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patent difficulty that the facts of this case fail to show that decedent's "drive" or "urge" to end her life was uncontrollable or irresistible.[23] Despite testimony of the neuro-psychiatrist that, in his opinion,[24] decedent knew what she was doing but could not resist the impulse to do it, the fact remains that the suicide took place twenty-two months after the accident, and after several planned attempts of the deceased to take her life had been stymied. From this it can be seen that the decedent had actually planned each attempt on her life by controlling the "uncontrollable" impulse to take her life until she was certain that no one in her family would be home to block her attempt. Such an intelligent and willful purpose on the part of the decedent to commit suicide is not compatible with the idea of uncontrollable impulse.

The relation of negligence to death in the instant case would seem to be too remote as a matter of law to justify recovery. The proximate cause of death was decedent's suicide — her planned demise finally accomplished by her own act. The rationale of the present case is unsound in that it seeks to trace the proximate cause of death through numerous stages of mental aberration and physical suffering for twenty-two months to the original accident. Carried to its logical conclusion, this reasoning would impute liability to a defendant if the victim of his negligence subsequently killed another, thus allowing recovery against the defendant by the deceased's survivors. Such a course would in effect undermine the whole concept of proximate cause and impose unlimited liability on the negligent tortfeasor.

William F. Coyle

TRUSTS—APPORTIONMENT OF DIVIDENDS—PENNSYLVANIA RULE OF APPORTIONMENT RENDERED EXTINCT DUE TO RETROACTIVE EFFECT GIVEN UNIFORM PRINCIPAL AND INCOME ACT.

In Re Catherwood's Trust (Pa. 1961).

By a trust deed dated June 9, 1924, Daniel Catherwood assigned 1896.72 shares of the common stock of American Gas & Electric Co. (now American Electric Power Co.) to the First Pennsylvania Banking and Trust Company as trustee. The instrument provided that the trustee pay the net income from said shares to Catherwood's two children for life, and upon their death, to their descendants per stirpes. In 1948, two-hundred of

23. See note 4, *supra*.
24. See note 20, *supra*.

these shares were sold by the trustee for $7808.18. Although, in terms of book value, this sale represented a gain, the trust suffered an actual loss by virtue of a decrease in the stock's market value between 1924 and 1948.[1] The trustee was subsequently the recipient of four stock dividends: a 5% dividend in 1951, a 2½% dividend in 1952, a 2% dividend in 1955, and a 2½% dividend in 1957. In 1956, the holdings of the trustee were increased due to a "one and one-half for one" split in the corporate stock. A transfer from the earned surplus to the capital stock account represented 61.9% of this stock dividend, while the balance of the issue was financed by a transfer from capital surplus. At the audit of the trustee's third account, the Orphans' Court of Philadelphia County was called upon to determine to whom and in what proportion the aforementioned dividends and proceeds of sale should be granted. The life tenants were both still living, and, by virtue of prior decrees, an attorney had been appointed guardian ad litem for minors and trustee ad litem for unascertained remaindermen. Relying upon the Pennsylvania Rule of Apportionment, the court decided that the proceeds from the sale of stock and from the stock split were the property of the remaindermen, but that the four small stock dividends must be apportioned between the life tenants and the principal of the trust. In so ruling, however, it urged upon the highest tribunal of the Commonwealth a reconsideration of its earlier decision in *Crawford Estate*[2] with a view toward the relaxation of the rule therein enunciated so as to permit the retroactive application of the Uniform Principal and Income Act[3] to trusts created prior to its passage. On an appeal filed by the life tenants, the Supreme Court of Pennsylvania, with two justices concurring in part and dissenting in part, *held* that the Uniform Principal and Income Act, which adopted the Massachusetts Rule of Apportionment, could constitutionally be accorded retroactive application to trusts created prior to its enactment, and, that "in all audits now pending and henceforth," distributions shall be made in conformance with the provisions of that Act. *In Re Catherwood's Trust*, 405 Pa. 61, 173 A.2d 86 (1961).

In those states in which shares of stock have been held in a trust under which the income of the trust estate is payable to certain beneficiaries for life and the principal is on their death payable to other beneficiaries, complex problems often have arisen with regard to the respective rights of beneficiaries to money or other property received by the trustee from the shares. These problems have not only been the subject of much judicial interpretation, but have served as an impetus for considerable legislative action. In an effort to resolve these difficulties, and at the same time maintain a reasonable balance between equity and administrative practi-

1. At the creation of the trust, the book value of the stock was $11.76 per share and its market value was listed at $71.77. The sale of two hundred shares for $7,808.18, therefore, amounted to a gain of $5,455.24 in book value, but a loss of $6,546.90 in market value, that is, $14,355.08 (the market value at $71.77 per share) less $7,808.18 (the proceeds of the sale).
2. 362 Pa. 458, 67 A.2d 124 (1949).
3. PA. STAT. ANN. tit. 20, §§ 3470.1-.15 (Supp. 1960).

cality, the various states have formulated certain rules of apportionment. The two most significant, and the ones to which we must direct our attention for purposes of this analysis, are the so-called Pennsylvania and Massachusetts rules.[4] The first of these standards was enunciated by the Pennsylvania Supreme Court in 1859 in the case of *Earp's Appeal*.[5] It was at that time held that when there is a distribution of an extraordinary cash or stock dividend, the trustee must consider that dividend income if it was declared out of earnings which accrued to the declaring corporation during the period of the trust. If, on the other hand, it was derived from earnings which accrued prior to the trust's creation, the dividend must be deemed principal. The avowed purpose of this, the Pennsylvania rule, was to preserve the intact value of the corpus as it existed at the commencement of the trust, while giving to the life tenants the income earned thereafter.[6] Although that formula has been acknowledged by the courts to be the most equitable,[7] it has in recent years lost the favor of many states due to complexities relative to its application. In 1931, the National Conference of Commissioners on Uniform State Laws promulgated a Uniform Principal and Income Act which rejected the Pennsylvania rule and adopted the more workable Massachusetts rule.[8] The latter standard was initially proclaimed in 1868 in the leading case of *Minot v. Paine*.[9] The rule, as originally defined, provided that every cash dividend, whatever its amount, be allocated to income, and that each stock dividend, if composed of shares of the declaring corporation, be deemed principal. If the dividend consisted of securities or shares which were not those of the declaring corporation, the life tenants were the sole beneficiaries.[10] Some measure of this rule's acceptability can be seen by noting that, to date, twenty-three jurisdictions have adopted the Principal and Income Act.[11]

In 1945, the Pennsylvania state legislature became the twelfth such body to ratify the Uniform Principal and Income Act. By so doing, it not

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4. The majority opinion in the instant case also makes note of the so-called Kentucky rule. By virtue of both judicial and legislative action, Kentucky abandoned that standard in the last decade. It is no longer followed by any jurisdiction in the country.

5. 28 Pa. 368 (1859).

6. In Re Nirdlinger's Estate, 290 Pa. 457, 139 Atl. 200 (1927); Earp's Appeal 28 Pa. 368 (1859).

7. In Re Estate of Fera, 26 N.J. 131, 136, 139 A.2d 23, 26 (1958); In Re Catherwood's Trust, 405 Pa. 61, 75, 173 A.2d 86, 93 (1961); In Re Nirdlinger's Estate, 290 Pa. 457, 472, 139 Atl. 200, 206 (1927).

8. A further indication of that trend can be seen by noting that the American Law Institute, which had originally adopted the Pennsylvania rule in its Restatement of Trusts, abandoned that formula in favor of the Massachusetts standard in 1948. RESTATEMENT, TRUSTS 236(b) (Supp. 1948).

9. 99 Mass. 101 (1868).

10. Union & New Haven Trust Co. v. Sherwood, 110 Conn. 150, 147 Atl. 562 (1929) (bonds held in surplus were distributed to stockholders); Whiting v. Hagey, 366 Ill. 86, 7 N.E.2d 885 (1937) (stock of another corporation); Creed v. McAleer, 275 Mass. 353, 175 N.E. 761 (1931) (dividend consisted of another corporation's stock).

11. Many of the states have adopted the Act only after changing certain of its provisions. For a list of those jurisdictions in which the Act is currently in effect, see, 9B UNIF. LAWS ANN., p. 87 (Supp. 1961).

only abandoned the principles which were first stated in *Earp's Appeal* and thereafter developed by the courts of the Commonwealth, but it also introduced certain problems with respect to the scope of the new law. Those problems provide the basis for the present discussion. It is clear that the legislators intended that the 1945 Act be applied retroactively, i.e., to those trusts created prior to the date of passage, as well as to those that would thereafter come into being.[12] That intention was thwarted, however, when the Supreme Court of Pennsylvania held in *Crawford Estate*[13] that to give such effect to the statute would be a violation of both state and federal due process. The court reasoned that the decisional law embodying the Pennsylvania rule established in the life tenant a vested property right in the accumulated unpaid earnings and profits of the corporation. In 1947, the Pennsylvania legislature passed the second Principal and Income Act[14] which, while repealing its predecessor, substantially reenacted the latter's provisions,[15] including the one calling for the law's retroactive application. The highest court was not yet prepared to shelve its constitutional objections and consequently reaffirmed its *Crawford* decision on a number of subsequent occasions.[16] The instant case represents the court's initial break from that precedent. In finding that the legislatively adopted rule can validly be applied to trusts created prior to its enactment, the court has rejected the proposition that the life tenants have a vested interest in the accumulated unpaid earnings of the corporation or in any particular apportionment formula for the ascertainment of such earnings. In the absence of that vested interest, it has held that judicial enforcement must be afforded the legislative mandate.[17]

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12. Section 17 of the Act provided that the provisions should apply to all trusts "*theretofore* or thereafter made or created." (Emphasis supplied).
13. 362 Pa. 458, 67 A.2d 124 (1949).
14. PA. STAT. ANN. tit. 20, §§ 3470.1-.15 (Supp. 1960).
15. One important exception was that, whereas the Act of 1945 provided that those dividends payable in the shares of the declaring corporation would always go to principal, the 1947 Act stated that only those shares of the corporation which are of the "same kind and rank" as those held by the trustee are so allocable. PA. STAT. ANN. tit. 20, §§ 3470.3(1), 3470.5(1) (Supp. 1960).
16. In Re Jones' Estate, 377 Pa. 473, 105 A.2d 353 (1954); In Re Steele's Estate, 377 Pa. 250, 103 A.2d 409 (1954); In Re Pew's Trust, 362 Pa. 468, 67 A.2d 129 (1949).
17. For the reader who is not thoroughly familiar with this area of the law, it might be an aid to understanding if we briefly review the fundamental tenets of the Pennsylvania rule in the light of its successor, the Uniform Principal and Income Act. The three stock transactions in the instant case provide an appropriate basis for this review.

Under the Pennsylvania rule an "apportionable event" was said to occur in four situations: (1) the distribution by the corporation of an "extraordinary" cash or stock dividend; (2) the liquidation of the corporation; (3) the sale of the stock by the trustee; (4) the issuance of stock rights. In Re Cunningham's Estate, 395 Pa. 1, 149 A.2d 72 (1959). In July of 1948, the trustee sold two hundred of the corporate shares held by him. By virtue of the definition above, an "apportionable event" had clearly occurred. In the case of In Re Waterhouse's Estate, the Pennsylvania Supreme Court summarized the rule with respect to such a sale as follows:

"(c) Where stock that produces income owned by the estate is sold for a price greater than the intact value and such greater price is due to an accumulation of income, the proceeds are apportionable; that is, so much of the proceeds as neces-

The Commissioners who promulgated the original Uniform Principal and Income Act, in referring to the Pennsylvania Rule of Apportionment, observed: "Experience has shown that, however praiseworthy the intent, the [Pennsylvania] rule is unworkable, since neither trustee nor court has the means to value the corporate assets in such a way as to

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sary to preserve the intact value goes to the trustees for the corpus, and only so much of the balance that represents income goes to the life tenant.

"But where the greater value is due to the stock's earning power, good will, or its intrinsic, speculative, or enhanced market value, all of the proceeds are part of the corpus and belong to the remainderman; the increase is capital gain.

"The presumption is that the proceeds from the sale of stock belong to the corpus of the trust and the burden of proving that they do not rests on the person asserting a claim to them." In Re Waterhouse's Estate, 308 Pa. 422, 429, 162 Atl. 295, 296 (1932).

The Orphans' Court in the instant case found that the life tenants had failed to overcome the presumption in favor of the corpus. By affirming the lower court's determination, it would seem that the Supreme Court confirmed the appellees' contention that, for apportionment purposes, a gain is the difference between the carrying value of the stock on the books of the trust, i.e., the market value at the time of acquisition, and the amount realized from the sale. It is not based on book value, as was claimed by the appellants. This holding is consistent with the facts since the carrying value of the two hundred shares exceeded the proceeds from their sale by $6546.90. The Principal and Income Act, which will henceforth be applicable to all similar situations in Pennsylvania, provides that, "Any profit or loss resulting from the sale or liquidation of corporate shares shall enure to or fall upon principal." PA. STAT. ANN. tit. 20, § 3470.5(3) (Supp. 1960).

One of the "events" classified as "apportionable" under the Pennsylvania rule is the distribution by the corporation of an "extraordinary cash or stock dividend." That language appears simple enough, but it might reasonably be asked: Does "extraordinary" modify both "cash" *and* "stock" dividend, or merely the former? The auditing judge in the instant case declared that "all of the decisions of our Courts hold that the distribution by the corporation of a stock dividend is an apportionable event" 22 Pa. D.&C.2d 701, 715 (1960). No cases were cited to support that proposition, but it was on that authority that the lower court held the four small stock dividends to be apportionable. On appeal, the life tenants contended that there was no precedent to justify an apportionment unless it was "extraordinary" in nature, that the four dividends in question were not "extraordinary," and that "where amounts of stock dividends are small enough and where it would not be worth the accounting effort to apportion them, such stock dividends should be treated as ordinary cash dividends." Brief for Appellant, p. 20, In Re Catherwood's Trust, 405 Pa. 61, 173 A.2d 86 (1961). In every pertinent case since *Earp's Appeal*, the distribution of a cash dividend, "ordinary" in nature, has been acknowledged to be the property of those entitled to the income of the trust. In Re Knox's Estate, 328 Pa. 177, 195 Atl. 28 (1937); In Re Nirdlinger's Estate, 290 Pa. 457, 139 Atl. 200 (1927). The rationale of the courts has been that, since the intervals between the declarations of such dividends are so brief and the sums involved so small, the denial of apportionment would result in no great injustice, and would moreover avoid the difficulty of ascertaining the precise amount of corporate earnings which accrued during these periods. Earp's Appeal, 28 Pa. 368 (1859). To lend credence to their analogy the appellants made reference to a concurring and dissenting opinion rendered by Justice Bell in *Cunningham Estate*, wherein he proposed that all ordinary stock dividends "which are paid quarterly, semi-annually or annually, currently or irregularly, and do not exceed 6% in any one year," be deemed income. 395 Pa. 1, 34, 149 A.2d 72, 89 (1959). The Supreme Court, evidently persuaded by Bell's logic, reversed the lower court's determination of this issue in the instant case, and held that the appellants were entitled to each of the small stock dividends. It is clear that the six percent rule was not intended to apply to stock dividends which are now subject to the Principal and Income Act. Section 5 of that legislation is lucid in providing that *all* stock dividends of the same company and class shall be principal. PA. STAT. ANN. tit 20, § 3470.5 (Supp. 1960).

The final subject of adjudication in the instant case involved the declaration by the corporation of a 50% stock dividend (the so-called "one and one-half for one"

secure the fair adjustment aimed at."[18] That statement is as valid today as when utttered in 1931. It also serves to illustrate the obvious fact that, while the Pennsylvania formula in theory provides the ultimate in equitable distribution, it too often has proved cumbersome and inadequate when removed from the realm of abstract concepts to the reality of administration. To compel the trustee or court to ascertain the just apportionment rate is most impractical in view of the complexity of modern corporate operations. It would seem that the intolerable situation was only made more acute by the holding in *Crawford Estate*. By virtue of that decision the administrators of trusts in Pennsylvania were required to face the onerous task of applying one standard to those trusts created prior to the passage of the 1945 Act, another to those established between the 1945 and 1947 enactments,[19] and still a third to those created thereafter. It is not difficult to understand why the auditing judge in the instant case was prompted to label that situation as an "apportionment morass."[20] Although it be conceded that expediency is of itself no justi-

split). That distribution was financed by a transfer on the corporate books from the capital and earned surplus accounts to the capital stock account. The life tenants alleged that the Pennsylvania rule was applicable in this situation and that the proceeds of the split were therefore subject to an apportionment. It was their contention that, since more than sufficient funds had been transferred from earned surplus to capital surplus to support the transfer from the capital surplus account to the capital stock account, and since sufficient earnings accrued while the shares were held by the trustee to equal or exceed the full amount placed in the capital stock account, this transaction should be deemed an apportionable event. The courts of first instance and last appeal, both citing *Cunningham Estate* as controlling, emphatically rejected the appellants' conclusion and held that the apportionment concept could neither be extended nor interpreted so as to embrace the type of dividend at issue. In *Cunningham*, the Pennsylvania Supreme Court denied that a stock distribution which was supported in part by a transfer from capital surplus to the capital stock account, constituted an apportionable event. The appellants' attempt to circumvent that precedent by suggesting that the capital surplus account be broken down into component parts to ascertain its source was rebuffed by both courts on the grounds that any conclusion with respect to such an inquiry would be founded purely on speculation. It is clear that, since the Principal and Income Act has adopted the Massachusetts Rule of Apportionment, all litigation subsequent to the instant case and involving a stock dividend essentially the same as the one herein discussed shall be decided in favor of the corpus of the trust.

18. 9B UNIF. LAWS ANN., Commissioners' Prefatory Note to Principal and Income Act (1957).

19. Although the 1947 Law substantially re-enacted its predecessor, it did so with certain modifications. For example, § 3470.3(1) and § 3470.5(1) provide that dividends on corporate shares, payable in shares of the declaring corporation itself, belong to principal *only* when those shares are "of the same kind and rank as the shares on which such dividend is paid." The 1945 Act did not so limit the principal's interest, but provided that the remaindermen were entitled to any stock dividend payable in the shares of the declaring corporation. Thus, if the 1947 Act had not been accorded retroactive application, a trust created in 1946, which was the recipient of a dividend payable in the shares of the declaring corporation, would be subject to the 1945 provision and the remaindermen would receive the benefit of that dividend *even if the shares were of a different class than those already held by the trust.* If the same dividend were declared after 1947, however, that dividend would be subject to the provisions of the second Act and would therefore accrue to income. By the granting of retroactive effect to the Act of 1947, the trustees and courts were emancipated from the burdensome process of being compelled to apply to each trust the law which happened to be in effect at the time the trust was created.

20. 22 Pa. D.&C.2d 701, 708 (1960).

fication, it would seem that the Supreme Court's rejection of the constitutional argument advanced by it in *Crawford* has in effect relieved much of the confusion. The trustees and courts have in great measure been emancipated from their involvement with complex accounting procedures, and need only apply the relatively simple regulations set forth in the Principal and Income Act.[21] But the question remains, whether the solution is a defensible one. The life tenants vigorously asserted that, notwithstanding certain deficiencies of the Pennsylvania rule, the retroactive application of the Principal and Income Act to a trust created prior to its enactment would violate due process of law in that such application would be an abridgement of their vested property rights. The validity of their argument on this issue must necessarily be the determining factor in the instant case. The appellants relied heavily upon *Crawford Estate* in contending that their property right vests not merely in the "income" of the trust, but, more specifically, that it vests in the accumulated unpaid earnings of the corporation. This is so, they said, because at the time of the trust's creation, the courts determined what share of the trust res belonged to "income" by calculating what percentage of it represented such earnings. It was their position that no other method could subsequently be employed by the courts to measure that income. In essence, the life tenants were claiming a vested property right in the Pennsylvania rule; they were asserting a vested interest in a method of interpretation. If their claim be correct and their assertion true, there is no justification for the present holding.

The cases cited in *Crawford* and in the instant case to support the proposition that, to give retroactive effect to the Act would violate the due process provisions of the state constitution,[22] were cases concerned with interference with rights in property,[23] not with rights to a rule of law and a method of interpretation. No authority was cited in either case to indicate that the federal constitution would be infringed upon. In only two other jurisdictions where the Principal and Income Act is law, have the courts been confronted with substantially the same problem as is presented here. Fortunately, however, the precedent is as illuminating as it is scant. In July of 1957, the state of Wisconsin adopted the Uniform Act, which by its terms was made applicable to trusts already in

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21. There is a certain minority of cases to which the Principal and Income Act does not apply, e.g., those which involve apportionable events that occurred prior to the passage of the Act and which might still be appealed. Situations of that nature will be considered presently.

22. PA. CONST. art. I, §§ 1, 9.

23. Willcox v. Penn Mutual Life Insurance Co., 357 Pa. 581, 55 A.2d 521 (1947) (a statute was held unconstitutional because, *inter alia*, it effected a deprivation of vested property rights for a non-public use); Palairet's Appeal, 67 Pa. 479 (1871) (a statute which provided for the extinguishment of ground rents was held invalid since it effected a deprivation of vested property rights for a non-public use); Brown v. Hummel, 6 Pa. 86 (1847) (a statute which replaced will-appointed trustees was held invalid).

existence.[24] In the case of *In Re Allis' Will*,[25] the Wisconsin Supreme Court held that life tenants under a trust created at a time when the courts were applying the Pennsylvania rule were not deprived of any vested right in property due to the retroactive application of the Act. It was the opinion of the Wisconsin tribunal that, since there were widely divergent views prevailing as to the respective merits of the Pennsylvania and Massachusetts rules when the testatrix used the word "income" in her will, it is most unlikely that she intended to adopt either standard with respect to stock dividends. It is logical to assume that, in the absence of any express language calling for a particular method of allocation, the testatrix intended that such allocation should be made in accordance with the law on the subject as established from time to time by court decision or legislative enactment. In rejecting the whole rationale of *Crawford*, the Wisconsin court stated:

> It is fundamental that the life beneficiary possessed no vested property right in the earnings of a corporation, shares of whose stock constituted part of the portfolio of investments of the trust at the time of the enactment of the Wisconsin Uniform Principal and Income Act, prior to a declaration of a dividend by the board of directors payable therefrom. In Re Estate of Gerlach, 1922, 177 Wis. 251, 256, 188 N.W. 94. We consider it to be equally clear that she also has no vested property right in the rule with respect to any stock dividends subsequently declared without violating the due process clause of the Fourteenth Amendment.[26]

Prior to April of 1954, the state courts of Kentucky adhered to the so-called Kentucky Rule of Apportionment. That rule provided that all extraordinary corporate dividends be awarded in their entirety to the life tenant without regard to whether they were distributed in cash or in stock, or whether they represented earnings that accumulated wholly before or wholly after, or partly before or partly after, the commencement of the trust. In 1954, however, the Kentucky Supreme Court, in the case of *Bowles v. Stilley's Ex'r.*,[27] rejected the prevailing standard and in its stead adopted the Massachusetts rule. In so doing, the court administered the new doctrine to a trust which had been in existence since 1931. Subsequently, in *Farmers Bank & Capital Trust Company v. Hulette*,[28] the Kentucky court was confronted with a situation in which the trustee had been the recipient of certain cash distributions due to a corporate liquidation. In the will establishing the trust, the testatrix had stipulated that the "entire income" should go to the life tenants. At the time of the will's execution and the testatrix's death, the Kentucky rule was in force. This meant that if any cash proceeds had then been received as

24. WIS. STAT. ANN. tit. 20, §§ 231.40(1)-(12) (Supp. 1961).
25. 6 Wis.2d 1, 94 N.W.2d 226 (1959).
26. 6 Wis.2d 14, 94 N.W.2d 226, 232 (1959).
27. 267 S.W.2d 707 (Ky. 1954).
28. 293 S.W.2d 458 (Ky. 1956).

the result of a liquidation, the "income" of the trust would have been entitled to it. In holding that the cash proceeds must be distributed in accordance with the Massachusetts rule, and thereby reaffirming its *Bowles* decision, the court stated:

> In the absence of any provisions in the will which could lead to a different interpretation, we must presume the testatrix intended any legal difficulties of construction arising under her will to be solved according to the prevailing legal principles applicable to changed conditions.[29]

The court further declared:

> To say that the lifeless hand of Mrs. Boggs [the testatrix] should bind us to a legal concept of 'income', as it existed in her lifetime, in other lawsuits is asking too much. The function of the courts in seeking justice in the light of changing times and concepts would largely be stultified if the legal effect of words used in a will in one generation should create a vested right in that construction with respect to other wills and other parties.[30]

The rationale of the Wisconsin and Kentucky courts is fundamentally sound, as well as directly in point. When Daniel Catherwood created the trust in 1924, his stipulation was that the net income should be distributed to the designated life tenants. He made no mention of the manner in which that income was to be determined. Furthermore, at the time he initiated the trust, there was a great divergence of opinion with respect to which method of allocation was superior. There would, therefore, seem to be no basis upon which one could conclude, either from reason or from the express language of the settlor himself, that he intended that the income *forever* be measured in accordance with the Pennsylvania Rule of Apportionment. How then can it logically be inferred that the life tenants had a vested interest in that rule? The court in the instant case was quick to emphasize that, of all the states which had adopted the Principal and Income Act, only Pennsylvania had held that its retroactive application is unconstitutional. It would appear that, by virtue of the present decision, the Commonwealth can hereafter disclaim so dubious a distinction.

While it would not be unsound to maintain that the instant case restored order and reason to a field where complexity and confusion reigned supreme, it would be prudent to at least be mindful of the problems raised by it. Many are of fundamental significance to Pennsylvania practitioners and should be given careful consideration by them.[31] For purposes of

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29. *Id.* at 462.
30. *Id.* at 463.
31. For a useful review of a number of these problems, see Fiduciary Review, Sept., 1961, Pp. 1, 2, 3.

the present discussion, however, it would be of doubtful value to dwell upon them, and, therefore, we will note but two. The first is a product of the following language employed by the court to declare that its decision would take effect prospectively: "In all audits now pending and henceforth, distributions shall be made under the provisions of the Principal and Income Act of 1947."[32] Due to the absence of uniformity in local practice, some doubt exists as to the intended scope of the words, "all audits now pending." It is clear that a precise definition should be formulated so as to avoid the confusion which has resulted from the varying interpretations. A second question arising out of the present case relates to the so-called "six-percent rule" as applied to stock dividends. As originally proposed by Mr. Justice Bell in *Cunningham Estate,* and as adopted by the court in the instant case, the rule stipulates that when a total stock distribution for the current year is payable at the rate of 6% or less of the corporation's outstanding shares before such distributions were made, such distributions in stock of the distributing corporation should be treated as income.[33] This, of course, is a substantial departure from Pennsylvania's common law doctrine. Mr. Justice Bell sought to justify it, however, on the grounds that an apportionment of such distributions not only avoided the testator's dominant intention that his widow or children benefit from the small stock dividends, but that it resulted in costly and vexatious litigation. Without questioning the validity of that rationale, it might be worthy of note that the newly adopted rule will make possible the revival of certain litigation. The Pennsylvania Fiduciaries Act of 1949 provides that any party in interest may petition for a review of a fiduciary's account, auditor's report, adjudication or decree of distribution *within five years* after the final confirmation of the account is clear, so long as none of the property involved has been distributed by the personal representative in accordance with a decree of court before the filing of the petition.[34] Since it would seem that the "six-percent rule" was intended to govern stock dividends declared prior to May 3, 1945, as well as those involved in the instant case, any account which concerned such a dividend, and which has been adjudicated within the past five years, is subject to appeal on the basis of the rule. A possible insight into the future significance of the "six-percent rule" might be had by observing that, while it clearly does not now apply to those cases within the purview of the Principal and Income Act, the Commissioners on Uniform State Laws have recently proposed that the various states amend their Acts in order that it could be so applied.[35] A policy on the part of four or five hundred major companies

32. In *Re Catherwood's Trust,* 405 Pa. 61, 78, 173 A.2d 86, 94 (1961).

33. Mr. Justice Bell is not in favor of restricting the rule to only those stock dividends which are composed of the stock of the issuing corporation. He is also against requiring them to be of the same class.

34. PA. STAT. ANN. tit. 20, § 320.721 (1950).

35. Commissioners' second tentative draft of a proposed REVISED UNIFORM PRINCIPAL AND INCOME ACT § 5.

now to pay either as a substitute for or in addition to cash dividends a small regular stock dividend, was cited as the reason for the proposed change. Should the Pennsylvania State Legislature subsequently follow the Commissioners' suggestion and incorporate their proposal into its Principal and Income Act, it is conceivable that life tenants in the Commonwealth might once again be able to survey the field of dividend apportionment with objective eyes.

Matthew F. McHugh