6-1-1950

The Nature of the Beneficiary's Interest in a Trust

Rufford G. Patton

Follow this and additional works at: http://repository.law.miami.edu/umlr

Recommended Citation
Available at: http://repository.law.miami.edu/umlr/vol4/iss4/5

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.
The title of this study is not new either to Anglicans or to Latins. However, they usually approach it from two different angles. The Anglicans deal with it on the basis of (1) the beneficiary’s remedies before the court protecting his interests as against the settlor, the trustee and third parties, with (2) more or less incidental discussion of whether he or the trustee is the owner of the trust assets and consequently as to whether the interest of the beneficiary is legal or equitable. This is confusing to the Latin both as to the order of importance given to the two divisions of the subject and by reason of splitting what he considers the major subdivision of the subject into two types of ownership. The object of the present study is to explain to our guests these two seeming inconsistencies and to overcome the confusion which they have created; also to attempt to explain to the Anglicans the importance which the Latins attach to having a definition in the organic statute which will accurately define the institution and locate the situs of title to the assets. Since it is the older of the two, suppose we consider first the Anglican viewpoint and the circumstances under which it has developed.

The institution now known as a trust did not come to us as a full-fledged device for the handling of property. No eminent scholar sat down and drafted from his vast experience and research a statement of the elements of which it should be composed, the rules under which it should operate and the rights and interests of the parties involved. Instead the first writings regarding it were drafted as descriptions of an institution that had already been developed by trial and error to meet the exigencies of legal and economic conditions then existing in England, mostly by reason of the fact that people desired to convey or to will real estate to the church or to some of its orders at a time when the law did not recognize a will of real estate and did not permit real estate to be owned by religious corporations.

Not but that there have always been occasions when it suited the convenience of the owner of property to have the title held by another for the accomplishment of some particular purpose to which it was desired to dedicate it. In early Roman law the fiducia served this purpose in transactions between debtor and creditor. The creditor was both trustee and beneficiary; in other words the title was conveyed to him to hold as security for the debt.
due to him, but in trust for the benefit of both himself and the debtor who had conveyed it to him. Under similar circumstances in England the transaction had no element of a fiduciary character: the conveyance to the creditor was absolute subject only to his title being defeated by payment of the debt on or prior to its maturity when he became under obligation to reconvey to the debtor. Both of these security devices were later replaced by the use of mortgages.

Under Roman law there has also developed the _fideicomiso_ whose original purpose was to enable a testator to create a testamentary trust in favor of a donee who should hold the title not for his own use but for the use of a party to whom the testator could not make a direct gift. The institution became perverted by a substitution of successive trustees so as to entail the property and it thus came to be prohibited. However, it was only the substitutionary _fideicomiso_ which was ever considered contrary to public policy and a number of the civil codes still recognize the original _fideicomiso_.

Nevertheless the necessity for carrying the title to property in the name of a party other than the person who is to receive the income or other benefit from it was apparently not of such frequent occurrence in the Latin countries as in England, and the need for an institution of law which would provide for such situations in those countries does not appear to have been urgent until the advent of modern social and economic conditions. In fact the use of the trust device in England and in other English speaking countries was not extensive until within very recent years, although its use did prevail to a sufficient extent to cause the gradual development of a body of law defining the rights of the parties involved in such situations. Even in England, where the trust institution in its modern form originated, trusts occupied a comparatively minor place in the property of that country. Trusts were usually of a family character and the trustee was a friend or solicitor of the family. It is true that in some cases the trustee was an officer of a corporation who acted in that capacity in his name but his corporation did the work and made the charge for it, guaranteeing its officer's fidelity. In this indirect way some insurance companies and banks occasionally rendered trust services long before they were permitted to do so in their own name. In 1887 The Trustees Corporation, Limited, of London, was organized to act as a corporate trustee. Other trust corporations were later organized and early in the present century English banks established trust departments and began to qualify as trustees. In 1906 the government provided for the office of public trustee and that office has been a continuing institution in England since January 1, 1908. The public trustee is a government corporation composed of one man who is appointed to the office by the Lord Chancellor. Although the corporation consists of
the successive individuals who are appointed to the office it is not the individuals who act as trustee, but the corporation, and the latter has continued perpetual existence. It is the largest trust corporation in England and one of the largest in the world. From the time that the office of public trustee was created trust business has increased enormously in England not only as to trusts committed to the public trustee but also as to trusts committed to individuals, banks and other corporations.¹

Prior to 1885 trusts were employed in only a comparatively small area of the United States, chiefly in the larger cities, New York, Philadelphia, Boston and a few others. Since then there has been a steady increase in the use of this institution. By 1925 this increase was becoming swift. It accelerated with astonishing rapidity and was not slowed up by either World War I or World War II.

The English law of trusts commenced with individuals as trustees. In order that there might be a more or less perpetual succession in the office, some of the trust instruments, particularly those used in Boston, provided for successor trustees who were usually members of the same law firm as the original trustee. As already stated, in England this continuity was provided by a public corporation known as a public trustee, the corporation consisting always of a succession of public officers.² In the United States generally, the situation was met by appointing as trustee a corporation having perpetual existence or capable of renewing its charter so as to secure continuance of corporate existence.³

Up to 1839, only thirty-one (31) trust companies appear to have been chartered.⁴ With these early corporations the matter of acting as trustee was more or less incidental to other business, such as receiving time deposits and carrying on an insurance business. The chartering of additional companies who were authorized to do a trust business proceeded slowly.⁵ At the date of publication of the book just cited, 1902, the author was able to list 573 trust companies then in existence in the United States. These were located in those states which had experienced the greatest economic development. As soon as citizens of a state began to accumulate fortunes, there appears to have been need for trust companies. This is shown by the

---

². See note 1 supra; also English Statute, 6 Edw. 7, c. 55 (1906).
³. The idea is said to have originated with Alexander Hamilton and Daniel Tomkins at the early date of 1801 in connection with establishment of the Snug Harbor Trust of Captain Robert R. Randall for the benefit of poor and indigent sailors. A trust instrument designating as trustees certain public officers, they to be trustees regardless of the change in individuals holding the office, thus the continuity of the office of trustee was assured in spite of any change in personnel. Some five years later an act of the legislature created a corporation composed of these officers. Thus a corporation came into existence.
⁴. Stephenson, Beginnings of Trust Companies of the United States, 48 Trust Company Magazine 343.
⁵. Cator, Trust Companies in the United States (1902).
chartering after that date of numerous trust companies in the southern and western states.6

By 1913 a great many banks which existed under state laws had been authorized to conduct a trust business. In that year Congress made it possible for national banks to conduct this type of business. Since then the number of trust departments of banks has increased tremendously. Without repeating the statistics given in a previous study,7 it may be stated that the trust departments of national banks appear to handle more than half of the personal or family trusts. Significant figures are those showing that the number of these trusts in 1926 was about twenty-six thousand and in 1931 practically one hundred-three thousand; that the value of the assets in the first group of trusts amounted to less than one billion dollars and that the total in the second was more than five times that amount. A substantial portion of the increase in business at that time and during more recent years is due to the creation of trust companies and of trust departments in banks in communities to which the creation of trust business has expanded from the larger and wealthier metropolitan centers. This development in the United States has been followed by similar extensions in both Canada and England.8

Aside from the increase in trusts created to serve directly the interest of individuals and corporations there has been an increase in those which may be designated as foundations, trusts created to carry out projects of general or special public welfare. Of particular note are trusts of this character created by George Peabody, Andrew Carnegie, the Rockefellers, Mrs. Russell Sage and Messrs. Duke, Rosenwald and Field. The totals of these foundations are staggering in their size.9

Of more general spread are trusts which can be created by people of modest means, not out of accumulated wealth but out of the proceeds of life insurance policies paid for in installments over a period of years. Commencing in 1869 with the Girard Trust Company of Philadelphia and proceeding very slowly from that beginning to other parts of the United States, the amount involved in trusts of this character appears to have reached, in 1930, the sizeable amount of one and one-half billion dollars.10 Figures to show the size of the increase since then do not appear to be available.

However, the main purpose of the smaller trusts in the United States has been to provide for the family of the creator or for himself and his family.

6. SMITH, TRUST COMPANIES IN THE UNITED STATES (1928).
7. Patton, Trust Systems in the Western Hemisphere, 19 Tulane L. Rev. 398 (1945); Patton, Los Sistemas de Trust en el Hemisferio Occidental, 23 Jus (Mexico) 399; 24 op. cit. 1; 19 Revista Cubana de Derecho 19, 85; 15 Revista Juridica de la Universidad de Puerto Rico 1.
8. POWELL, TRUSTS AND ESTATES 45, 46.
10. Powell, op. cit. supra note 8, at 50.
He has accomplished this not merely by the insurance trusts just mentioned but also by the older form of a trust created by inter vivos agreement or by the still older form, by provisions of his will. These do not total as much in asset values as corporation trusts and foundations but they greatly exceed all others in the total number. The exact figures are available in standard trust literature but need hardly be set forth in this study.\(^{11}\)

The foregoing would indicate that even though the trust institution did develop gradually over a period of many years in the Anglican countries, there would have occurred controversies between settlor, trustees, beneficiaries and third parties which would produce legislation and judicial decisions as to rights of these respective parties as against the others, and particularly as to the rights of the parties for whom trusts are created, the beneficiaries. With the exceptions noted at the beginning, and yet to be examined, this was the case. In all the standard Anglican texts on the subject of trusts there are subdivisions dealing with the rights of the beneficiary.\(^{12}\) A recent Spanish text\(^{13}\) by one of the ablest Mexican commentators states that an analytical review of the relevant legal texts shows that most of the rights of beneficiaries there listed are expressly covered by articles of the Mexican trust statutes which he lists. These are so typical of any trust in any country that they are worth examining. The rights listed are as follows:

1. Those granted to him by the trust instrument.
2. To enforce fulfillment by the trust institution.
3. To attack the validity of acts which it commits in bad faith to his prejudice.
4. To attack the validity of acts which it commits to his prejudice in excess of the powers given by the trust instrument or by statute.
5. To demand the return of assets which have been removed from the trust estate as a result of such acts.
6. To select a trustee when the appointed trustee refuses to accept or is removed, or when no fiduciary institution is named in the trust instrument.
7. To give his consent to decisions and rules made by a technical committee or by a committee for distribution of funds when the maker of the trust has provided for the formation of such a committee.
8. To require information from the trustee within 48 hours as to investment, acquisition or substitution of trust property, the receipt of rents, crops, or proceeds from liquidation, and as to the payments which have been made out of the trust funds.

---

11. Id. at 51-54, and publications there listed.
9. To collect damages from the trustee for divulging any confidential information in connection with operation of the trust even to the authorities or in court other than in actions brought by the settlor or the beneficiary.

10. To demand an accounting by the trustee.

11. To exact responsibility in general from the trustee for all damages which may occur through non-feasance or malfeasance in its management of the trust property.

12. To ask for removal of the trustee.

13. That in addition to the rights and actions expressly provided in the statutory subdivisions cited, the beneficiary may have other rights and the corresponding actions which are not predeterminable but which result from fact situations growing out of the execution of the trust.

The learned commentator then proceeds to study these rights from various standpoints much the same as did the English and North American writers of the texts already cited. It is not the purpose of the present study to go into these details. Suffice to say that the various texts, Spanish and English and the French treatise on the Quebec fiducie by Dr. Faribault of Montreal, agree very substantially as to what are the practical rights of the beneficiary. Controversies which may have previously existed have been pretty well settled before now by statutes or judicial decisions. It is only as to the more or less theoretical rights, that any serious difference of opinion now exists—those which have seldom been before the courts and which have little likelihood of judicial decision because they have little or no bearing on issues which may arise between interested parties. The main item of this character, and the only one which will be now considered, is as to the situs and character of the title to the trust assets. Under the various theories advanced, one takes the position that the beneficiary holds the title and the trustee is merely his agent, the second that the trustee has the title, another that ownership is divided between the trustee and the beneficiary, and the fourth that neither has the title in that the trust assets are dedicated to a purpose so that there need be no owner. For a reason which will appear in the concluding statements of this study, these four theories will now be examined in their general aspects only and not in any great detail.

**First Theory, that Beneficiary is the owner.** In the French-Canadian Province of Quebec the trust institution developed as in England by the same process of use and adaptation to use. However, Dr. Faribault states that when the institution was sanctioned by statute the text of our articles

---

14. MOLINA, **op. cit. supra** note 13, c. 7.
15. See note 12 supra.
16. FARIBAULT, **TRAITE THEORIQUE ET PRATIQUE DE LA FIDUCIE** (1936).
has been borrowed, or rather adapted, from the English law." For many years there prevailed two theories as to the nature of the *fiducie* (trust). According to the first theory, it is only a variety of donation or legacy to the beneficiary subject to an agency or *mandato* in favor of the trustee. Although this view restricted the role of the *fiducie*, it had the support of treatise and judicial decision. Nevertheless the most recent decision supports the other theory, namely that the trustee or *fiduciarie* takes the title and that the beneficiary's right in the property is limited to compelling management and disposition in accordance with the terms of the trust instrument. The main argument in support of this theory is that the trust law of Quebec, art. 981a, provides for a "transfer to the fiduciaries." The Supreme Court held that an acceptance by the *fiduciarie* dispossesses the donor of title and that no act of the beneficiary is required; also that this rule has the advantage of being consonant with the English law of trusts.

There are two other theories, which have been advanced to explain the nature of the fiducie. The second theory, that Trustee is the Owner. As stated by the Supreme Court of Quebec in the decision just cited, rendered in 1933, it was the prevailing theory at that time in England and in the United States that the trustee was the owner and that such rights as were possessed by the beneficiary were in personam against the trustee or against third parties by reason of their dealings with the trustee. Though the subject is not expressly considered in the *Restatement of the Law of Trusts*, the definition there given would indicate that this is the standard rule in the United States.

Third Theory, Double Ownership. However, two of the scholars most responsible for the phraseology of the *Restatement of the Law of Trusts*, Dr. Scott and Professor Bogert, are also authors of standard texts on

---

18. Id. at 393.
25. See vol. 1, § 1 (1935).
trusts. Their works state expressly that the trustee holds title. Yet, Professor Bogert advances the conclusion that while the right of the beneficiary was originally solely in personam against the trustee, it has become increasingly a right in rem and is now substantially equivalent to equitable ownership of the trust res. Professor Scott affirmatively argues that the beneficiary has a property interest and not merely a chose in action. His conclusions had previously appeared as an article in a noted law review.

He has very eminent support from other commentators, with equally eminent opinion to the contrary.

Those who advance the view that the beneficiary has a property interest in the trust assets admit that the trustee has the ownership so far as the records are concerned; in other words, the only title which would have been recognized in the early English law courts, a title which is now designated, by reason of that fact, as the legal title. Nevertheless by reason of the fact that under certain circumstances the equity courts would have recognized the beneficiary as the actual owner, they assert that his interest is so great that it amounts to a form of ownership, which, because of the sole forum in which it could formerly be enforced, is designated as an equitable interest or as equitable ownership.

Unfortunately the use of these terms, legal ownership and equitable ownership, has produced confusion in that they have conveyed the impression that property held in trust is the subject of a double and conflicting ownership. In view of the fact that an English writer has said that a trust with its peculiar Anglo-Saxon characteristics is not thinkable where the conditions for conceiving dual ownership are lacking, it is not surprising that a very discerning civilian should decide that this "curious and strange" concept is the fundamental characteristic of the trust and that our own Dr. Alfaro, well versed in both civil and common law, should state that "The first thing by which the Latin Mind is struck in studying the institution of trust is that it involves a conception of double ownership."

Since the very nature of the institution depends upon the rights of the beneficiary, it was to be expected that this concept would be an important part of the study made by every Latin-American jurist who has written on

26. Bogert, Trusts; Scott, Trusts.
30. Weiser, Trusts on the Continent of Europe 3 (1936).
32. Alfaro, I Comparative Law Series 1 (Dep't of Commerce).
33. Lizardi, La Naturaleza Juridica del Fideicomiso 59 (Mexico, 1945).
Nevertheless it is the conclusion of the author of the present study that any difference of opinion on this particular item of a beneficiary's rights is more a matter of words than of substance. In numerous situations under the common law and in a lesser number under the civil law, two or more persons are interested in the same property. Though in fact only one is the owner, the other has rights so closely resembling ownership that he is frequently spoken of as the owner. The best example, but far from being the only one, is real estate on which there is a long term lease or a lease for the life of the tenant. In much the same way the beneficiary of a trust has the present right of enjoyment of the trust property but since the trustee has the power of disposition, he is the owner. His title may be of lesser importance than is the beneficiary's right of enjoyment but nevertheless he has the title and the beneficiary has merely the personal rights of enjoyment listed by Dr. Molina and others. In the case of both the tenant and the beneficiary, no difficulty arises so long as we speak of their interest in the property as a right. They own and have title to that right but it is in personam. If we designate such party as owner there is at once the thought that he has a right in rem which is not the case.

May we quote from a personal letter of some years ago written by Dr. Scott to the author of this study? A part of the letter reads as follows:

I agree with you that in introducing the trust in a civil law country it is not of much help to emphasize various theories as to the nature of a trust. I originally expressed my views in an article in 17 Columbia Law Review 269 (1917). Dean (now Chief Justice) Harlan F. Stone wrote an article taking the opposite view in 17 Columbia Law Review 467 (1917). I think, however, that it really makes little difference in actual results whether you adopt my theory of equitable ownership by the beneficiary or Stone's theory, which follows that of Maitland and Ames, that the beneficiary has only a chose in action. The important thing is to understand what actual rights are created by a trust rather than the theoretical nature of those rights.

The concluding paragraph of Dean Stone's article to which Dr. Scott refers is as follows:

To summarize the matter, it is believed that the view of the nature of the right of the cestui que trust most consistent with the decisions and which gives greatest promise of the development of the law upon a moral basis is that the right of the cestui is a right in personam against the trustee, specifically enforceable with reference to the trust res; that the cestui acquires rights in personam against the third person not because he

34. Of recent years the subject of trusts has been of such interest that the bibliography is extensive. Only a very limited number of the books and articles are listed in these notes.

35. See notes 12 and 13 supra.
is equitable owner of the trust res, but through equity's imposing upon third persons obligations *in personam*, because of their unconscientious interference with the right which the *cestui* has against the trustee; that, therefore, equity imposes on all the world the duty of not consciously aiding in a breach of trust or preventing the *cestui* from having the benefit of the obligation of the trustee.

The two law review articles cited by Dr. Scott, one by himself and the other by Chief Justice Stone, then Dean of Columbia University School of Law, cannot be excelled in thoroughness of treatment. However, on the basis of the little that appears in our books on the subject of trusts, Latin writers have stated correctly that the Anglo-Saxon jurists "have bothered themselves but little in formulating a constructive theory, and in their texts they have concerned themselves more in declaring the prevailing rules and their application. . . . Nevertheless those authors who have given study to the nature of the trust institution have generally approached the matter from the right angle, namely from the point of view of the rights of the beneficiary." Also that "English writers, especially the North Americans, do not give to definitions the importance which we attribute to them, probably because they are the product of inductive development which ends with (instead of commencing with) formulating a definition. Some commentators do not even give definitions but merely describe the institution." Our attitude may be due, as the writer first quoted has stated, to our having a "habit of thought eminently practical and but little inclined to abstraction." Accepting that description as personal to the author of this study, he finds no great inconsistency in the concepts of Judge Stone and Dr. Scott and still less in those formulated by the three Latin scholars who have most recently written on the subject, Lic. Xavier O. Aragon, Lic. Manuel Lizardi Albarran and Lic. Roberto Molina Pasquel.

The first commentator states that in the trust institution there is a broadening of the classical Roman concept of ownership, that the beneficiary does not properly have a right of property but nevertheless that he has an economic and material interest in the trust assets and that this phenomenon of dual interests is similar or equivalent to that presented in the Roman law by the "nuda propiedad" (bare title) and the "usufructo" (usufructuary).

The second writer concludes that the trust is composed of two rights

---

36. See note 33 supra.
39. LIZARDI, op. cit. supra.
40. MOLINA, op. cit. supra.
whose existence is possible by reasons of the principles by which the new institution is governed. One of these, that of the trustee, is characterized, if not absolutely, at least in general, by a power of disposition and for that reason the trustee appears to third persons to be the owner, that being the essential attribute of ownership. However, his ownership is temporary, seldom exceeding thirty years (in Mexico) and exists solely to carry out the purposes of the trust so that it is without economic value to the trustee. The second right, that of the beneficiary, is characterized by having an economic value and is so intimately tied to the trust purposes as to tend to be confounded with them since the latter usually represent in one form or another an economic benefit for the beneficiary. The existence of the rights of the beneficiary are nevertheless dependent upon those of the trustee and are, accordingly, like the latter, also temporary. The final distinctive right of the beneficiary is in its effect a property right in that, though ordinarily it is the trustee who exercises control over the trust assets, the beneficiary may in certain cases recover them from a third party in order to restore them to the trust fund. It is because of this right that the interest of the beneficiary acquires the appearance of being in rem, though of a special type.

The third writer had the advantage of writing last. He reviews the theses of the other two, and appears to this investigator to only mildly criticize their conclusions. His own conclusions do not appear to be radically different though more difference may be discernible to a reviewer better trained in abstract reasoning. As in his earlier writings, he denies any in rem character to the rights of the beneficiary in a Mexican trust, and believes that he does not need anything of the kind for protection of his interests under an elevated standard as to the parties who may serve as trustees (solely banks of special qualifications under Mexican law). Personal actions are sufficient to protect their rights. The beneficiary has a primary and fundamental right to exact fulfillment of the trust by the trustee but lacks any direct control of the trust assets, to which the trustee has the exclusive title.

Apparently the work of Lic. Molina is the only book by a civilian which relates directly and exclusively, as its title indicates, to the rights of the beneficiary. He has performed a masterly service in reviewing the subject, not merely from the standpoint of Mexican law but on the basis of the concepts in other Latin jurisdictions.

A brilliant student of the subject of trusts in the classes of Dr. Austin Scott at Harvard University was a young Frenchman, Dr. Pierre Lepaulle. Both in an article which had wide circulation in North America and, after he returned home, in a book advocating the adoption and development

---

41. An Outsider’s Viewpoint of the Nature of Trusts, 14 CORNELL L.Q. 52 (1928), La Naturaleza del Trust, REVISTA GENERAL DE DERECHO Y JURISPRUDENCIA (Mexico, 1932).
of trusts in France," he takes issue with any definition which calls for a division of ownership between trustee and beneficiary. He agrees with several other commentators that, if this were the case, the trust could not exist apart from a bipartite system of common law and equity. However, he regards this concept as unsound and as inconsistent with not only the principles of civil law but also with the decisions reached by English and American courts; stating that they include in their opinions references to dual ownership because of the history of their procedure, but that the decisions reached are no different than would be the case in France where no such concept exists. He reviews the arguments of the supporters of the doctrine that the beneficiaries' rights are in personam only and states that this theory fails to explain the nature of trusts and does not fit with all the facts of which account must be taken. He then examines the facts with relation to the in rem theory and draws the conclusion that it is equally inadequate. His decision is that one must go beyond these two notions and look for the dynamic principle that organizes and determines from the outside both the rights and the obligations of all parties concerned. In a search for this dynamic principle, he finds that all that is really necessary in every trust is a res and an appropriation of the res to some specified end; hence, that a trust is a segregation of assets from the general property of individuals and a dedication of those assets to a specified purpose, "a juridical device which consists in a property independent of any owner, whose unity is brought about by a purpose, this purpose being free within the limits of the laws in force and of public policy." Dr. Chafee remarks that "it is significant of the difference between our legal system and the French system that M. Lepaulle should be so much more preoccupied with these problems of definition than we are." However, in concluding his article, Dr. Lepaulle discloses that in his opinion the concepts discussed are not of the importance which has been attributed to them as is evidenced by his statement that "if one ceases to explain trusts by using the difference between the jurisdictions of common law and equity courts, legal title and equitable title, rights in rem and rights in personam, many fallacious explanations may be avoided and the true nature of trusts may be better discovered."

Now may the compiler of the present study have the presumption without causing offense to make two or three suggestions to which he is impelled by an ancestral "habit of thought eminently practical," to wit:

42. TRAIT THEORIQUE ET PRATIQUE DES TRUSTS (Paris, 1932). The book has not been translated into English but an excellent summary of its contents was made by Professor Zacharias Chaffee, Jr. and published in 46 Harv. L. Rev. 533. A rather detailed exposition of the Lepaulle theory appears in Chapter II of the book of Dr. Narciso Enrique Garay, EL TRUST ANGLOSAJON (Santiago, 1941). The theory is criticized by an equally eminent civilian jurist, Dr. Max Rheinstein of the Law School of Chicago University, published in the book of Lic. Molina cited in note 13 supra at 63, note 4. Also by Molina and Franceschelli: see Molina, op. cit. supra at 61-67.
That the trust institution has great possibilities for improving the welfare of families, communities and nations.

That in accordance with the spirit of resolutions of successive conventions of the Inter-American Bar Association it is desirable that laws be enacted authorizing its use in countries where this is not now the case.

That the institution should be popularized by giving to the public, in those countries where it is not well known, suitable descriptive articles comparable to those to which the lawyers have had access in their law reviews.

That aside from discussion of its theoretical concepts in professional theses, the articles by Dr. Scott and Chief Justice Stone in the United States and the writings of eminent civilians already cited, be considered as having thoroughly covered the theoretical aspect of the subject without necessarily deciding it or showing that a decision is necessary and that for the future those who write for the law reviews or the lay press will best serve the cause of spreading use of the institution by affording information as to its advantages, methods of operation, items to be included in trust documents and particularly those rights of the beneficiary summarized from the book of Lic. Molina at the beginning of this study and found in the North American texts there cited.