴⁷ Inasmuch as it is the requirement that the consent of unborn and unascertained remaindermen be obtained which often prevents the desired destruction of a trust, the North Carolina, Oklahoma and New York statutes, by obviating the need for that consent, increase the opportunity for reaching trust property.

It is to these obstacles, namely, the necessity of showing failure of the trust purpose, and of obtaining the consent of all beneficiaries as conditions precedent to the termination of the trust, that Section 2 of the Estates Act of 1947 was particularly directed.

IV. THE ESTATES ACT

(a) *History*

The problem of the oppressive trust and the desirability of providing a means whereby such a trust might, under proper circumstances, be terminated was given consideration by the Advisory Committee of the Joint State Government Commission on Decedents'

not in esse or not determined until the happening of a future event may at any time, prior to the happening of the contingency . . . revoke the grant of the interest to such person or persons . . ." N. C. CODE § 996 (1931). By amendment, the statute does not apply to trusts expressly made irrevocable. N. C. LAWS 1943, c. 437, § 1.

45. "Every trust shall be revocable by the trustor, unless expressly made irrevocable by the terms of the instrument creating the same. Provided, that any trust may be revoked by the trustor upon the written consent of all living persons having vested or contingent interest therein." OKLA. STAT. ANN., tit. 60, § 175.41 (Supp. 1947).

46. N. Y. STAT. ANN., tit. 40, § 23 (1938).

47. *Levy v. Empire Trust Co.*, 269 App. Div. 188, 54 N. Y. S. 2d 817 (1945); *Smith v. Title Guarantee & Trust Co.*, 287 N. Y. 500, 41 N. E. 2d 72 (1942); *Franklin v. Chatham Phoenix Natl. Bank*, 234 App. Div. 369, 255 N. Y. Supp. 115 (1932).

It is the intention of the settlor that determines whether interests pass by purchase or descent: *Corbett v. Bank of N. Y., etc., Co.*, 229 App. Div. 570, 242 N. Y. Supp. 638 (1930).

Estates and Trusts.⁴⁸ This subject was referred to a subcommittee which, upon the basis of an investigation and analysis of the existing law, filed a report strongly urging legislation to provide a means of relief from trusts which have, for various reasons, outlived their usefulness, and whose continued existence is a source of hardship to those who were intended to be benefited.⁴⁹

The Advisory Committee thoroughly debated the wisdom of such legislation. In its deliberations it gave careful consideration to the constitutionality of the statute if made applicable to existing trusts,⁵⁰ to the possible income and estate tax implications of such legislation,⁵¹

48. The Joint State Government Commission of the General Assembly having been directed to "study, revise and prepare for re-enactment" certain statutory components of Decedents' Estate Law, appointed a special committee to consider this subject. This Committee in turn appointed an Advisory Committee composed of members of the Bar, both judges and practitioners, with Robert Brigham, Esquire, as its Chairman. REPORT, DECEDENTS' ESTATES LAWS OF 1947 1.

49. The following statute was suggested:

"The Court having jurisdiction over an inter vivos trust or a testamentary trust, heretofore or hereafter created, shall have the power, in its discretion, after due hearing upon the petition of any interested person or persons and the written consent of all living persons having a beneficial interest therein (and of the settlor, if alive), to decree the settlement and termination of said trust in whole or in part, whenever said Court shall be satisfied that the purpose of the trust has failed, or that the needs of the beneficiaries and the particular circumstances of the case warrant, or that for other good and sufficient reasons it is advisable to terminate the said trust in whole or in part.

"As herein used 'beneficial interest' shall mean such an interest in praesente or in remainder created by the trust instrument as would entitle the beneficiary to enjoyment of the estate upon the falling in of the preceding estates; 'beneficial interest' shall not include such an interest as would pass to the next of kin of a life tenant or of a settlor under the intestacy laws."

50. It is well established that retroactive destruction of vested interest is unconstitutional: *Wolford v. Morgenthal*, 91 Pa. 30 (1879). Reversions are treated as vested interests: *Schafer v. Eneu*, 54 Pa. 304 (1867). It is debatable whether the same rule applies to contingent remainders and expectancies. See *United States v. Heinrich*, 12 F. 2d 938 (D. C. Mont. 1926); *Stanbach v. Citizens' National Bank of Raleigh*, 197 N. C. 292, 148 S. E. 313 (1929); COOLEY, PRINCIPLES OF CONSTITUTIONAL LAW 351 (3d ed. 1898), which indicate that retroactive destruction of contingent interests is not unconstitutional. But see *Cunningham Estate*, 340 Pa. 265, 16 A. 2d 712 (1940) and *Overbrook Heights B. & L. Association v. Wilson*, 333 Pa. 449, 5 A. 2d 529 (1939), indicating that contingent remaindermen have valid property rights.

51. The possible tax liability was based upon the uncertain scope of: (a) Section 166 of the Internal Revenue Code which provides generally for the taxation to the settlor of income from trusts with respect to which he has the power, either alone or in conjunction with others not adverse to him, to revoke; and (b) Section 811 (d) which includes within a grantor's estate any trust property subject to the exercise by him, acting alone or in conjunction with others not adverse to him, of a power to alter, amend, revoke or terminate "without regard to when or from what source the decedent acquired such power."

(a) Under the rule laid down in *Helvering v. Clifford*, 309 U. S. 331 (1940), the proposed statute might have increased the tax liability of a settlor. The income from a trust made revocable by statute is taxable to the settlor: *Gaylord v. Commissioner*, 153 F. 2d 408 (C. C. A. 9th 1946). However, tax liability is avoided when the power to revoke must be exercised by the settlor in conjunction with the beneficiaries: *Smith v. Commissioner*, 59 F. 2d 56 (C. C. A. 1st 1932). Actually, such a power is no more than any settlor possesses under general law: *Knapp v. Hoey*, 24 F. Supp. 39 (D. C. S. D. N. Y. 1938); RESTATEMENT, TRUSTS § 338 (1935).

(b) The inclusion in a settlor's estate of property which he had, during his lifetime, transferred in trust, depends upon its being subject at his death to a power to alter, amend, revoke or terminate without regard to the source of that power or the

and to the burden which might be cast upon the courts if too broad discretion to terminate trusts were conferred upon them.⁵²

Section 2 of the Estates Act of 1947 finally emerged.⁵³ It provides, as follows:

"SECTION 2. *Termination of Trusts.*

(a) *Failure of Original Purpose.* The court having jurisdiction of a trust, regardless of any spendthrift or similar provision therein, in its discretion may terminate such trust in whole or in part, or make an allowance from principal to a conveyor, his spouse, issue, parents, or any of them, who is an income beneficiary, provided the court after hearing is satisfied that the original purpose of the conveyor cannot be carried out or is impractical of fulfillment and that the termination, partial termination, or allowance more nearly approximates the intention of the conveyor, and notice is given to all parties in interest or to their duly appointed fiduciaries. But, distributions of principal under this section, whether by termination, partial termination, or allowance, shall not exceed an aggregate value of twenty-five thousand dollars from all trusts created by the same conveyor.

(b) *Distribution of Terminated Trust.* Whenever the court shall decree termination or partial termination of a trust under the provisions of this section, it shall thereupon order such distribution of the principal and undistributed income as it deems proper and as nearly as possible in conformity with the conveyor's intention.

(c) *Other Powers.* Nothing in this section shall limit any power of the court to terminate or reform a trust under existing law."

(b) *Analysis of Section 2*

1. *Jurisdiction*

The power to decree the termination of a trust, or to make an allowance from the principal thereof in the manner provided in Section 2 is given to "the court having jurisdiction of the trust." The

persons with whom it must be exercised. Consequently, a trust made revocable by statute is includable in the settlor's estate. *Vaccaro v. U. S.*, 149 F. 2d 1014 (C. C. A. 5th 1945).

Furthermore, the fact that the power may not be exercisable for the pecuniary benefit of the settlor does not avoid the liability of his estate: *Commissioner v. Holmes*, 326 U. S. 480 (1946). However, when the power is exercisable only in conjunction with the beneficiaries, having interests adverse to the settlor, it is questionable whether tax liability would be imposed. See *Helvering v. Helmholz*, 296 U. S. 93 (1935). So long as the power exercisable by the settlor, in conjunction with the beneficiaries, is equivalent to that accorded by general law, there would seem to be no tax incident. But see *Estate of H. A. Cannon*, 40 B. T. A. 508 (1939).

52. The courts have assumed a heavy burden in the adoption of the "failure of purpose" doctrine. It is to be hoped that the new legislation will not materially increase this load.

53. See note 4 *supra*.

Orphans' Court has exclusive jurisdiction of testamentary trusts.⁵⁴ The Orphans' Court and the Courts of Common Pleas have concurrent jurisdiction of inter vivos trusts.⁵⁵ Consequently, termination proceedings may be instituted in the Orphans' Court or Common Pleas Court, depending upon the nature of the trust involved.

2. Discretionary Termination

The relief provided in Section 2, whether in the nature of total or partial termination, or allowance from principal, may not be claimed by a petitioner as of right. Assuming that all of the requirements imposed by Section 2 as conditions to granting the relief sought are met, such relief will be granted only if the court "in its discretion" decides so to act. In this respect Section 2 differs from the corresponding statutes of New York,⁵⁶ North Carolina⁵⁷ and Oklahoma⁵⁸ which give to the settlor, under specified circumstances, the power to revoke trust interests, without subjecting the exercise of that power to judicial sanction. The absence of judicial supervision over exercise of a power to revoke may be justified under those statutes, since the destruction of the trust may be undertaken only by the creator. In such cases, there can be no violence done to the settlor's intent, and, consequently, there is probably less need for the court to scrutinize the proceedings.⁵⁹ Under Section 2, however, termination may be decreed without regard to the consent of the settlor, and making termination a matter of judicial discretion provides a safeguard against wanton disregard of the settlor's intention. Aside from affording some measure of sanctity to the settlor's intention,⁶⁰ recourse to judicial discretion will prevent the widespread destruction of trusts which might otherwise ensue.

One other consequence of entrusting the power to terminate to the court rather than to the settlor and/or other persons interested in the trust may be briefly noted here. The sections of the Internal

54. Act of June 7, 1917, P. L. 363, § 9(b), PA. STAT. ANN., tit. 20, § 2242 (Purdon, 1930).

55. Act of June 7, 1917, P. L. 363, § 9(n), added June 26, 1931, P. L. 1389, § 1, PA. STAT. ANN., tit. 20, § 2253(a) (Purdon, 1930); Act of June 16, 1836, P. L. 784, § 13, PA. STAT. ANN., tit. 17, § 281 (Purdon, 1930); see *Padelford v. Trust Co.*, 121 Pa. Super. 193, 183 Atl. 451 (1936).

56. See note 46 *supra*.

57. See note 44 *supra*.

58. See note 45 *supra*.

59. Compare note 12 *supra* with RESTATEMENT, TRUSTS §§ 338, 339 (1935).

60. Precedent for disregarding the settlor's intention, even with respect to trusts created before enactment of the statute, may be found in the Act of April 14, 1931, P. L. 29, PA. STAT. ANN., tit. 20, § 3251 (Purdon, 1930), which provided, retroactively, for the termination of testamentary trusts in which vested charitable remainders followed life estates. The constitutionality of the Act was upheld in *Derbyshire's Estate*, 16 D. & C. 200 (Pa. Or. Ct. 1932).

Revenue Code which, under certain circumstances, tax to a settlor the income from a trust,⁶¹ and to his estate the corpus thereof,⁶² are based broadly on the retention by the settlor of some powers of economic control. Section 2 entrusts that power not to the settlor but to the discretion of the court. It may be, therefore, that whatever tax consequences may have flowed from Section 2 are thereby dissipated.⁶³

3. *Limitations on Discretion*

The discretion which the court, in a Section 2 proceeding, may exercise is subject to its finding, after due hearing, "that the original purpose of the conveyor cannot be carried out or is impractical of fulfillment and that the termination, partial termination or allowance more nearly approximates the intention of the conveyor." In so restricting the exercise of the court's discretion, the statute makes no distinction between inter vivos and testamentary trusts or between termination proceedings in which the settlor joins and those in which he does not.⁶⁴ A showing of impossibility of fulfillment of the trust purpose and of approximation of the settlor's consent is required in all attempts to terminate. Insofar as this requirement is imposed upon attempts at termination in which the settlor joins, Section 2 provides a more exacting termination procedure than the Restatement.⁶⁵ However the existing law in Pennsylvania, as a result of the decision in *Bowers' Trust Estate*,⁶⁶ would seem to permit termination upon the consent of the settlor and all beneficiaries regardless of any unfulfilled trust purpose.⁶⁷ This case law is expressly preserved.⁶⁸

Applied to testamentary trusts, or inter vivos trusts, where the settlor is deceased, the requirement of a showing that the trust purpose is "impractical of fulfillment" is a codification of the existing law and is in accord with the Restatement.⁶⁹ A trust whose purpose "is impractical of fulfillment" is a trust whose purpose has failed. Consequently, the facts which have heretofore impelled a court to find a

61. INT. REV. CODE § 166.

62. INT. REV. CODE § 811(d).

63. It may be doubted that Section 2 would have created the suggested income or estate tax liability, even though the power to terminate were given, not to the court, but to the settlor acting with the consent of the beneficiaries. See *Knapp v. Hoey*, 24 F. Supp. 39 (D. C. S. D. N. Y. 1938); *Helvering v. Helmholtz*, 296 U. S. 93 (1935).

64. The distinction is made in RESTATEMENT, TRUSTS §§ 337, 338 (1935), and was approved and adopted in *Bowers' Trust Estate*, 346 Pa. 85, 29 A. 2d 519 (1943).

65. Where the settlor consents to termination, it is immaterial that any trust purpose remains unfulfilled: RESTATEMENT, TRUSTS § 338 (1935).

66. 346 Pa. 85, 29 A. 2d 519 (1943).

67. The facts in *Bowers' Trust Estate*, *supra*, might have justified a finding of failure of purpose, but the court did not base its decision on that ground. See note 36 *supra*.

68. The right of a petitioner to proceed under the more liberal rules of existing law is expressly preserved by subsection (c) of Section 2.

69. See note 28 *supra*. RESTATEMENT, TRUSTS § 337(2) (1935).

failure of purpose⁷⁰ and to terminate a trust should be equally persuasive and effective to warrant a finding that the trust purpose "is impractical of fulfillment." This legislative recognition of the failure of purpose doctrine may even be held to supply the courts with the requisite authority to terminate the so-called nuisance trusts.⁷¹

In addition to showing that the purpose of the trust "is impractical of fulfillment," it is necessary to show, as a condition to the exercise of judicial discretion, that termination "more nearly approximates the intention of the conveyor." These two requirements are imposed conjunctively. In other words, a showing that termination more nearly approximates the intention of the conveyor cannot be made alternatively to a showing of failure of purpose, but must be made additionally. Consequently, the inability to convince the court that termination approximates the intention of the settlor might bar termination even though failure of purpose is shown.⁷² It becomes important, therefore, to examine the import of the requirement "more nearly approximates the intention of the conveyor."

The statute contains no definition of the "intention" of the settlor which must be approximated by termination. That intention may be construed to be the original intention which the settlor had (and may have declared) when he created the trust. Such a construction, however, would, under the statute, be inoperative in a great many cases. Thus, a statement in the trust instrument that it is the settlor's express intention that the trust shall continue for a specified period might be effective to prevent termination prior to the expiration of that period, regardless of the compelling equitable considerations which the proponents of termination may demonstrate. Furthermore, such an interpretation would seem to render of no avail the settlor's consent to termination if that consent conflicted with a clearly expressed original intention. Such a construction of "intention," which would frustrate an attempted termination regardless of the circumstances existing at the time the attempt was made, would seem to ignore the end sought to be attained by Section 2, namely, a more liberal termination procedure in hardship cases.⁷³

On the other hand, the statute might be construed to refer to the settlor's intention at the time termination is sought or, if he be dead,

70. Cases cited note 21 *supra*.

71. In view of the clearly expressed policy underlying Section 2, that is, to provide relief from oppressive trusts, the section itself may be too deferential to the settlor's intention. See note 60 *supra*. In New York an express declaration by the settlor to the effect that he intends the trust to be irrevocable is ineffective to prevent the application of that revocation statute. *Pulsifer v. Monges*, 66 N. Y. S. 2d 367 (1946).

72. This is the rationale adopted by RESTATEMENT, TRUSTS § 336 (1935), and the cases cited notes 21 and 22 *supra*.

73. See note 49 *supra*.

an intention which might be reasonably attributed to him under the then existing circumstances. Under this construction, the requirement would obviously be met in any case in which the settlor joins in the petition for termination, and is not complied with when he objects thereto.

An intermediate view, and one which would avoid the extremes inherent in the interpretations just adverted to, would construe "intention" as the motive which the settlor had when he created the trust. If the motive of the settlor was to provide a reasonably stable income for the life beneficiaries, then, if circumstances warrant, that motive should be effectuated in a termination proceeding. Adoption of this construction will involve an ascertainment of the motive which impelled creation of the trust and an application of that motive to the circumstances existing when termination is sought.

In selecting the proper construction of "intention," consideration should be given to the evident desire of the Advisory Committee to liberalize termination procedure. It is to be hoped that when this problem is presented for judicial determination the courts will endeavor to effectuate the underlying purpose of Section 2.

4. *Spendthrift Trusts*

If the requirements just discussed are satisfied, termination may be decreed even though the trust contains spendthrift provisions. By its wording, Section 2 apparently neutralizes spendthrift provisions as a factor in a termination proceeding, and in so doing makes no distinction between inter vivos and testamentary trusts. Insofar as Section 2 is applicable to testamentary spendthrift trusts and inter vivos spendthrift trusts where the settlor is dead, Section 2 marks a departure from the existing law of Pennsylvania⁷⁴ and from that set forth in the Restatement,⁷⁵ both of which preclude termination of such trusts.⁷⁶ Under Section 2, the inclusion of spendthrift provisions is expressly stated to be of no consequence. It would seem, therefore, that where termination of a trust, whether inter vivos or testamentary, is resisted solely on the ground of the presence of a spendthrift clause in the trust instrument, and no other unfulfilled trust purpose is shown, the exponents would be unsuccessful and termination would be granted.

74. See *Bowers' Trust Estate*, 346 Pa. 85, 88, 29 A. 2d 519, 520 (1943), and cases there cited.

75. RESTATEMENT, TRUSTS § 337(2), comment *b* (1935).

76. But a testamentary spendthrift trust whose purpose has failed may be terminated. *Auchu's Estate*, 38 D. & C. 33 (Pa. Or. Ct. 1939).

Two arguments may conceivably be advanced to refute this position. In the first place, it may be urged that inclusion of spendthrift provisions is an indication that termination can never approximate the settlor's intention. This argument, however, ignores the clear import of the words "regardless of any spendthrift . . . provision" which preclude the use of such provisions as a bar to termination. In the second place, it may be argued that termination being discretionary, the court should, in the exercise of proper discretion, refuse to terminate a testamentary spendthrift trust. However, it would seem that such a refusal would be an abuse of discretion, if all the other factors necessary to warrant termination are present.

Applied to inter vivos spendthrift trusts, the settlor of which is alive and consenting, Section 2 merely codifies the law enunciated in *Bowers' Estate*.⁷⁷ No longer is a spendthrift provision an obstacle to termination in such cases.

5. Total or Partial Termination

In the event that, under all of the circumstances, the court determines to exercise the discretion conferred by Section 2, it may order a total or partial termination of the trust. Such relief may be granted upon application of, and in favor of, any beneficiary, regardless of relationship to the settlor. Although termination "in part" is not defined, it probably signifies the termination of the interest of one or more beneficiaries whose total interests comprise less than the whole of the trust.⁷⁸ Of course, it could be construed to mean termination of part of a trust in which a beneficiary had an interest.

6. Allowance From Principal

Where termination is sought on behalf of "a conveyor, his spouse, issue, parents, or any of them, who is an income beneficiary," the court may, as an alternative to total or partial termination, permit an allowance from principal. In order to merit such relief it is not only necessary that the applicant therefor fall within the enumerated classes, but he must also be an income beneficiary. Consequently, a remainderman is excluded, regardless of his relationship to the settlor.⁷⁹ However, where the applicant is within the specified designations and is an

77. 346 Pa. 85, 29 A. 2d 519 (1943). If, however, it should be held that such inter vivos spendthrift trusts are terminable only upon a showing of failure of purpose and approximation of intention, then Section 2 conflicts with *Bowers' Trust Estate*.

78. This appears to be the meaning of "partial termination" as employed in RESTATEMENT, TRUSTS § 340(1) (1935).

79. Subject, of course, to the right of the remaindermen, preserved by subsection (c) of Section 2, to proceed under existing law.

income beneficiary, he may be entitled (in addition to the relief of partial termination) to an allowance from principal.

This provision, in effect, grants to the court a limited power of consumption where such action is warranted under the circumstances of the particular case. For example, evidence may be adduced to show that a testator was accustomed to, and intended to, provide his wife with an income of \$3,000 per year; that diminishing returns on securities have reduced the income from the trust to \$1,000 per year; and that rising costs of living have decreased the purchasing power of the dollar. Under such circumstances, Section 2 empowers the court to make up the deficiency by directing the trustee to distribute \$3,000 or more per year out of principal⁸⁰ (or a total distribution of income and principal of \$3,000 or more per year).

7. Notice to Parties in Interest

It is in the complete removal of the requirement that the consent of all interested parties be obtained as a condition to termination that Section 2 makes the most radical departure from existing law. As previously pointed out, the consent of all beneficiaries has always been regarded as essential to termination,⁸¹ and the impossibility of obtaining such consent has often presented an insuperable obstacle in termination proceedings. The rigidity of this requirement has been relaxed in those states whose statutes were previously noted. In New York⁸² and Oklahoma⁸³ the consenting class includes only persons who are living and who take, not by descent, but by purchase. In North Carolina, contingent interests in persons "not in esse or not determined until the happening of a future event may at any time, prior to the happening of the contingency . . ." be revoked without their consent.⁸⁴ Section 2 of the Estates Act goes farther than any of these statutes by eliminating the necessity of obtaining the consent of anyone.⁸⁵

As a substituted means of protecting the interests of the various beneficiaries, the statute requires "notice . . . to all parties in interest or to their duly appointed fiduciaries." The Act contains no definition of parties in interest. It may be assumed, however, that "all parties in interest" comprehends the same persons whose consent has here-

80. Provided, however, that such distributions do not exceed a total of \$25,000.

81. Cases cited note 37 *supra*.

82. See note 46 *supra*.

83. See note 45 *supra*.

84. See note 44 *supra*.

85. The suggested draft which was submitted by the Sub-Committee provided for the consent of the settlor (if living) and all persons having a beneficial interest in the trust. See note 49 *supra*.

tofore been required.⁸⁶ "Their duly appointed fiduciaries" undoubtedly refers to guardians ad litem for minors, or trustees ad litem for unborn or unascertained beneficiaries.

The use of *notice* instead of *consent* liberalizes the termination procedure. A guardian or trustee, whether general or ad litem, may feel that he does not have the power, or at least does not wish to consent to the termination of a trust. However, that same guardian or trustee may not feel obligated to object to such termination. Consequently, *notice* is a much more liberal requirement than *consent*.

The use of *notice* instead of *consent* may have the effect of eliminating tax liability that might possibly result if trusts were made terminable upon the consent, inter alia, of the settlor.⁸⁷

Whatever effect the device of notice may have on any possible tax implications created by Section 2, it is clear that one of the classic obstacles to trust termination is thereby removed. Since it is no longer essential to obtain the consent of beneficiaries, it will not now be possible for remote and unascertained remaindermen to frustrate a desirable termination. Theoretically, it is now possible to obtain termination without the consent of any beneficiary or of the settlor. Practically, of course, since the granting of termination is discretionary only, a court will deny that relief where the owners of substantial trust interests refuse to consent. The real significance of Section 2 is that it removes from termination proceedings the absolute bar that often resulted from the requirement of plenary consent. Under Section 2, termination may be decreed if the equitable circumstances warrant, and regardless of inability to obtain the consent of all parties.

8. The \$25,000 Limitation

The relief which may be granted under Section 2, "whether by termination, partial termination, or allowance," is restricted to a maximum aggregate of \$25,000 "from all trusts created by the same conveyor." This limitation had its genesis in the desire to restrict any possible tax implications of Section 2⁸⁸ to only \$25,000 of the settlor's trust property. The limitation amounts to a hedge against the possibility that the preventive measures taken by the draftsmen

86. The taxable incident, contemplated by the Internal Revenue Code § 811(d) is the death of a settlor of an inter vivos trust which had been subject to his exercise of a power to revoke, alter, amend or terminate. The section has no application to a testamentary trust. Consequently, whatever possible danger may have been involved in the use of "consent" as a condition to terminating an inter vivos trust, would not have been involved in testamentary trusts.

87. That is, those persons whose continued interest in the trust estate is equivalent to an absolute fee. *Donnan's Estate*, 339 Pa. 43, 13 A. 2d 55 (1940).

88. See note 51 *supra*.

might be ineffective to prevent tax liability.⁸⁹ In addition, it constitutes a boundary beyond which the broadened powers of termination therein contained may not be exercised.

Where the maximum relief is exhausted by decrees directing allowances from principal or partial termination in favor of some beneficiaries, thereafter no further relief under the statute may be permitted regardless of the compelling circumstances inducing the subsequent request.⁹⁰ Since the limitation is applied collectively to all trusts created by the same settlor or testator, exhaustion of the maximum by allowance from one trust will constitute an absolute bar to subsequent recourse to the corpus of other trusts. This, of course, places a certain premium upon the timeliness and diligence of the first beneficiary, or beneficiaries, in requesting court relief from specific trusts. This consequence, however, unfortunately flows from the tax protection this restriction was intended to provide.

9. *Distribution*

The distribution of principal and undistributed income of a terminated trust shall be such as the court "deems proper," and conforms "as nearly as possible . . . with the conveyor's intention."⁹¹ In awarding the trust corpus to the beneficiaries the court will give heed to the express terms of the trust instrument. As a practical matter, however, it will now be possible to make distribution in accordance with the agreement of the parties, subject to judicial approval.

10. *Preservation of Existing Law*

It has been pointed out that in some respects the termination procedure established by Section 2 is more restricted than under existing law.⁹² The general purpose of the draftsmen, however, was to *broaden*, not *narrow* the law of termination. Consequently, subparagraph (c) was inserted in the section to insure the preservation in entirety of existing law.⁹³

89. If no tax liability was involved, the limitation was unnecessary. It was not necessary to apply the limitation to testamentary trusts. See note 86 *supra*.

90. See note 79 *supra*.

91. The method of distribution provided by Section 2 approximates that set forth in RESTATEMENT, TRUSTS § 347, comments *b* and *c* (1935).

92. See note 65 *supra*.

93. In *Bonsall's Estate*, 60 D. & C. 76a (1947), the court held the enactment of Section 2 to be indicative of the fact that termination was a matter outside the scope of Act of June 1, 1945, P. L. 1337, PA. STAT. ANN., tit. 68, § 581 (Purdon, Supp. 1946) (which was codified in the Estates Act as § 3) and could not be accomplished by recourse to that Act. In that case testator created a spendthrift trust for his wife for life with remainder to his grandchild. In order to terminate for the benefit of the grandchild, the widow attempted to release her life estate. In holding that the Act of 1945 does not permit termination, the court referred to the enactment of Section 2 as indicative of the fact that prior thereto such trusts could not be terminated.

We concur with the court that the Act of 1945 was not applicable. Query, however, whether the court's reasoning conflicts with the policy of subsection 2 to preserve intact all existing means whereby termination may be effected.

11. *Prospective Operation of Statute*

By the express terms of the Estates Act, the operation of Section 2 is confined to trusts created on and after January 1, 1948.⁹⁴ Being prospective in nature only, the statute does not apply to trusts in existence prior to that date. Therefore, no relief will be available in such trusts which are burdensome, oppressive, or have outlived their usefulness, unless grounds for termination are available under existing law.

V. CONCLUSION

Section 2 represents an important step forward in the law of termination of trusts. An appraisal of its real worth, however, must be deferred pending an opportunity to observe the manner in which it operates and to examine the problems which it creates. It is to be hoped that the courts will interpret the statute liberally as legislative authority to broaden and extend their power in termination cases, and, in particular, to provide them with the machinery to lighten or eliminate the burden of the oppressive trust.

94. Act of April 24, 1947, P. L. —, PA. STAT. ANN., tit. 20, § 301.21 (Purdon, Supp. 1947) (effective January 1, 1948).