NOTE

Ex-Wife's Power to Attach Spendthrift Trust Income to Enforce a Decree for Alimony

In those jurisdictions where it has been considered, conflicting replies are afforded to the question of whether the income from a spendthrift trust may be attached in order to enforce a decree for alimony when an absolute divorce has been granted. However, in not more than a third of the states has litigation arisen involving these elements, and the majority of those in which it has tend towards a denial of such recovery.

The point singled out for comment in this note is admittedly a narrow one: it involves the frequent failure of courts to distinguish between the terms "wife" and "ex-wife" and consequently between their statuses. Yet this is a fundamental point, for, as will be shown further on, a decision may well turn upon what status a plaintiff in a suit for alimony may inadvertently be given. In addition to this, the problem is made complex by two elements which are inevitably a part and upon which the answer to the above question must to a great extent depend, namely, the doctrine of the spendthrift trust and the concept of alimony. Necessarily these must be discussed first.

The validity of the spendthrift trust is based upon the principle that a donor should be able to dispose of his property in any manner he desires.[1] In the majority of states the intent of the donor or settlor that the corpus or income from a trust may not be subject to alienation, whether voluntary or compulsory, is basically controlling.[2] The word "basically" is advisedly used, because not even in those states which have accepted the spendthrift trust from the first has it survived unscathed.[3] The frequent attempts of

1. Roorda v. Roorda, 230 Iowa 1103, 300 N. W. 294 (1941); Erickson v. Erickson, 197 Minn. 71, 266 N. W. 161, 267 N. W. 426 (1936); Schwager v. Schwager, 109 F. (2d) 754 (C. C. A. 7th, 1940); Van Leer v. Van Leer, 221 Pa. 195, 70 Atl. 716 (1908).

2. "In creating an equitable estate a donor may carve out and create such equitable rights in property as his fancy may dictate and his imagination devise, without regard to the rights appertaining to the several estates known to the law." Dunn v. Dobson, 198 Mass. 142, 146, 84 N. E. 327 (1908); Eaton v. Eaton, 82 N. H. 216, 132 Atl. 10 (1926). In Eaton v. Lovering, 81 N. H. 275, 125 Atl. 433 (1924) the following language appears: "The test to determine whether the plaintiff can reach the funds in the hands of the trustee . . . is to inquire what his father intended to give him." See also Gilkey v. Gilkey, 162 Mich. 664, 127 N. W. 715 (1910). "The words should be construed in the light of the purpose to be served. To permit a wife to collect out of spendthrift trust funds any decree for alimony which she might obtain with all its accumulations, would often deprive an improvident beneficiary of all the protection which the testator intended to give him." Bucknam v. Bucknam, 294 Mass. 214, 220, 200 N. E. 918, 921 (1936). "If alimony or support money is to be an exception to protection offered by the spendthrift provisions it must be by some justifiable interpretation of the donor's language. . . ." Erickson v. Erickson, 197 Minn. 71, 78, 266 N. W. 161, 164 (1936).

3. A few American jurisdictions have followed the English view and not recognized the spendthrift trust, on the basis of Lord Eldon's opinion in Brandon v. Robinson, 18 Ves. Jr. 429 (Ch. 1811), that one of the incidents of property is that it be subject to debts. While the English concept was rejected by the Supreme Court of the United States in Nichols v. Eaton, 91 U. S. 716, 23 L. Ed. 254 (1875)—and seems to be easily refuted by the statement that "creditors cannot complain because they are bound to know the foundation on which they extend their credit," given in the early Pennsylvania case of Fisher v. Taylor, 2 Rawle 33, 37 (Pa. 1829)—still a few states have either not accepted spendthrift trusts at all or have imposed limitations with regard to the amount that may be the *res* of such a trust. The following states have

creditors over a period of years to defeat the doctrine or at least to make inroads upon it for their own benefit have not been altogether unsuccessful, for they have caused the courts to make certain exceptions, later incorporated in statutes,[4] to the original immunity, allowing persons in particular classes to recover out of the *cestui que trust's* interest.[5] Actually, the courts in some jurisdictions, instead of creating exceptions have held that the spendthrift trust is invalid with respect to such persons.[6] Moreover, the inviolability of the trust has further suffered at the hands of legislators who have deemed it desirable that only that amount necessary for the support and education of the beneficiary shall be out of the reach of creditors.[7] These two inroads upon the doctrine of the spendthrift trust are distinct from one another, for by statute an ordinary creditor may only attach the surplus or funds deemed not necessary for the beneficiary's support, his rights being limited to that surplus, while a member of one of the preferred classes, or more strictly, one with regard to whom the spendthrift trust is considered invalid, may reach the funds that have been deemed necessary for the support of the beneficiary.

One of the first persons to be allowed to reach income that had been declared necessary for the beneficiary's support was his wife.[8] Her right to attach the income of the trust in the absence of a statutory provision has been based upon several grounds: (1) that the income of the husband is the sole source of the wife's support;[9] (2) that public policy demands

rejected the doctrine: Alabama, Rugely v. Robinson, 10 Ala. 702 (1846) and Hill v. McRae, 27 Ala. 175 (1885); Rhode Island, Tillinghast v. Bradford, 5 R. I. 205 (1858); Kentucky, KY. STATS. (Carroll, 1930) § 2355, but *cf.* Todd Ex'rs. v. Todd, 260 Ky. 611, 86 S. W. (2d) 168 (1935). Virginia has limited the *res* of such a trust to $100,000: VA. CODE ANN. (Michie, 1942) § 5157; while North Carolina limits the amount to that which will produce no more than an annual income of $500 at the time the trust was created: N. C. CODE ANN. (Michie, 1939) § 1742; see also Griswold's model statute in GRISWOLD, SPENDTHRIFT TRUSTS (1936) 478.

4. MO. STAT. ANN. (1932) § 569; LA. GEN. STAT. (Dart, 1939) § 9850.28; PA. STAT. ANN. (Purdon, 1930) tit. 48, § 136; *id.*, tit. 20, § 243.

5. Oberndorf v. Farmers' Loan and Trust Co., 208 N. Y. 367, 102 N. E. 534 (1913) (action by wife for support); Wright v. Leupp, 70 N. J. Eq. 130, 62 Atl. 464 (1905) (assignment of spendthrift trust income to wife for support held valid); *In re* Williams, 187 N. Y. 286, 79 N. E. 1019 (1907) (decision based on statute authorizing attorney's lien); Sherman v. Skuse, 166 N. Y. 345, 59 N. E. 990 (1910) (physician); Pond v. Harrison, 96 Kan. 542, 152 Pac. 655 (1915) (physician).

6. "Such trusts are void as to wives and children." Moorehead's Estate, 289 Pa. 382, 137 Atl. 802 (1927); Stewart v. Stewart, 127 Pa. Super. 567, 581, 193 Atl. 860 (1937).

7. "Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the beneficiary, shall be liable to the claims of his creditors in the same manner as other personal property, which can not be reached by execution." N. Y. REAL PROPERTY LAW § 98. Several other states have enacted almost identical statutes. CAL. CIV. CODE (Deering, 1941) § 859; MICH. STAT. ANN. (Henderson, 1936) § 26.63; MINN. STAT. (Mason, 1927) § 8092; MONT. REV. CODES ANN. (Anderson & McFarland, 1935) § 6788; N. D. COMP. LAWS ANN. (1913) § 5669; OKLA. STAT. ANN. (Harlow, 1931) § 11825; S. D. CODE (1939) § 59.0306; WIS. STAT. (1941) § 231.13. Such statutes have been held to apply equally to personal property as to real property. Wetmore v. Wetmore, 149 N. Y. 520, 527, 44 N. E. 169, 170 (1896); Canfield v. Security First National Bank, 8 Cal. App. (2d) 277, 283, 48 P. (2d) 133, 136 (1935). But *cf.* Erickson v. Erickson, 197 Minn. 71, 266 N. W. 161, 267 N. W. 426 (1936); San Diego Trust and Savings Bank v. Heustis, 121 Cal. App. 675, 10 P. (2d) 158 (1932).

8. Board of Charities v. Moore, 6 Pa. Co. Ct. 66, 19 Phila. 540 (1888); Board of Charities v. Kennedy, 3 Pa. Dist. 231, 34 W. N. Cas. 83 (1894). See GRISWOLD, SPENDTHRIFT TRUST (1936) §§ 334-5.

9. 2 BISHOP, MARRIAGE, DIVORCE & SEPARATION (1891) § 447: "What families ordinarily and properly subsist on is the income of the husband."

that a beneficiary be not allowed to enjoy the benefits of such a trust while ignoring his family obligations;[10] (3) that it is the presumed intent of the settlor that the *cestui que trust's* wife shall be a beneficiary;[11] and (4) that public policy so dictates even where the settlor has manifested an intent to exclude the beneficiary's wife.[12] In at least three states the wife's right with regard to such a trust has been established by legislation.[13]

The wife, then, because of the marital relationship between her and her husband is allowed to reach the income from the trust. In almost every case the wife's action has been one to enforce a support order. In view of the wife's right, the next question would be, Does the wife by securing a divorce from her husband lose her right to attach the trust for support in the form of alimony? Certainly by the divorce proceedings she ceases to be his wife, and logically she should lose those rights which were given to her simply because of her status as a wife. Should she not then be treated as an ordinary creditor who cannot attach such a trust, or should she continue to enjoy a preference as a carry-over from her former status?

Whether or not it is desirable to allow a further inroad to be made upon the doctrine of the spendthrift trust, seems in this case to be more of a social question than a legal one. The only apparent legal issue would arise over the safeguarding of the settlor's intent, since after all this is the basis upon which the spendthrift trust has developed. But such a consideration should not stand in the way of adopting a modified rule that would better meet social needs, provided these needs justified whatever adverse effects would be produced upon the beneficiary and his family.[14] On the other hand, the decision of whether or not to relax the protection surrounding a spendthrift trust is one certainly dependent to a great extent upon the attitude that an individual state has taken with regard to alimony. Thus, in those states which have not curtailed the granting of alimony, a rule permitting the former wife to attach the beneficiary's interest would appear to be desirable in that it would further assure payment of the alimony. However, from the point of view of Pennsylvania, which by statute has abolished permanent alimony,[15] leaving the courts power to grant ali-

10. "Equity will not feed the husband and starve the wife." Wetmore v. Wetmore, 149 N. Y. 520, 529, 44 N. E. 169, 170 (1896).

11. Tuttle v. Gunderson, 254 Ill. App. 552 (1929); Gardner v. O'Loughlin, 76 N. H. 481, 84 Atl. 935 (1912); Eaton v. Eaton, 81 N. H. 275, 125 Atl. 433 (1924); Moorehead's Estate, 289 Pa. 542, 137 Atl. 802 (1927).

12. Moorehead's Estate, 289 Pa. 542, 137 Atl. 802 (1927); but *cf.* Thurber v. Thurber, 43 R. I. 504, 112 Atl. 209 (1921); Schwager v. Schwager, 109 F. (2d) 754 (C. C. A. 7th, 1940); Erickson v. Erickson, 197 Minn. 71, 266 N. W. 161 (1936).

13. Mo. STAT. ANN. (1932) § 569: "All restraints upon the right of the cestui que trust to alienate or anticipate the income of any trust estate in the form of a spendthrift trust or otherwise and all attempts to withdraw said income of any trust estate from the claims of creditors of the cestui que trust, whether said restraints be by will or by deed, now existing or in force, or, which may be hereafter executed in this state, be, and the same are hereby declared null and void and of no effect, as against the claims of any wife, child or children, of said cestui que trust for support or maintenance, or, as against the claims of any said wife for alimony." LA. GEN. STAT. (Dart, 1939) § 9850.28; PA. STAT. ANN. (Purdon, 1930) tit. 48, § 136; *id.*, tit. 20, § 243.

14. "To permit a wife to collect out of spendthrift trust funds any decree for alimony which she might obtain, with all accumulations, would often deprive an improvident beneficiary of all the protection which the testator intended to give him." Bucknam v. Bucknam, 294 Mass. 214, 220, 200 N. E. 918, 921 (1936).

15. PA. STAT. ANN. (Purdon, 1930) tit. 23, § 45 and notes thereto. An exception is made in the case where one of the parties is insane. See Fertig, *Report on the Divorce Law*, LEGIS. REF. BUREAU BULL. No. 27 (1928) 24. Temporary alimony *pendente lite* was not expected. PA. STAT. ANN. (Purdon, 1930) tit. 23, § 46.

mony only in divorce *a mensa et thoro,*[16] the relaxation of the rule would appear to be undesirable.

A word should be added with regard to the nature of alimony and the circumstances to which it has been applied in the United States. Alimony is considered to be an allowance made to a wife or former wife living apart from her husband or former husband, it being treated as the enforcement of an extension of the legal duty of a husband to support his wife.[17] The decision whether or not to allow recovery from the income from a spendthrift trust seems in the various jurisdictions to turn upon whether alimony is referred to as a debt, the decree creating a debtor-creditor relationship between the former husband and wife,[18] or whether the decree is held as merely making specific the general obligation of a man to support the woman he marries regardless of a discontinuation of the marriage relation.[19] The majority rule is that alimony is an obligation similar in nature to that of the marital duty of support,[20] not being founded upon a contract, express or implied, but arising out of the relationship of marriage.[21] Under such a view the decree does not create a debt in the ordinary sense, rather it defines the husband's original obligation.[22] On the other hand, alimony has by some courts been termed a "debt," which gives the recipient of a decree for alimony the rights of a judgment creditor. And yet the legal attributes of this "debt" vary greatly from those of an ordinary money claim, it being generally exempt from garnishment,[23] and not an assignable property right.[24] Furthermore, the local means of equitable enforcement accorded to it, such as injunctions,[25] sequestration,[26] would appear to make it far more than an ordinary debt.

As for the amount of the alimony decree, it has for its basis the former husband's financial status, and along with other income the proceeds

16. PA. STAT. ANN. (Purdon, 1930) tit. 23, § 47. Alimony *pendente lite* is also allowed to provide support for the wife while the action is pending. *Id.* § 46. See Note (1944) 92 U. OF PA. L. REV. 421, with regard to the effect of a foreign decree for alimony especially in Pennsylvania.

17. "When she became the wife of the defendant . . . he undertook to support and maintain her during life. That duty still devolves upon him notwithstanding the decree of divorce." Wetmore v. Wetmore, 149 N. Y. 520, 529, 44 N. E. 169, 170 (1896).

18. "For a judgment of alimony stands no better and no worse, so far as reaching this [spendthrift trust] fund is concerned, than any other judgment." Eaton v. Eaton, 81 N. H. 275, 276, 125 Atl. 433 (1924). "A final decree awarding alimony is a judgment for all purposes." De Rousse v. Williams, 181 Iowa 379, 382, 164 N. W. 896, 897 (1917); Gilkey v. Gilkey, 162 Mich. 664, 127 N. W. 715 (1910); Erickson v. Erickson, 197 Minn. 71, 266 N. W. 161, 267 N. W. 426 (1936); Bucknam v. Bucknam, 294 Mass. 214, 200 N. E. 918 (1936).

19. "In this state alimony is not a debt. It is a social obligation as well as a pecuniary liability; it is founded on public policy and is for the good of society." England v. England, 223 Ill. App. 549 (1922); Tuttle v. Gunderson, 254 Ill. App. 552 (1929); Wetmore v. Wetmore, 149 N. Y. 520, 44 N. H. 169 (1896).

20. 2 BISHOP, *op. cit. supra* note 9, § 829; 2 SCHOULER, TREATISE ON LAW OF MARRIAGE, DIVORCE, SEPARATION AND DOMESTIC RELATIONS (6th ed. 1921) § 1754.

21. 2 NELSON, DIVORCE AND SEPARATION (1895) § 900.

22. Faversham v. Faversham, 161 App. Div. 521, 146 N. Y. Supp. 596 (1st Dep't 1914).

23. Wright v. Wright, 93 Conn. 296, 105 Atl. 684 (1919); Kingman v. Carter, 8 Kan. App. 46, 54 Pac. 13 (1898). But *cf.* Kelso v. Lovejoy, 9 Ohio Cir. Ct. (N. S.) 539 (1905), *aff'd.*, 76 Ohio St. 598, 81 N. E. 1189 (1907).

24. Jordan v. Westerman, 62 Mich. 170, 28 N. W. 826 (1886); see Faversham v. Faversham, 161 App. Div. 521, 523, 14 N. Y. Supp. 569, 571 (1st Dep't 1914).

25. *In re* White, 113 Cal. 282, 45 Pac. 323 (1876); Errisman v. Errisman, 25 Ill. 136 (1830).

26. Casteel v. Casteel, 38 Ark. 477 (1882).

derived from a spendthrift trust are taken into consideration in determining the alimony.[27]

It is necessary to say that alimony is an allowance to a wife or a former wife, because alimony follows not only an absolute divorce, *a vinculo matrimonii,* by which decree the legal relations of husband and wife are terminated,[28] but the term "alimony" is also used to cover allowances made to a *wife* in two cases: while the divorce is pending (alimony *pendente lite*), and when a divorce *a mensa et thoro,* or what is otherwise known as a "separation," has been granted. Strictly speaking, only in the cases of *pendente lite* and separation is alimony an allowance to a *wife:* when an absolute divorce has been granted, alimony is an allowance to a *former wife,* an *ex-wife.*

But lawyers and judges and legal writers commonly have referred to the latter allowance as "alimony to a wife."[29] Perhaps this is so because an application for alimony is almost always filed before the husband and wife relationship is terminated by a final decree. Yet such terminology is most unfortunate when used in later actions to enforce the alimony decree.

A problem has been introduced by this lack of clear terminology because of a consequent failure to distinguish between present wife and former wife and the legal effects which follow from the status of each. It is not hard to see how misunderstandings and erroneous legal conclusions might follow. It is one such misunderstanding arising with regard to the spendthrift trust that has brought forth the question, What are the rights of divorced woman to attach to her former husband's income from such a trust in order to enforce her decree for alimony?

The answers to this question to be found in the American law are none too clear. The reading of a few opinions, territorially scattered, leaves a somewhat clouded impression and makes the reader aware that on this point a confusion has been brought into the law by a failure to distinguish between the terms "wife" and "ex-wife."

It would seem that the courts in many cases do not openly meet the problem of whether or not the rules limiting those who may attach a spendthrift trust should be relaxed so as to include the ex-wife. Instead, they term a woman finally divorced from a man "his wife," leaving the reader to wonder whether the intent was to strengthen recovery by a somewhat questionable procedure, or whether an erroneous decision was reached because of inadvertence and a tendency to lump indiscriminately the wife and the ex-wife and their relative legal positions.

Turning to the cases, it is most interesting to note that while no fault may be found with the result of the leading New York case of *Wetmore v. Wetmore,*[30] the opinion is misleading insofar as certain language is used.

27. Hill v. Hill, 84 Pa. Super. 379 (1925).

28. There is an early provision to this effect. The Act of March 13, 1815, § 8 P. L. 150 reads in part: "After a sentence nullifying or dissolving a marriage, all and every the duties, rights and claims accruing to either of the said parties and time, theretofore, in pursuance of the said marriage, shall cease and determine, and the said parties shall severally be at liberty to marry again in the like manner as if they never had been married, except where otherwise provided by law." This section also contains the usual provisions of an absolute divorce decree.

29. Hoagland v. Leask, 154 App. Div. 101, 138 N. Y. Supp. 790 (1st Dep't 1912); Eaton v. Eaton, 82 N. H. 216, 132 Atl. 10 (1926); see Griswold, *Reaching the Interest of the Beneficiary of a Spendthrift Trust* (1929) 43 HARV. L. REV. 63; 1 SCOTT, THE LAW OF TRUSTS (1939) § 157.11; 2 SCHOULER, *op. cit. supra* note 20, § 1861.

30. 149 N. Y. 520, 44 N. E. 169 (1896). This case was cited in Fink v. Fink, 139 Misc. Rep. 630, 248 N. Y. Supp. 129 (1931); Moore v. Moore, 143 App. Div. 428, 208 N. Y. Supp. 97 (1913); Tuttle v. Gunderson, 254 Ill. App. 552 (1927); Keller v. Kel-

In speaking of a decree for alimony where an absolute divorce had been granted, Justice Haight said:

> "The court determines the amount necessary for such support and requires that amount to be paid to her. His duty is thus determined. And from that time on he is in effect a debtor owing his wife the amount adjudged and determined by the decree." [31]

The decision actually rests upon the theory that alimony "was founded upon the marital obligation of support, from which . . . [the former husband] was not relieved by the decree" [32] of absolute divorce. Such a statement goes directly to the heart of the alimony question and is the basic argument for it: that a man owes a duty of support to the woman he marries until she dies. But the above quoted passage is certainly misleading. The words "support" and "wife" would indicate that the plaintiff as a wife and exception to the spendthrift trust rule of immunity could, without more, attach the defendant's interest in the spendthrift trust. It is language like this that has led other courts to allow ex-wives to reach spendthrift trusts on the basis that they stand in the same position as a wife.[33]

It is interesting to perceive what a powerful effect the case has had. In a later New York case,[34] the court approached the problem from the other extreme, citing the *Wetmore* case, *supra,* and saying that the plaintiff's right to recovery against the spendthrift trust was not thwarted "by the fact that the wife in the case at bar has as yet only an interim order and not a final judgment." [35] Obviously, the plaintiff not having obtained an absolute decree was still a wife and one who, more than anyone else, would have a right to reach the spendthrift trust income.

In *Eaton v. Eaton,*[36] the New Hampshire Supreme Court carefully developed the opinion to show that the plaintiff, having been granted an absolute divorce, was no longer a member of the defendant-beneficiary's family [37] and hence could not reach the spendthrift trust, such being only for the use of the defendant and his family. But the court fell into the same error of referring to the former wife's right as the "plaintiff wife's award of alimony." [38]

In a Michigan case [39] the Supreme Court stated that the property in a spendthrift trust was "not subject to seizure by the court to pay alimony allowed to the wife." [40] Yet the plaintiff having secured a final divorce was no longer a "wife."

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ler, 284 Ill. App. 198 (1936). But *cf.* San Diego Trust & Savings Bank v. Heustis, 121 Cal. App. 675, 10 P. (2d) 158 (1932) and Erickson v. Erickson, 197 Minn. 71, 266 N. W. 161, 267 N. W. 426 (1936), which discuss but do not follow the Wetmore case.

31. 149 N. Y. 520, 528, 44 N. E. 169, 170 (1896).

32. *Id.* at 528-9, 44 N. E. at 170.

33. Moore v. Moore, 143 App. Div. 428, 208 N. Y. Supp. 97 (1st Dep't 1913); Tuttle v. Gunderson, 254 Ill. App. 552 (1927); Keller v. Keller, 284 Ill. App. 198 (1936).

34. Fink v. Fink, 139 Misc. 630, 248 N. Y. Supp. 149 (1931).

35. *Id.* at 631, 248 N. Y. Supp. at 130.

36. 82 N. H. 216, 132 Atl. 10 (1926).

37. "In ordinary and common understanding marriage creates family membership between the parties and divorce destroys it. The divorce completely dissolving the marital status, thereafter there are no ties either of kinship or of marital status to relate the parties. In law, and usually in fact, the parties upon divorce become strangers to each other, and no one thinks of calling a divorced man and woman members of each other's family." *Id.* at 217, 132 Atl. at 11.

38. *Id.* at 216, 132 Atl. at 10.

39. Gilkey v. Gilkey, 162 Mich. 664, 127 N. W. 715 (1910).

40. *Id.* at 666, 127 N. W. at 715-6.

The Supreme Judicial Court of Massachusetts in *Bucknam v. Bucknam* [41] strongly supported its decision with these words:

> "To permit a wife to collect out of spendthrift trust funds any decree for alimony which she might obtain with all its accumulations, would often deprive an improvident beneficiary of all the protection which the testator intended to give him." [42]

Again the words "wife" and "alimony" are used in the same sentence in a case where the divorce was an absolute one.

The courts are not alone in this confusion. The Restatement of Trusts also contributes to the perplexity. The Restatement contains the following ambiguous provision: "The interest of the beneficiary [of a spendthrift trust] can be reached . . . by the wife for alimony." [43] Did the authors of this section mean that the word "wife" should relate only to a woman separated by a decree *a mensa et thoro,* in those jurisdictions which recognize such divorces? Or was the intention to include also a woman with a divorce *a vinculo matrimonii?* Was it mere inadvertence that caused the writers to fail to make clear what should be the scope of the term "wife"?

A reading of Illustration 2 gives little help, if any at all.

> "A bequeaths $100,000 to B upon a spendthrift trust for C. C's wife brings a proceeding against C for divorce. A divorce is granted with a decree awarding alimony of $1500 a year. C's wife can reach C's interest under the trust in satisfaction of her claim for alimony."

Unless this illustration be limited to the divorce *a mensa et thoro,* it is a complete contradiction in terms: a woman who has a final divorce is referred to as a "wife."

Judging from the cases discussed above, perhaps this section is a true restatement of the law—a restatement including all the confusion and uncertainty into which a number of the courts have slipped.

Contrary to the apparent meaning of Clause *a* of Section 157, but following the obvious intention of Illustration 2, most jurisdictions, since 1935, have interpreted the language of the Section in its use of the word "wife" to include by analogy "divorced wife," "ex-wife," or "former wife." [44]

Since the first prerequisite to reaching a sound conclusion is a clear statement of the problem, it is well to find that the courts in some jurisdictions carefully analyze the situation presented when a former wife seeks to enforce her decree alimony against the spendthrift trust of which her former husband is the beneficiary.

The recent Pennsylvania case of *Lippincott v. Lippincott* [45] merits commendation as one of the very few cases involving spendthrift trusts and alimony which thoroughly appreciate and discuss the importance of correct terminology.

> "It is most manifest that . . . [it] was not the intention of the Legislature . . . nor of this court in rendering its decisions . . . that

41. 294 Mass. 214, 200 N. E. 918 (1936).
42. *Id.* at 220, 200 N. E. at 921.
43. RESTATEMENT, TRUSTS (1935) § 157.
44. Erickson v. Erickson, 197 Minn. 71, 266 N. W. 161, 267 N. W. 426 (1936); Knettle v. Knettle, 197 Wash. 225, 84 P. (2d) 996 (1938); Schwager v. Schwager, 109 F. (2d) 754 (C. C. A. 7th, 1940); Roorda v. Roorda, 230 Iowa 1103, 300 N. W. 294 (1941); Bucknam v. Bucknam, 294 Mass. 214, 200 N. E. 918 (1936); Keller v. Keller, 284 Ill. App. 198 (1936).
45. 349 Pa. 501, 37 A. (2d) 741 (1944).

> the word 'wife' used in these statutes and decisions with reference to allowing spendthrift trusts to be attached for maintenance and support should include by analogy a 'former wife,' 'a divorced wife,' or an 'ex-wife.' . . . A man can have but one wife, and when the word 'wife' is used in statute or decision it means a woman then married to a man in lawful wedlock—not a woman who was his wife before she was divorced." [46]

And further on, the court follows with:

> "Since an absolute divorce finally concludes the relationship existing between man and wife, a judgment obtained for permanent alimony must be treated as all other judgments for ordinary debts are concerned. It has only the same standing so far as reaching the interest of a former husband in a spendthrift trust, as has any judgment obtained by an ordinary creditor." [47]

This statement is valuable for its application of the above-quoted analysis to the case at bar. It is, of course, a desirable as well as logical result from the Pennsylvania point of view, since in this state permanent alimony has been abolished so far as absolute divorces are concerned.[48] The plaintiff here sought to enforce a foreign decree, hence her claim for alimony.

To summarize, then, the solution to the question of whether a former wife is to be allowed to enforce a decree for alimony out of the income from a spendthrift trust of which her former husband is the beneficiary is not going to follow merely from correctly labeling the parties "wife" and "former wife." Certainly not. There is no magic in these words, and jurisdictions will still differ fundamentally with regard to recovery for ex-wives so long as a decree for alimony in a final divorce is treated as a debt, and the ex-wife consequently as a judgment-creditor, in a state hostile to alimony, while the decree is considered more than a debt, and the ex-wife treated as more than a judgment-creditor, in another state favoring alimony. But carefully chosen terminology is essential to a complete understanding of the relations of the parties involved in a given case. Only in this way will it be possible to obtain a full realization of the grounds upon which the decision is founded.

Perhaps the courts in those jurisdictions which have not as yet been forced to decide the rights of a former wife to enforce a decree for alimony against a spendthrift trust will meet the problem squarely and employ correct terminology.[49]

J. O. M.

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46. 349 Pa. 501, 506, 37 A. (2d) 741, 743-4 (1944).

47. *Id.* at 506, 37 A. (2d) at 744.

48. PA. STAT. ANN. (Purdon, 1930) tit. 23, § 45.

49. In this connection it will be most interesting to see how the Missouri court will act when presented with a case of this kind, especially in view of its yet uninterpreted statute declaring the spendthrift trust null and void with regard to the claims of a "wife for alimony." This statute is quoted at note 13 *supra*.