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Spendthrift Trusts in Minnesota

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DEAN FRASER has so fully and carefully set forth the numerous absurdities of the Minnesota law of restraints and perpetuities as it relates to trusts that it ought to be unnecessary to go over the same ground. But the Dean's good seed has fallen on singularly barren soil. In the eight years since the publication of his papers there has been no important legislation except the excellent new statute on charitable trusts, and in the field of case law the principal decision does not refer either to the clear statement of the Dean or the apparently applicable statutes, and reaches a result in some respects more extreme than in any other jurisdiction. It seems to be necessary that someone plow some of the same ground again. What is here attempted is limited to part of the one field of spendthrift trusts.

By a spendthrift trust is meant, in the words of the American Law Institute, one "in which by the terms of the trust a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed." Several assumptions underly this definition. The first and most important is that in general, unless restrained, the interest

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1The Rules against Restraints on Alienation, and against Suspension of the Absolute Power of Alienation in Minnesota, (1924) 8 MINNESOTA LAW REVIEW 185, 192-199; (1925) 9 MINNESOTA LAW REVIEW 314-352.
3The case referred to is First National Bank of Canby v. Olufson, (1930) 181 Minn. 289, 232 N. W. 337. The decision was competently noted at the time in this review. (1931) 15 MINNESOTA LAW REVIEW 570-581. The importance of the questions involved, and the fact that this seems to be the only Minnesota decision directly on the subject, seems to justify this further treatment. Cf. however, Erickson v. Erickson, (1930) 181 Minn. 421, 423, 237 N. W. 793.
of the beneficiary of a trust is capable both of voluntary and involuntary transfer. This is of course subject to the nature of the interest. If one has a right to have his education paid for, or to occupy a certain room rent free, he cannot, in the nature of the thing, usefully assign his right to anyone else, nor is it of value to his creditors. But most forms of property can be assigned, and the owner's creditors can reach them. The present proposition merely is that it makes no difference, to assignability or availability to creditors, that the property in question is an interest in a trust rather than an ordinary legal title. It is believed this is law everywhere, including Minnesota, except as modified by certain statutes hereafter to be noticed.

The second assumption of the definition is that, in general, restraints on voluntary and involuntary transfers go together; that is, if a man can transfer a trust interest his creditors can reach it, and vice versa. This is undoubtedly the general rule, just as with other forms of property. In Minnesota, because of the stat-

5American Law Institute, Restatement of the Law of Trusts, Tentative Draft No. 2, secs. 128, 138-143; Gray, Restraints on Alienation, 2d ed., secs. 1-10, 143-149, 256; Bogert, Trusts 433; Perry, Trusts, 7th ed., sec. 827a; 26 R. C. L. 1264; Croxall v. Sherrend, (1866) 5 Wall. (U.S.) 268, 18 L. Ed. 572. In Simmons v. Northwestern Company, (1917) 136 Minn. 357, 360, 162 N. W. 450, the court said:

"There can be no serious doubt of her right of alienation, not only of the corpus of the estate, but also the income, since the will contains nothing inconsistent with the exercise of such right." In Jacobson v. Mankato Loan & Trust Co., (Minn. March 2, 1934) the court said: "And where the right and interest has vested in the beneficiary on becoming of age, he may assign or dispose of such interest by will or otherwise, even though possession and enjoyment be postponed." Some language in Estate of Thorne, (1920) 145 Minn. 412, 417, 177 N. W. 638, apparently tending in the opposite direction, is adequately disposed of by Dean Fraser. See (1924) 8 MINNESOTA LAW REVIEW 185, 199, note 73. A vested interest in trust is subject to garnishment in Minnesota. National Surety Co. v. Hurley, (1915) 130 Minn. 392, 153 N. W. 740.

6American Law Institute, Restatement of the Law of Trusts, Tentative Draft No. 2, Explanatory notes to sec. 148, Comment C, and cases cited. National Bankruptcy Act, Sec. 70 (a) (5), 11 U. S. C. A., sec. 110 (a) (5), 1 Mason's U. S. Code, tit. 11, sec. 110 (a) (5); 2 Collier, Bankruptcy, 13th ed., pp. 1657-9, 1686-8; Pollack v. Meyer Bros. Drug Co., (C.C.A. 8th Cir., 1916) 233 Fed. 861. The "caveat" on this point in the text of sec. 148 of the American Law Institute, Restatement of the Law of Trusts, Tentative Draft No. 2, obviously results from the decisions in Boston Safe Deposit Co. v. Luke, (1915) 220 Mass. 484, 108 N. E. 64; Eaton v. Boston Safe Deposit Co., (1916) 240 U. S. 427, 36 Sup. Ct. 391, 60 L. Ed. 723. Those decisions are really strong confirmation of the doctrine. In order to sustain the Massachusetts result (that the interest did not pass to the trustee in bankruptcy) the Supreme Court found it necessary substantially to overrule the Massachusetts dictum that the interest was assignable. Otherwise "there would be difficulty in admitting that a person could have property over which he could exercise all the powers of ownership except to make it liable for his debts."
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The definition furthermore assumes, or rather states directly, that the restraint must be "by the terms of the trust." If the instrument is silent there is no restraint, and outside testimony is not admissible to prove an unexpressed intention. This rule is really part of the first proposition. It is because interests in trusts are assignable unless restrained that restraint is necessary to prevent assignability; and the proper place to impose restraints is obviously in the instrument. It is perhaps because they have forgotten the first rule that several courts have found restraints intended on very inconclusive language.

The definition further states that to make a spendthrift trust the restraint imposed must be "valid." This assumes that some restraints may be invalid. It is here that the battleground has been for fifty years. Will the law permit a competent adult to own a right to income or to corpus which he cannot sell and which his creditors cannot reach? If so, to what extent and within what limitations? These were the subjects which John Chipman Gray debated with the Supreme Court of the United States and on which courts and legislatures have differed from each other ever since.

Mason's 1927 Minn. Stat., secs. 8098, 8092.
American's Law Institute, Restatement of the Law of Trusts, Tentative Draft No. 2, sec. 148, Comment D. In Simmons v. Northwestern Trust Co., (1917) 136 Minn. 357, 360, 162 N. W. 450, the court declined to pass on the question whether parol evidence could be received as to the purpose of the trust and the settlor's desire to permit it to be terminated in certain circumstances.

The cases are collected in the prior comment on the Olufson Case, (1931) 15 Minnesota Law Review 570, 579-80, notes 49-52. Short and appropriate methods for the expression of the intention are given (if necessary) in the American Law Institute, Restatement of the Law of Trusts, Tentative Draft No. 2, sec. 148, comment c, and illustrations. These forms have a long and interesting history, which has been readily available to lawyers for almost forty years. See Gray, Restraints on Alienation, 2nd ed.; Fraser, The Rules Against Restraints on Alienation, and against Suspension of the Absolute Power of Alienation in Minnesota, (1924) 8 Minnesota Law
The view ultimately taken by a majority of American courts was that if the beneficiary’s sole right was to income from the trust, for life or for a term of years, provisions that his right should not be transferable by him and should not be subject to the claims of creditors were valid, but if his interest was an equitable fee, subject to someone else’s life estate, he could sell it and his creditors could reach it, and provisions to the contrary were void. Prior to 1930 the supreme court of Minnesota had not passed upon these questions, and no one knew whether a valid spendthrift trust could be set up in the state or not. The best practice therefore was, when a settlor or testator wished a trust set up with spendthrift clauses, to insert appropriate provisions, and then go on to provide that in case of bankruptcy, assignment, or an attempt to levy on the interest, the right of the beneficiary should absolutely cease, and the trustee should proceed, in his absolute discretion, to apply so much of the income as he deemed wise to the support of the beneficiary or of other persons named (commonly the wife or children of the beneficiary). Counsel thus hoped that if the direct restraining clauses were held void a somewhat similar result might be accomplished by the forfeiture, followed by discretionary application of income to support.

This was, however, not entirely the whole story. There had been in force since 1851 two statutes, now Mason’s Statutes of 1927, sections 8098 and 8092.
Section 8098 provides:

"No person beneficially interested in a trust for the receipt of rents and profits of the lands can assign, or in any manner dispose of, such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created are assignable."

Various perplexing questions are apparent on inspection of this section. What was "a trust for the receipt of the rents and profits of the lands?" Did it include, for instance, a trust of real estate under which net income (or a stated annuity from income) was payable to A for life, remainder to another? In New York, where the section originated, it was held it did, but not in Minnesota. Our court had said distinctly that a trust simply to pay income was not within the section, but that "it applies only to trusts to receive and apply to specific purposes the rents and profits of land." Few trusts would come within this definition, and the section has accordingly apparently never been applied.

What then was the other sort of trust mentioned in the section, one that is "for the payment of a sum in gross?" Was an annuity a sum in gross, or must it be a single sum, or what? There were no decisions in Minnesota on the subject, but in New York it had been held that the words meant "a single sum, payable at one time or in installments, but not periodical sums given as annuities are usually given, for permanent maintenance."

It therefore seemed clear that the two classifications of the sec-

S. 1913, sec. 6718, 6712; G. S. 1923, sec. 8098, 8092.

The sections, like most of our chapter about trusts, came from the New York code of 1848, via Michigan and Wisconsin. Similar provisions are still in force elsewhere, as follows:

Statutes like Mason’s 1927 Minn. Stat., sec. 8098:

Statutes like Mason’s 1927 Minn. Stat., sec. 8092:


17Simmons v. Northwestern Trust Co., (1917) 136 Minn. 357, 361, 162 N. W. 450. This and other problems under the section were treated by Dean Fraser in 1925. See (1925) 9 Minnesota Law Review 314, 345-350. They are further discussed in (1931) 15 Minnesota Law Review 570-581.

tion did not cover the whole field. In particular, the very common form of private trust to pay net income to a wife for life, remainder to a child or children, was excluded from the first class by the definition of the Simmons Case, and was not within the second. And the section apparently applied only to trusts of land, so that all trusts of securities, etc., were equally excluded.\textsuperscript{19} The great majority of all existing private trusts were therefore not within the section but were governed by the common law.

The other statute is now Mason's Statutes of 1927, section 8092. It reads:

"When a trust is created to receive the rents and profits of lands, 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 person for whose benefit the trust is created, shall be subject in equity to the claims of his creditors, in the same manner as other personal property which cannot be reached by an execution at law."

This section apparently had never been referred to by the Minnesota court. It was on its face as full of puzzles as the other. A trust "created to receive the rents and profits of lands" might cover any trust of real estate. So read, the section was unnecessary, for the general proposition was that interests in trusts were reachable by creditors like other property. If the meaning of the section was that "the sum necessary for the education and support of the person for whose benefit the trust is created" should not be reached by creditors (and it obviously had that meaning, incidentally), then a very backhanded way had been taken to say a very simple thing. Some other explanation of the section must be found.

The explanation lay in the fact that this was the companion to section 8098. The two came from the same source, and were enacted together as part of the same code.\textsuperscript{20} They were to be read together, and completed each other. They were consistent with a legis-\textsuperscript{19}While this has never been definitely held in Minnesota, I think it is clearly the right view. The opposite result in New York (based in part on other sections of the code which Minnesota did not copy), and the conflicting results in Michigan and Wisconsin, are discussed in the note at (1931) 15 MINNESOTA LAW REVIEW 570, 574-5. There are many differences between trusts of real estate and personal property in Minnesota (see Dean Fraser's paper, (1925) 9 MINNESOTA LAW REVIEW 314, 327-351), and I can see no reason for saying that this section, which on its face applies to land and to land only, was intended to cover also stocks and bonds. This conclusion is reached also by the writer of the note in (1931) 15 MINNESOTA LAW REVIEW 570, 578.

\textsuperscript{20}See footnote 15.
lative understanding that in general interests in trusts were assignable and could be reached by creditors, and also that in general assignable interests were subject to the claims of creditors and non-assignable interests were not. They changed both of those rules for a single sort of trust, so that the interests in question, although not assignable, were subject to claims of creditors to the extent provided. The statutory rules apparently were final in the cases which they covered, and could not be changed by language in the instrument or by the purpose of the creator of the trust. But they covered only certain cases.

It followed that the sorts of trusts within the second section (8092) were the same as those within the first provision of the first (8098), and that the restrictive definition of the Simmons Case applied to both. It followed also that all other sorts of trusts were governed by the common law.

This was apparently the situation as it stood in 1930. It was, however, not a picture that counsel could be sure of. The reading of the two sections, so much more restrictive of their meaning than that adopted where they came from, depended on one sentence in the Simmons Case, and could hardly be called settled. And in all the trusts not covered by the sections, and depending on the common law, no one could tell whether spendthrift clauses were legitimate or not. All that seemed certain was that the sections covered something, that what they covered they controlled, and that interests in other trusts could be assigned or reached by creditors unless validly restrained.

In this situation First National Bank of Canby v. Oulufson came up for decision. Thrond Syverson had died, leaving a will by which he bequeathed the residue of his estate as follows:

"An undivided one-third part thereof and interest therein to Sina Kopperud.

An undivided one-third part thereof and interest therein to Arna Kopperud.

An undivided one-third part thereof and interest therein to Christian Kopperud, in trust for Minda Oulufson, for the following uses and purposes: a. Said trusteeship shall continue as long as John Oulufson lives or as long as he is the husband of said Minda Oulufson. b. Said trustee shall annually pay to said Minda Oulufson the net income from her share. c. Said trustee shall hold and manage said share and property as a trust fund, and shall

\[\text{See footnote 17.}\]

\[\text{(1930) 181 Minn. 289, 232 N. W. 337.}\]
have full authority and is hereby empowered to sell land, mortgage land, reinvest, and do any and all things with reference to said property in his hands as such trustee as he shall consider to be for the best interests of said trust and of said Minda Olufson. Said trusteeship shall terminate in the event that said Minda Olufson dies before John Olufson and while his wife.”

The final decree of the probate court had been entered, and had copied the language of the will without interpretation or enlargement. The present action was by a judgment creditor of Minda Glufson, to construe the probate decree and to subject the interest of Minda in the trust, by sale, to the satisfaction of the plaintiff’s judgment. The trust included both personal property and land.

Upon this state of facts four questions were involved, that is:

First: What were the interests of Minda Olufson under the will and decree?

Second: Were those interests subject to the statutes we have mentioned? (To the extent, if any, that they were, they were not assignable, but subject in part to claims of creditors, and the testator’s intent was immaterial.)

Third: To the extent that the statutes were not applicable, did the will show any intention to restrain assignment of her interests by Minda, or to restrain her creditors from reaching them? (Unless it did Minda could assign her interests, and her creditors could reach them.)

Fourth: If such an intention was disclosed, was the restraint provided one that the law should recognize, or should it be disregarded as illegal? In other words, were spendthrift trusts to be held valid in Minnesota, and if so to what extent?

The court’s opinion considers the first question briefly, disregards the second, assumes an answer to the third, and spends itself fully on the last of all. To make clear what has occurred, it is nevertheless necessary to consider all the questions, somewhat in the foregoing order.

First: What were the interests of Minda Olufson? She had, first and clearly, a right to receive income so long as she was married to the person named. Was this (as to the real estate) “a trust for the receipt of the rents and profits of the lands” under section 8098? If so, it was non-assignable by virtue of that section, but subject, in part, to the claims of creditors under section 8092. Neither section was referred to by counsel or the court. If the restrictive definition of the Simmons Case were followed,
the trust would not be within the sections, and this may be the reason that they were not referred to. But if it was intended to renew that definition (so much more restricted than the view of the same section held in New York, where it originated), it would have been comforting to know it. At least the new decision does not overrule this portion of the Simmons Case, and it may therefore still be said that a trust of real estate to pay income, or an annuity from income, is in Minnesota probably governed by the common law, and not by the two statutes.

Granting that Minda Olufson's interest in income was not within the sections of the statutes, it was the sort of interest to which, by the prevailing view in a majority of states, spendthrift provisions might validly attach. The court says it is not a spendthrift trust (evidently having some other meaning of the phrase in mind), but it relies upon the cases which sustain restraints on reaching income, and its decision is that the interest in question cannot be reached. The holding clearly is that restraints on reaching income (and therefore also against assigning it) are valid. Minnesota counsel from now on may confidently restrict such interests against assignment by the beneficiary and against attacks of creditors, and may omit with safety the further clauses formerly in use, for forfeiture and the discretionary application of income to support. This much the case does settle.

Returning to the interests of Minda Olufson, did she have anything except the interest in income mentioned? Where was the remainder? The will is far from clear, but the remainder is apparently disposed of in her favor. The other daughters got their thirds outright. No other recipient of her one-third is mentioned. The property is held "in trust for Minda Olufson." If her husband dies before her (or if they are divorced), then the trust ends, and apparently she takes the property. If she dies before him it also terminates and (perhaps) her heirs or issue take. The will was incomplete, but apparently she had at least a contingent interest in the corpus of the trust as well as a vested interest in income. To the extent that the remainder was not disposed of in her favor, it was not disposed of at all, and there was a partial intestacy. In that case also she takes one-third of the undisposed remainder of one-third, as heir. In either case she had an interest in corpus.²³

²³The court did not take this view. The opinion says (1930) 181
The court held that the creditor took nothing. Upon the facts as analyzed, this apparently would mean that even an interest in principal can be placed beyond the reach of creditors. But the case cannot be cited for that proposition. The opinion does say at one point that "during the existence of this trust a creditor of Minda Olufson cannot reach either the trust property or the income therefrom." But the will was vague and incomplete, the interest of Minda in the corpus was left to inference and was perhaps contingent, and the court was not convinced that she had any. It is therefore still in doubt in Minnesota, whether a trust interest in fee can be rendered non-assignable or placed beyond the reach of creditors. The rules elsewhere upon that point are stated in Dean Fraser's papers, and in the Restatement.

But the startling part of the decision relates to our third question. The court finds, from the language of the trust, that the purpose of the donor was "to protect the income and the property from the control of and acquisition by others, especially her husband," in other words, that the testator intended to restrain any transfer of her interest by Minda, and to restrain her creditors from reaching it. If this was his intention, he took great pains not to disclose it. All that he says is that there is to be a trust as long as Minda is married to John Olufson, that while the trust continues Minda is to have the income, that if Minda predeceases John the property (perhaps) passes to her children, and that if John predeceases Minda the trust is at an end, and the property (apparently) becomes Minda's absolutely. His language gives none of the common indications that Minda must not transfer her interest, or that it is exempt from creditors. He obviously did not

Minn. 289, 291, 232 N. W. 337:
"There is no provision in the instrument creating the trust for the transfer or passage of any title to the trust property to her. All she is expressly given is the income therefrom."

It would be interesting to know what the court would do with a case where, John Olufson having died, and the trust therefore having terminated, Minda and someone else appeared as rival claimants for the property.

24 (1930) 181 Minn. 289, 294, 232 N. W. 337. American Law Institute, Restatement of the Law of Trusts, Tentative Draft No. 2, therefore, cites the case as holding that the rights of creditors to reach an interest in corpus can be postponed until the corpus is due to vest in possession. American Law Institute, Restatement of the Law of Trusts, Tentative Draft No. 2, sec. 149 and explanatory note.

25 Fraser, Rules against Restraints on Alienation, and against Suspension of the Absolute Power of Alienation in Minnesota, (1924) 8 MINNESOTA LAW REVIEW 185, 187-194; American Law Institute, Restatement of the Law of Trusts, Tentative Draft No. 2, sec. 147 and 149 and explanatory notes.
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trust John Olufson, but there is no indication that he distrusted Minda. On the contrary, if she should survive her husband, the trust is at an end and she (apparently) is to have the property outright. The creditor who sued was a creditor of Minda, and the decision gives no intimation that the obligation sued on had any connection with her husband. But the court finds, somewhere, an intention to protect Minda's interest from everyone, and decides accordingly.

It has already been suggested that when courts find restraints intended on such inconclusive language the real reason may be that they have for the moment overlooked the first general proposition, that such interests are assignable unless restrained. It is believed this happened in the Olufson Case. The court says:

"To hold that creditors or others may now come in and take away the income or the property will destroy the trust and defeat the clear purpose of the donor. He says that this income is to be paid by the trustee to his daughter. We are asked to say that the income shall be diverted and paid to her creditors."

In other words, any trust to pay income is a spendthrift trust.

It is this part of the decision that has most disturbed the bar. The proposition that creditors can in no case reach the income from a trust may be attractive to a cestui when he is attempting to evade his obligations, but its necessary corollary, that the right to income cannot be assigned, is not so pleasant when for any reason he desires to sell, or give away, or borrow on his interest. And if adopted fully such a rule creates, without necessity, a vast new mortmain of great properties, valuable and varied, which their owners cannot give away nor sell nor mortgage, which are exempt from claims of creditors, and which are not available for any of the purposes of commerce or of credit.

It will not do to assume that no one puts property in trust except to "protect" the cestui from himself. Trusts are created every day to keep property together to be managed, while dividing up its benefits, or to permit life tenants and persons in remainder in a fund consisting of securities. Persons leaving property in trust, for the benefit of competent and adult beneficiaries, now have the choice to leave their cestuis free to deal with their own interests (which means that their creditors can also reach them) or to protect those interests from creditors (which means that the beneficiaries' own hands must be tied.) When the latter inten-

26 (1930) 181 Minn. 289, 291, 232 N. W. 337.
tion exists, it is only reasonable to require that it be stated. Otherwise it is impossible to say of any particular trust, without a lawsuit, whether the beneficiary has power to deal with his interest or not.

It is because it seems to overlook these last considerations that the Olufson decision has been so disturbing. It is strongly to be hoped that the court will have a chance to reconsider it. But what is really needed is legislative action on the subject. The present statutory sections are confusing in their language, the distinction which they make between income from real estate and from securities is without reasonable basis at the present time, and the vagueness of the "surplus" provisions of section 8092 is full of seeds of trouble. But it will not do simply to repeal the sections. We shall then have the common law distinction between "trusts for support" and trusts simply to pay income, which are often, in the mind of their creator, two forms of the same thing; and under the Olufson decision we shall have spendthrift trusts in unlimited amount. No court, committed to the principle of spendthrift trusts, has so far made a difference between an income of five hundred dollars and one of fifty thousand, and it is hard to see how a purely judicial consideration could do so; but no one will dispute that, as a social policy, a difference of rule would be appropriate.

It should be possible, to some extent, for donors to protect their beneficiaries against their own unwisdom. There are degrees of competence in money matters, which testators can guess at, but which the law can hardly ascertain or go by. Our present sections, authorizing what amount to spendthrift trusts in certain cases and in limited amounts, contain a germ of wisdom which is worth preserving. But the idea should not depend upon the form of property, should leave some leeway to the judgment of the creator of the trust, and the upper limit should be definite. And certain sorts of claimants should be able to reach any property their debtors own.

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27See the New York cases referred to in Gray, Restraints on Alienation, 2nd ed., Appendix I, secs. 290-294 d, and (1931) 15 MINNESOTA LAW REVIEW 570, 573.


To make these suggestions definite, the following legislative action is proposed:

1. Repeal Mason’s Statutes, 1927, sections 8098 and 8092.

2. Enact two new sections, to read substantially as follows:

   "Sec. ——. The right to receive income or principal (or a share of either or a payment out of either) from any private trust is, in general, subject both to voluntary and involuntary transfer. But the creator of the trust may (by appropriate language in the trust instrument and not otherwise) provide that the interest of a certain beneficiary (or class of beneficiaries), in income (but not in principal) shall not be subject to voluntary transfer, and such provision when made shall be effective. When and to the extent that such provision is made the creator of the trust (when it is created without consideration) may (by provision in the instrument and not otherwise) further provide that the same interest or interests (being owned wholly by others than himself) shall not be subject to be reached by the creditors of the beneficiary in question, and such provision when made in such case shall be valid, except to the extent provided in the next section."

   "Sec. ——. Notwithstanding such provisions, the interest of the beneficiary can be reached (by garnishment or execution served on the trustee) in satisfaction of a claim (otherwise enforceable) against the beneficiary in any of the following cases:

   1. By the wife or child of the beneficiary for support;
   2. For necessary services rendered to the beneficiary or necessary supplies furnished to him;
   3. For services rendered and materials furnished which preserve or benefit the interest of the beneficiary;
   4. When the income payable to the beneficiary in any calendar year exceeds $2,000.00, then by any creditor of the beneficiary to the extent of such excess."

30Or "(and in principal)" as is decided to be the better policy. See Fraser, Rules against Restraints on Alienation, and against Suspension of the Absolute Power of Alienation in Minnesota, (1924) 8 MINNESOTA LAW REVIEW 187, 192-194.


33These exceptions are generally admitted in states that otherwise approve spendthrift clauses. See the authorities in footnote 29. The question whether alimony claims (see Erickson v. Erickson, (1930) 181 Minn. 421, 423, 232 N.W. 793) and claims for torts should be included should also be considered.

34This clause adopts a general idea now expressed in other form in the statutes of three states. North Carolina, Code 1927, sec. 1742; Virginia, Code 1930, sec. 5157; New Jersey Comp. Stats. Cum. Supp. 1924, sec. 71-91. If the transfer of interests in principal is permitted to be tied up (see footnote 30), then an appropriate limitation as to amount of principal should also be included in this section.