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# Trusts - Revocation and Termination of Pennsylvania Trusts

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## TRUSTS—REVOCATION AND TERMINATION OF PENNSYLVANIA TRUSTS.

The 1947 Estates Act of Pennsylvania<sup>1</sup> contained a new provision whereby partial termination of any trust could be decreed whenever the settlor's original purpose could not be carried out and where the termination in whole or in part would more nearly effect his intent.<sup>2</sup> After providing for distribution of the principal and undistributed income in the next subsection, the act stipulates that "Nothing in this section shall limit any power of the court to terminate or reform a trust under existing law."<sup>3</sup> The comment to this subsection stated that it had been added so that it would be clear that the section was not intended to be exclusive as to the termination of trusts.<sup>4</sup> It is not the purpose of this Comment to consider specifically the changes made by the 1947 Estates Act, but rather to survey the whole field of revocation and termination of trusts in Pennsylvania.

### I.

#### REVOCATION OF A TRUST.

A trust may be validly revoked when a reserved power of revocation is rightfully exercised. Illustrating the view that a trust becomes irrevocable if the reserved power of revocation is surrendered though the time for its exercising has not arrived is the case of *In re Trust Deed of Smaltz*.<sup>5</sup> A trust which is created for the benefit of others with due formality is irrevocable in the absence of a revocation clause, mistake, fraud, duress, or undue influence.<sup>6</sup> If it can be established that the power of revocation was omitted due to a mistake of fact or one of mixed fact and law, the trust is revocable.<sup>7</sup> This rule is also applied when the settlor is misled as to the legal effect of a trust deed which would have resulted in her impoverishment.<sup>8</sup>

1. PA. STAT. ANN. tit. 20, § 301.2 (Supp. 1954).

2. "The court having jurisdiction of a trust, regardless of any spendthrift or similar provision therein, in its discretion may terminate such trust in whole or in part, or make an allowance from principal to a conveyor, his spouse, issue, parents, or any of them, who is an income beneficiary, provided the court after hearing is satisfied that the original purpose of the conveyor cannot be carried out or is impractical of fulfillment and that the termination, partial termination, or allowance more nearly approximates the intention of the conveyor, and notice is given to all parties in interest or to their duly appointed fiduciaries. But, distributions of principal under this section, whether by termination, partial termination, or allowance, shall not exceed an aggregate value of twenty-five thousand dollars from all trusts created by the same conveyor." PA. STAT. ANN. tit. 20, § 301.2(a) (Supp. 1954).

3. PA. STAT. ANN. tit. 20, § 301.2(c) (Supp. 1954).

4. JOINT STATE GOVERNMENT COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA REPORT—DECEDENTS' ESTATES LAWS OF 1947, 68, comment § 2(c) (1947).

5. 329 Pa. 21, 195 Atl. 880 (1938).

6. Appeal of Merriman, 134 Pa. 114, 19 Atl. 479 (1890); Ritter's Appeal, 59 Pa. 9 (1868); Greenfield's Estate, 14 Pa. 489 (1850).

7. Appeal of Bristol, 135 Pa. 110, 19 Atl. 851 (1890); Russell's Appeal, 75 Pa. 269 (1874).

8. Rick's Appeal, 105 Pa. 528 (1884) (There were no third party's rights involved and the court implied that a different rule might prevail if third party's rights were impaired).

Quite often trusts were created under which the settlor was the life beneficiary and which provided for the distribution of the corpus after his death to named beneficiaries or in accordance with the intestate laws. Such trusts were often held to be testamentary in character since no beneficial interest passed until after the death of the settlor.<sup>9</sup> Despite the absence of a revocation clause, the settlor was held to have intended that it be revocable and to have that testamentary character, and, therefore, courts allowed the settlor to revoke the deed of trust at will.<sup>10</sup> Such holdings were distinguished in other cases on the basis that the settlor had intended that the trusts should be revocable though no revocation clause was included in the trust deed.<sup>11</sup> However, in these cases it was held that the facts showed the intention of the settlor was that the deed of trust was to have an immediate effect but the enjoyment of the remaining beneficial interests was postponed until the death of the settlor.<sup>12</sup> This was likened to an executory interest whereby a present interest passed but its enjoyment was deferred until the occurrence of a future event or the expiration of a certain time limit. Since a present interest had passed the trust was not revocable by the settlor.<sup>13</sup>

Pennsylvania has a peculiar rule of law under which a trust created by a settlor for his own benefit is irrevocable when the settlor is incapable of handling his property or suffers from improvident or intemperate habits.<sup>14</sup> They are held irrevocable because revocation would defeat the purpose for which the trust was created, that of protecting the settlor against his bad habits.<sup>15</sup> Such trusts are not spendthrift trusts<sup>16</sup> and presumably the property comprising the trust res is attachable by creditors and the settlor-

9. *Sturgeon v. Stevens*, 186 Pa. 350, 40 Atl. 488 (1898); *Chestnut St. Nat'l. Bank v. Fidelity Ins., Trust & Safe-Deposit Co.*, 186 Pa. 333, 40 Atl. 486 (1898); *Rick's Appeal*, 105 Pa. 528 (1884); *Frederick's Appeal*, 52 Pa. 338 (1866).

10. *Sturgeon v. Stevens*, 186 Pa. 350, 40 Atl. 488 (1898); *Chestnut St. Nat'l. Bank v. Fidelity Ins., Trust & Safe-Deposit Co.*, 186 Pa. 333, 40 Atl. 486 (1898); *Appeal of Gingrich*, 1 Mona. 301, 17 Atl. 33 (Pa. 1889); *Frederick's Appeal*, 52 Pa. 338 (1866).

11. *Potter v. Fidelity Ins., Trust & Safe-Deposit Co.*, 199 Pa. 360, 49 Atl. 85 (1901); *Wilson v. Anderson*, 186 Pa. 531, 40 Atl. 1096 (1898); *Fellow's Appeal*, 93 Pa. 470 (1880).

12. *Potter v. Fidelity Ins., Trust & Safe-Deposit Co.*, 199 Pa. 360, 49 Atl. 85 (1901); (trust expressly made irrevocable); *Rynd v. Baker*, 193 Pa. 486, 44 Atl. 551 (1899); *Wilson v. Anderson*, 186 Pa. 531, 40 Atl. 1096 (1898); *Fellow's Appeal*, 93 Pa. 470 (1880).

13. *Wilson v. Anderson*, 186 Pa. 531, 40 Atl. 1096 (1898); *Fellow's Appeal*, 93 Pa. 470 (1880).

14. *Rehr v. Fidelity-Philadelphia Trust Co.*, 310 Pa. 301, 165 Atl. 380 (1933); *Brendle's Executor v. Brendle*, 274 Pa. 590, 118 Atl. 502 (1922); *Willard v. Integrity Trust Co.*, 273 Pa. 24, 116 Atl. 513 (1922); *Wilson v. Anderson*, 186 Pa. 531, 40 Atl. 1096 (1898); *Neal v. Black*, 177 Pa. 83, 35 Atl. 561 (1896); *Stockett v. Ryan*, 176 Pa. 71, 34 Atl. 973 (1896); *Reidy v. Small*, 154 Pa. 505, 26 Atl. 602 (1893); *Reese v. Ruth*, 13 S. & R. 434 (Pa. 1826).

15. *Wilson v. Anderson*, 186 Pa. 531, 40 Atl. 1096 (1898); *Stockett v. Ryan*, 176 Pa. 71, 34 Atl. 973 (1896); *Reidy v. Small*, 154 Pa. 505, 26 Atl. 602 (1893); *Reese v. Ruth*, 13 S. & R. 434 (Pa. 1826). The trustee must allow the settlor an amount sufficient for his needs and is subject to removal if he fails to act in the best interests of the settlor.

16. *Reidy v. Small*, 154 Pa. 505, 26 Atl. 602 (1893). *But see Brendle's Executor v. Brendle*, 274 Pa. 590, 118 Atl. 502 (1922).

beneficiary can alien the future income. When the settlor is incompetent to care for his property, a valid deed of trust placing such duty in another is irrevocable in the absence of fraud, mistake, duress, or undue influence.<sup>17</sup> It is held that the settlor has, in effect, made himself a ward of the court and the court must satisfy itself that he has become competent to handle his property before revocation will be permitted. The criterion used by the court in making this decision is the settlor's best interest.<sup>18</sup>

When the settlor is capable of handling his property, any trust under which he is or becomes the sole beneficiary is revocable.<sup>19</sup> This is true despite the fact that the trust is expressly made irrevocable or by its terms is revocable only upon the occurrence of a certain event or the expiration of a specific time limit.<sup>20</sup> Thus, in *Shellentrager v. Tradesmen's Nat. Bank & Trust Co.*,<sup>21</sup> the settlor made himself the sole beneficiary by exercising the reserved power he had to change beneficiaries. The court held that the trust was either revocable or terminable by the settlor, and stated:

"The fact that the deed declared the trust to be irrevocable does not automatically make it so. It was only as irrevocable as the terms of the deed in operation permitted it to be."<sup>22</sup>

In 1933, the Pennsylvania Supreme Court adopted the tentative or Totten trust doctrine<sup>23</sup> in the case of *In re Scanlon's Estate*.<sup>24</sup> There it

17. *Willard v. Integrity Trust Co.*, 273 Pa. 24, 116 Atl. 513 (1922); *Neal v. Black*, 177 Pa. 83, 35 Atl. 561 (1896).

18. *Willard v. Integrity Trust Co.*, 273 Pa. 24, 116 Atl. 513 (1922); *Neal v. Black*, 177 Pa. 83, 35 Atl. 561 (1896). *But see* *King v. York Trust Co.*, 278 Pa. 141, 122 Atl. 227 (1923). There the settlor at the time the trust was created stated he was incapable of handling his property. Though he could have proved he had regained his competency, the trust was held irrevocable since he had passed present interests to others.

19. *Shellentrager v. Tradesmen's Nat'l. Bank & Trust Co.*, 370 Pa. 501, 88 A.2d 773 (1952); *Long v. Tradesmen's Nat'l. Bank & Trust Co.*, 108 Pa. Super. 363, 165 Atl. 56 (1933).

20. *Shellentrager v. Tradesmen's Nat'l. Bank & Trust Co.*, 370 Pa. 501, 88 A.2d 773 (1952); *Long v. Tradesmen's Nat'l. Bank & Trust Co.*, 108 Pa. Super. 363, 165 Atl. 56 (1933).

21. 370 Pa. 501, 88 A.2d 773 (1952) (The court also held that one cannot create an effective spendthrift trust where the settlor is the sole beneficiary). *But see* *Rehr v. Fidelity-Philadelphia Trust Co.*, 310 Pa. 301, 165 Atl. 380 (1933); *Brendle's Executor v. Brendle*, 274 Pa. 590, 118 Atl. 502 (1922). There the court inferred that one could create a spendthrift trust under which he is the sole beneficiary but in each case there was an independent basis from which the court could hold the trusts irrevocable. This problem was carefully considered in the case of *In re Bower's Trust Estate*, 346 Pa. 85, 29 A.2d 519 (1943), wherein the court specifically stated that one cannot create an effective spendthrift trust for his own benefit and his interest is attachable by his creditors.

22. *Shellentrager v. Tradesmen's Nat'l. Bank & Trust Co.*, 370 Pa. 501, 502, 88 A.2d 773, 774 (1952).

23. A Totten trust has been defined as "A trust created by the deposit by one person of his own money in his own name as a trustee for another and it is a tentative trust revocable at will until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration such as delivery of the passbook or notice to the beneficiary and if the depositor dies before the beneficiary without revocation or some decisive act or declaration of disaffirmance the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor." See BLACK, LAW DICTIONARY, 1682 (4th ed. 1951).

24. 313 Pa. 424, 169 Atl. 106 (1933).

was held that the execution of a will which distributed the bank account as part of the estate was an effective revocation of the tentative trust. The court stated:

"A deposit by one person of his own money in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the passbook or notice to the beneficiary."<sup>25</sup>

In another case,<sup>26</sup> despite the fact that the bank book was delivered to the beneficiary, it was held that the settlor effectively revoked the trust by a letter directing the disposition of the bank account.<sup>27</sup> Thereafter when a problem arose concerning the revocation of a tentative trust and no Pennsylvania precedents were found, the New York rules of revocation were applied.<sup>28</sup> Thus, a tentative trust was revoked when by some unequivocal act the intent of the depositor to revoke was manifested.<sup>29</sup> The presumption is that this type of trust is revocable and the act of changing the form of the deposit or the transfer of its funds to a personal account is one method of revoking it.<sup>30</sup> Even though such a trust becomes irrevocable upon the death of the depositor, it has been held that conditions such as a reverter clause can be imposed upon it.<sup>31</sup>

## II.

### TERMINATION OF A TRUST.

The mere failure of the trustee to perform the trust and the failure of the beneficiary to compel his performance does not terminate an otherwise non-terminable trust.<sup>32</sup> The life beneficiary, who is a trustee and has a general testamentary power of disposition, cannot terminate the trust in whole or in part by wrongfully appropriating or disposing of the trust res.<sup>33</sup> When a trust is created under which a beneficiary is to receive the

25. *In re Scanlon's Estate*, 313 Pa. 424, 427, 169 Atl. 106, 108 (1933).

26. *In re Bearer's Estate*, 336 Pa. 253, 9 A.2d 342 (1939).

27. The court did not refer to nor consider the fact that the letter was not delivered until after the death of the depositor.

28. The principal methods were: (1) Transfer of the form of the deposit. (2) Disposal of the account by the terms of the will of the depositor. (3) By depositor's unequivocal act or declaration of revocation. (4) By facts and circumstances resulting in the inadequacy of the estate assets to satisfy the testamentary gifts, funeral and administrative expenses, taxes and other charges. *In re Rodger's Estate*, 374 Pa. 246, 97 A.2d 789 (1953).

29. *In re Rodger's Estate*, 374 Pa. 246, 97 A.2d 789 (1953). *But see In re Krewson's Estate*, 154 Pa. Super. 509, 36 A.2d 250 (1944).

30. *In re Ingel's Estate*, 372 Pa. 171, 92 A.2d 881 (1952); *Vierling v. Ellwood City Federal Savings & Loan Ass'n.*, 356 Pa. 350, 52 A.2d 224 (1947); *Downey v. Duquesne City Bank*, 146 Pa. Super. 289, 22 A.2d 124 (1941).

31. *In re Gorgas' Estate*, 147 Pa. Super. 319, 24 A.2d 171 (1942).

32. *In re Schultz's Estate*, 374 Pa. 459, 98 A.2d 176 (1953); *Norris' Appeal*, 71 Pa. 106 (1872).

33. *In re Scott's Estate*, 353 Pa. 575, 46 A.2d 174 (1946).

income until a designated age past twenty-one and then to receive the principal, the restraint on alienation is void in the absence of a divesting clause or a contingency whereby the beneficiary is not to receive the principal if he fails to survive to the designated age.<sup>34</sup> This is an aspect of the Rule against Accumulations of Income.<sup>35</sup> Such a restraint, without a divesting clause would violate public policy since it places a restriction on the use and on the free disposition of property in which no one but the beneficiary has an interest.<sup>36</sup> Therefore, the beneficiary can terminate the trust upon reaching the age of twenty-one.<sup>37</sup>

When one person becomes the sole beneficiary and there is no trust purpose remaining to be accomplished, the trust is terminable.<sup>38</sup> This rule is also applied whenever one person validly acquires all the vested and outstanding interests of the other beneficiaries.<sup>39</sup>

If a trust by its terms is to terminate upon the happening of a certain event, it will terminate at that time even though its purposes have not been fulfilled. Thus, in *Fitzpatrick's Appeal*,<sup>40</sup> the trust was terminable either when the youngest child reached the age of twenty-one or upon the death of the settlor's widow. Income from the property was to be used for the support, maintenance, and education of the children. However, it was held terminable upon the death of the widow though the children were not twenty-one years old, and thus the trust purposes were not fulfilled. But a trust which was created to last for ten years after the settlor's death or during his widow's lifetime was held not terminable until the widow's death since the beneficiaries were to be determined at that time.<sup>41</sup> A trust was held not to terminate even though the trustee disposed of property in which the beneficiary had a life estate.<sup>42</sup> The court held that the trust continues with the proceeds from the sale of the property constituting the trust res. A trust which provides for a life estate is not terminable until the death of the life beneficiary.<sup>43</sup> This is also the rule when the event on which termination is dependent has not occurred.<sup>44</sup>

34. *Decker's Estate*, 353 Pa. 509, 46 A.2d 218 (1946); *Shallcross' Estate*, 200 Pa. 122, 49 Atl. 936 (1901). *But see In re Africa's Estate*, 359 Pa. 567, 59 A.2d 925 (1948); *Johnson v. Provident Trust Co.*, 280 Pa. 255, 124 Atl. 436 (1924).

35. See PA. STAT. ANN. tit. 20, § 301.6 (Supp. 1954).

36. *Decker's Estate*, 353 Pa. 509, 46 A.2d 218 (1946); *Shallcross' Estate*, 200 Pa. 122, 49 Atl. 936 (1901).

37. *In re Allen's Estate*, 347 Pa. 364, 32 A.2d 301 (1943); *In re Bechtel's Estate*, 303 Pa. 107, 154 Atl. 366 (1931).

38. *In re Wood's Estate*, 261 Pa. 480, 104 Atl. 673 (1918).

39. *In re Bower's Trust Estate*, 346 Pa. 85, 29 A.2d 519 (1943).

40. 49 Pa. 241 (1865).

41. *In re Reighard's Estate*, 283 Pa. 140, 128 Atl. 847 (1925). The widow's life was held to be the measuring rod for the duration of the trust despite the fact that she had elected to take against the will, and thus had no life estate in the property.

42. *B'nai B'rith Orphanage & Home for Friendless Children of District No. 3 v. Roberts*, 284 Pa. 26, 130 Atl. 298 (1925).

43. *In re Slater's Estate*, 316 Pa. 56, 173 Atl. 399 (1934); *In re Grazier's Estate*, 301 Pa. 422, 152 Atl. 390 (1930).

44. *In re Slater's Estate*, 316 Pa. 56, 173 Atl. 399 (1934).

Where the trustee has active duties to perform the trust is not terminable so long as those duties remain unperformed.<sup>45</sup> The settlor can validly create a spendthrift trust in order to protect the beneficiary's interest even though the beneficiary is not a spendthrift.<sup>46</sup> As stated by the court:

"An active trust may be created as a protection to the beneficiary because of his inexperience, improvidence, inability to manage his estate, or for any other purpose, not illegal, which the benefactor may deem wise or expedient in order to carry out his intention."<sup>47</sup>

The settlor may revoke the trust deed when the purpose for which the trust was created completely fails.<sup>48</sup> When a married woman created a trust for her own benefit either prior to or during her marriage, it was held not revocable during the life of the marriage since the courts had a policy of protecting her against what may have been the undue influence of her husband to revoke it.<sup>49</sup> Such a trust may be likened to a "separate use" trust whereby a parent gives property to a trustee for his married daughter in order that her interests will be protected against her husband's influence or interference. Thus, a "separate use" trust was held to terminate upon the death of the husband or the securing of a divorce since the trust purpose was thereby fulfilled.<sup>50</sup>

Whenever the trust purpose, such as the protection of life interests, is accomplished, the trust is held to be terminable.<sup>51</sup> The rule is that "'no matter what may be the nominal duration of an estate given to a trustee, it continues in equity no longer than the thing sought to be secured by the trust demands'; and, when that demand has been fully satisfied, 'although the trust may not have ceased by expiration of time . . . , yet, if all the parties who are or may be interested in the trust property are in existence and are sui juris, and if they all consent and agree thereto, courts of equity will decree the termination of the trust.'"<sup>52</sup> Of course, such a trust is not terminable so long as active trust purposes remain.<sup>53</sup>

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45. *In re Buch's Estate*, 278 Pa. 185, 122 Atl. 239 (1923); *King v. York Trust Co.*, 278 Pa. 141, 122 Atl. 227 (1923); *In re Stewart's Estate*, 253 Pa. 277, 98 Atl. 569 (1916).

46. *In re Harrison's Estate*, 322 Pa. 532, 185 Atl. 766 (1936); *Johnson v. Provident Trust Co.*, 280 Pa. 255, 124 Atl. 436 (1924).

47. *In re Stewart's Estate*, 253 Pa. 277, 278, 98 Atl. 569, 570 (1916).

48. *Sturgeon v. Stevens*, 186 Pa. 350, 40 Atl. 488 (1898).

49. *Fry v. Mercantile Trust Co.*, 207 Pa. 640, 57 Atl. 43 (1904); *Twining's Appeal*, 97 Pa. 36 (1881).

50. *Wilson v. Heilman*, 219 Pa. 237, 68 Atl. 674 (1908); *Koenig's Appeal*, 57 Pa. 352 (1868); *Bush's Appeal*, 33 Pa. 85 (1859).

51. *In re Bower's Trust Estate*, 346 Pa. 85, 29 A.2d 519 (1943); *In re Bechtel's Estate*, 303 Pa. 107, 154 Atl. 366 (1931); *In re Strafford's Estate*, 258 Pa. 595, 102 Atl. 222 (1917); *In re Woodburn's Estate*, 151 Pa. 586, 25 Atl. 145 (1892).

52. *In re Strafford's Estate*, 258 Pa. 595, 598, 102 Atl. 222, 223 (1917).

53. *In re Reighard's Estate*, 283 Pa. 140, 128 Atl. 847 (1925).

The rule as stated in *Culbertson's Appeal*<sup>54</sup> is that

"It must now be considered a well-settled rule in equity that, although a trust may not have ceased by expiration of time, and although all its purposes may not have been accomplished, yet if all the parties who are or who may be interested in the trust property are in existence and are sui juris, and if they all consent and agree thereto, courts of equity may decree the termination of the trust and the distribution of the trust-fund among those entitled thereto."<sup>55</sup>

A trust cannot be terminated when there are contingent remaindermen not in existence or not ascertained, since it is then impossible to obtain the consent of all the parties.<sup>56</sup> If the purpose of the settlor in creating the trust has not been fully accomplished, as for example, in a spendthrift trust arrangement, and if the settlor is deceased and therefore not capable of consenting, the trust cannot be terminated even though all the beneficiaries desire it.<sup>57</sup>

### III.

#### CONCLUSION.

In conclusion, the following rules will summarize Pennsylvania law in regard to revocation and termination of trusts. Revocation may be exercised in accordance with the reserved power in the trust deed. Mistake, fraud, duress, or undue influence all form appropriate bases from which the courts may decree revocation as a form of relief. A tentative trust is revoked by any method which effectively manifests the depositor's intent to revoke. A trust is revocable whenever its purpose wholly fails. When present interests pass to other beneficiaries, the trust becomes irrevocable. If the settlor created the trust to protect himself against his intemperate or improvident habits or because of his incapacity to handle his property, the trust is not revocable. In the absence of such a fact situation, a settlor who is or who becomes the sole beneficiary can revoke the trust.

A trust terminates upon the expiration of its time limit or upon the happening of the event controlling its termination. When the beneficiary reaches the age of twenty-one, the trust terminates in the absence of a di-

54. 76 Pa. 145 (1874).

55. *Culbertson's Appeal*, 76 Pa. 145, 148 (1874); *In re Harrar's Estate*, 244 Pa. 542, 91 Atl. 503 (1914).

56. *In re Africa's Estate*, 359 Pa. 567, 59 A.2d 925 (1948); *In re Kamerly's Estate*, 348 Pa. 225, 35 A.2d 258 (1944); *In re Bechtel's Estate*, 303 Pa. 107, 154 Atl. 366 (1931); *In re Gill's Estate*, 293 Pa. 199, 142 Atl. 207 (1928); *In re Jones' Trust Estate*, 284 Pa. 90, 130 Atl. 314 (1925); *In re Reighard's Estate*, 283 Pa. 140, 128 Atl. 847 (1925); *Johnson v. Provident Trust Co.*, 280 Pa. 255, 124 Atl. 436 (1924); *In re Buch's Estate*, 278 Pa. 185, 122 Atl. 239 (1923); *King v. York Trust Co.*, 278 Pa. 141, 122 Atl. 227 (1923); *In re Lewis' Estate*, 231 Pa. 60, 79 Atl. 921 (1911).

57. *In re Bower's Trust Estate*, 346 Pa. 85, 87, 29 A.2d 519, 520 (1943); *In re Harrison's Estate*, 322 Pa. 532, 185 Atl. 766 (1936).