

**Trusts--Assignability of Interest of Beneficiary in a "Spend-Thrift"  
Trust--Attachment of Same (Richard R. Sarver v. John H. Towne,  
et al., 285 N.Y. 264 (1941))**

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

for the Supreme Court to interfere with the exercise of such discretion.<sup>6</sup> In order to obtain the indorsement of his foreign license, an applicant must establish his merits to the satisfaction of the Board of Regents. His medical license cannot be indorsed unless he has substantially met all of the requirements established by the legislature.<sup>7</sup> Physicians' licensing statutes are not for the benefit of the members of the medical profession, but are intended to advance and promote public welfare through the improvement of citizens' health.

E. D. R.

TRUSTS—ASSIGNABILITY OF INTEREST OF BENEFICIARY IN A "SPEND-THRIFT" TRUST—ATTACHMENT OF SAME.—The deceased by his will established a trust fund for his grandson, the defendant in this action. The testator directed the trustees to pay to his grandson the net income of the trust fund for the duration of the beneficiary's life. The defendant in 1935 filed a voluntary petition in bankruptcy in which he listed among his assets his interest in the trust, but claimed exemption stating that only 10% of the income could be attached by a judgment creditor. Prior to the time that the petition had been filed and the defendant had been adjudicated and discharged as a bankrupt, 10% of his interest in the trust had been garnisheed by a judgment creditor.<sup>1</sup> The trustee in bankruptcy, in accordance with his powers,<sup>2</sup> obtained an order vacating the judgment creditor's garnishee order and directing that the beneficiary's trust income be paid to the trustee in bankruptcy. In order to facilitate the winding up of the bankrupt estate, the Referee in Bankruptcy authorized the sale of the bankrupt estate's interest in the 10% of the defendant's trust income. The plaintiff, Richard R. Sarver, purchased all right,

<sup>6</sup> N. Y. EDUCATION LAW §§ 51, 1259; *In re De Luca*, 168 Misc. 841, 6 N. Y. S. (2d) 742 (1938), *aff'd*, 256 App. Div. 859, 8 N. Y. S. (2d) 763 (1939).

<sup>7</sup> N. Y. EDUCATION LAW §§ 51(3), 1259; *Erlanger v. Regents of University of New York*, 256 App. Div. 444, 10 N. Y. S. (2d) 1013 (1939), *rev'g*, *Levi v. Regents of University of State of New York*, 169 Misc. 332, 8 N. Y. S. (2d) 19 (1938), *aff'd*, *Levi v. Regents of University of State of New York*, 281 N. Y. 627, 22 N. E. (2d) 178 (1939).

<sup>1</sup> N. Y. CIV. PRAC. ACT § 684. "1. Where a judgment has been recovered \* \* \* and where any \* \* \* income from trust funds or profits is due \* \* \* a judge or justice must grant an order directing that an execution issue against the \* \* \* income from trust funds \* \* \*, said execution shall become a lien and a continuing levy upon the \* \* \* income from trust funds \* \* \* and the amount specified therein which shall not exceed ten per centum thereof, \* \* \*"

<sup>2</sup> BANKRUPTCY ACT § 47, subd. a(2); 30 STAT. 557, Amd. 36 STAT. 840; U. S. CODE tit. 11, § 75: The trustee in bankruptcy, "as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied."

title and interest to the 10% of the income of the said trust and the sale was confirmed by the Bankruptcy Court. The beneficiary thereupon challenged the assignability and alleged that the Bankruptcy Court did not have a property right in the income and therefore could not assign same.<sup>3</sup> The Court of Appeals affirmed the Supreme Court decision vacating the garnishee execution. The assignee with the approval of the Bankruptcy Court commenced this action for a declaratory judgment "determining that he is entitled to a one-tenth interest in all distributable income from said trust funds." The question involved is whether, irrespective of the confirmation and the sale by the Federal Court, such trust interest is assignable or subject to judicial sale under the laws of the State of New York. *Held*, judgment reversed, and complaint dismissed. *Richard R. Sarver v. John H. Towne, et al.*, 285 N. Y. 264, 34 N. E. (2d) 918 (1941).

It is well-settled in the law of trusts that where a *cestui que trust* has a vested interest under a valid trust which is alienable by him or which can be reached by his creditors, such interest constitutes assets which pass to his trustee in bankruptcy,<sup>4</sup> but where, however, the trust funds because of local laws are inalienable, they do not then pass to the trustee in bankruptcy of the beneficiary of the trust.<sup>5</sup> The law of New York<sup>6</sup> provides that the right of a beneficiary to compel performance of a trust and receive the income of the personal property is inalienable and the benefits cannot be assigned by the beneficiary. Since it is the policy of the Bankruptcy Act to respect state exemptions,<sup>7</sup> the income of the beneficiary was not assignable by him. There is, furthermore, no provision in the law which provides that any part of the interest may be sold under judicial process. The rights of the trustee in bankruptcy as against the bankrupt's income could only arise from a garnishee order as authorized by statute<sup>8</sup> and that may not exceed 10% of the income. The execution upon such income is a lien and a continuing levy until

<sup>3</sup> *Matter of Towne*, 253 App. Div. 795, 278 N. Y. 597, 16 N. E. (2d) 117 (1938).

<sup>4</sup> *Hammond v. Whittridge*, 204 U. S. 538, 51 L. ed. 606, 27 Sup. Ct. 396 (1907); *Nichols v. Eaton*, 91 U. S. 716, 23 L. ed. 254 (1875).

<sup>5</sup> *In re McKay*, 143 Fed. 671 (1906), see also note 7, *infra*; *In re Baxter*, *Standard Oil Co. v. Blane*, 104 F. (2d) 318 (1939). A trustee in bankruptcy can recover only such property as the bankrupt could have personally transferred at date of adjudication. BANKRUPTCY ACT § 70(A), 11 U. S. C. A. § 110(a). *Todd v. Pettit*, 108 F. (2d) 139 (1940). A bankruptcy trustee takes title to all property to which the bankrupt has title.

<sup>6</sup> N. Y. PERS. PROP. LAW § 15, Cons. Laws c. 41. "1. The right of the beneficiary to enforce the performance of a trust to receive the income of personal property, and to apply it to the use of any person, cannot be transferred by assignment or otherwise. \* \* \*"

<sup>7</sup> *Eaton v. Boston Safe Deposit and Trust Co.*, 240 U. S. 427, 36 Sup. Ct. 391, 60 L. ed. 723 (1915); *Allen v. Tate*, 6 F. (2d) 139 (1925), " \* \* \* the Bankruptcy Act takes note of exemptions and rules of property in the several states." *Hull v. Farmers' Loan & Trust Co.*, 245 U. S. 312, 38 Sup. Ct. 103, 62 L. ed. 312 (1917), see also note 5, *supra*.

<sup>8</sup> See note 1, *supra*.

it is vacated, but no property passes to the trustee in bankruptcy except as the income is collected and there is no right or interest in the trust fund. When the bankrupt estate is settled and a garnishee order obtained by the trustee in bankruptcy can no longer be enforced, and is subsequently vacated, his assignee had no right which was enforceable against the trust fund established for the defendant.<sup>9</sup>

J. A. S.

---

<sup>9</sup> A debtor's discharge in bankruptcy frees his income from trust funds from an execution issued under N. Y. CIV. PRAC. ACT § 684 (see note 1, *supra*) as to payments made subsequent to the date of adjudication. *Matter of Irving Trust Co.*, 267 N. Y. 102, 195 N. E. 811 (1935).