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(Filed October 6, 1926)

BILL OF COMPLAINT

IN CHANCERY OF NEW JERSEY

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.

The complainant, the Hamilton Trust Company of Paterson, New Jersey, a corporation of New Jersey, Trustee, respectfully shows that:

1. Heretofore, on the eleventh day of February, Nineteen Hundred and Twenty-five, one Joseph Bamford, then of the City of Paterson, in the County of Passaic and State of New Jersey, executed a certain instrument in writing under his hand and seal bearing date the seventh day of February, Nineteen Hundred and Twenty-five, and delivered the same to the complainant, in and by which said instrument, in consideration therein expressed of one dollar, he sold, assigned, transferred and set over, unto the complainant, and one Walter Bamford (his brother), then also residing in the City of Paterson, all and singular his investments, bonds, stocks and securities of every nature and character, an inventory or list of which was annexed to said instrument and thereby made a part thereof, and any other securities he might acquire during his lifetime, to have and to hold all and singular the said granted and assigned premises, and every part thereof, unto the complainant and the said Walter Bamford, their successors, executors and administrators forever, upon the trusts, nevertheless, and to and for the uses, interests and purposes therein limited, described and

declared; that is to say, to invest, re-invest and keep invested the same, and to receive the issues, interest, income and dividends from time to time arising therefrom, and to pay the income thereof quarterly to him, the said Joseph Bamford, during the term of his natural life, and after his death to transfer the said securities and investments to his trustees named in a document which he described in said instrument as his last will and testament bearing even date therewith, a true copy of which was thereunto annexed and thereby made a part thereof, to be administered by his said trustees named in said document, in accordance and in conformity with the provisions thereof.

Annexed to this bill of complaint, and hereby made a part hereof, are true copies of said trust deed and of said inventory, and of the document annexed to said trust deed, and made a part thereof, and therein referred to by the said Joseph Bamford as "my last will and testament bearing even date herewith, a true copy of which is hereunto annexed and made a part hereof." Said copies hereto annexed are marked together Schedule 1.

2. By the said last mentioned document, thus referred to in said trust Deed by the said Joseph Bamford as his last will and testament, after therein devising his real estate to his wife, Louise Bamford, in fee, and bequeathing to her certain personal property specifically, and after giving a legacy to his daughter, Victoria Irving, he bequeathed all his residuary personal estate to his trustees, viz., complainant and the said Walter Bamford, whom he appointed by said document, which he referred to in the trust deed as his last will, executors thereof and

trustees, thereunder; upon trust to invest, re-invest and keep invested the same, the income thereof to be paid by them quarterly to his said wife, Louise Bamford, during the term of her natural life, and after her death the income thereof to be paid by them quarterly to the said Joseph Bamford's daughter, Victoria Irving, if then living, during the term of her natural life, and after the death of his said daughter, Victoria Irving, the income thereof to be applied by his said trustees in such amounts as they might deem necessary and proper to the support, maintenance and education of the child or children (if any) of the said Victoria Irving as should still remain under the age of twenty-one years, and to pay the corpus of his said residuary personal estate to the child, or in equal shares to the children of the said Victoria Irving as they respectively attained the age of twenty-one years, and in case his said daughter, Victoria Irving, should die, without leaving any child or children her surviving, then, that is to say, upon the death of the said Victoria Irving, to pay the corpus of his said residuary personal estate to those at that time answering the description of his next of kin under the statute of distributions then in force in the State of New Jersey. By the said document so referred to as a will, he provided that in case his said daughter, Victoria Irving, should predecease his said wife, Louise Bamford, leaving a child or children her surviving, and also surviving his said wife, Louise Bamford, then, upon the death of his said wife, Louise Bamford, the corpus of his said residuary personal estate should be paid to such child, or in equal shares to such children of the said Victoria Irving surviving his said wife, as each ar-

rived at the age of twenty-one years, and until so arriving at the age of twenty-one years the income of his said residuary personal estate should be applied by his said trustees after the death of his said wife, to the support, maintenance and education of the said child or children in manner aforesaid, and by the said document, so referred to as a will, annexed to said trust deed, he further provided that in case his said daughter, Victoria Irving, should predecease his said wife, Louise Bamford, leaving no child or children her surviving, or no child or children surviving his said wife, then, upon the death of his said wife his said trustees should pay the corpus of his said residuary personal estate to those at that time answering the description of his next of kin under the statute of distributions then in force in the State of New Jersey; and by the sixth clause of said document he provided that all the above bequests to his daughter, Victoria Irving, and all rights and interests bestowed on her, or in her favor, by the trusts created by said document (referred to as a will,) should be held by her in her own right absolutely, free of any control whatsoever in regard thereto on the part of her husband.

3. That the said securities referred to in said inventory were handed over and delivered to complainant as trustee pursuant to said trust deed, on or about, and some of them since, the execution of said trust deed, and that complainant has ever since held the same, or re-investments representing some parts of the same, in its custody, and has received the issues, incomes and dividends from time to time arising therefrom, and that during the lifetime of the said Joseph Bamford, complainant has paid to him quarterly such income, or so much thereof as he from time to time required and called for.

4. That the said Walter Bamford died on June 13, 1926 leaving a last will and testament, by which he appointed complainant executor thereof, and the same has been admitted to probate.

5. That the said Joseph Bamford also died on July 8, 1926 leaving a last will and testament bearing date March 8, 1926, and a codicil thereto bearing date June 1926, by which he devised and bequeathed all his residuary estate, real and personal, to his said wife, Louise Bamford, and appointed her sole executor thereof, and by which he expressly undertook to revoke and make void any and all former wills made by him, including the document (referred to in said trust deed as the last will and testament of Joseph Bamford) bearing date February 7, 1925, and said last will and testament and codicil of the said Joseph Bamford bearing date March 8, 1926 and June, 1926 respectively have been duly admitted to probate. True copies thereof, marked Schedule II, are hereto annexed for reference.

6. The said Louise Bamford, wife of Joseph Bamford, as executrix of the last will and testament of her deceased husband, and in her individual capacity, claims that the execution by her deceased husband, Joseph Bamford, in his lifetime of his said last will and testament bearing date March 8, 1926, and the codicil thereto bearing date June, 1926 operated as a revocation of the trust deed, thereby entitling her, under the last will and testament of her deceased husband, to delivery of all the securities belonging to his said estate now in the hands of complainant, but complainant is advised and charges the fact and the law to be that said trust deed was irrevocable in character and created an irrevocable trust of which complainant is the trustee, and that

although the document annexed to said trust deed, and referred to therein by said Joseph Bamford as his last will and testament, has, by the execution by the said Joseph Bamford, of a later will, lost its efficacy as the last will and testament of the testator, said document, by reason of it annexation to and the reference to it in said trust deed, and by the fact that it was made a part of said trust deed, still serves as a document setting forth the trusts subject to which said trust deed was executed and delivered. Complainant is further advised, and charges the fact and the law to be, that the use of the term "last will and testament" in said trust deed, was merely to identify the paper annexed to said trust deed, and that none of the securities mentioned in said inventory, or which have since come to the hands of complainant, are subject to the provisions of the said testator's last will and testament dated March 8, 1926, or of the codicil thereto dated June, 1926, having been conveyed in his lifetime by the said Joseph Bamford by said trust deed to said complainant and the said Walter Bamford, and being now, by reason of the death of said Walter Bamford, of whose estate complainant is also executor, vested exclusively in complainant as trustee.

7. On September 22nd, 1926 complainant received from the said Louise Bamford a letter, a copy of which, marked Schedule III, is hereunto annexed and hereby made a part hereof, in and by which she requested that inasmuch as the trust deed executed by her late husband, Joseph Bamford, was in express terms revoked by him by his last will and testament dated March 8, 1926 and duly admitted to probate, complainant should immediately transfer and hand over to her all the securities now held by it

belonging to her said husband's estate, together with an account of complainant's dealings with said trust estate to date, and asking complainant to fix a date at its bank when the said Louise Bamford could call and close the transaction.

To this letter the complainant sent a letter in reply, a copy of which, marked Schedule IV, is hereunto annexed and hereby made a part hereof, to the effect (among other things) that it had been advised by counsel that the said trust deed was irrevocable and that therefore it declined to accede to the said Louise Bamford's request, but that it was willing at any time to furnish an account of its dealings with said trust estate as trustee.

8. While the complainant is advised and charges the fact and the law to be as set forth in the sixth paragraph hereof, nevertheless in view of the claim to the contrary made by the said Louise Bamford, as executrix and in her individual capacity, the complainant is in doubt as to its duties, rights and obligations under said trust deed in the following respect namely, whether the view entertained by it as a result of advice received from its counsel that the said trust deed is irrevocable is correct, or whether the same was legally revoked by the will probated by the said Louise Bamford.

9. That the said Walter Bamford left Walter E. Bamford, Grace H. Johnson and Joseph C. Bamford, all of Paterson, New Jersey, his only children him surviving, all of whom are of full age, and that they, in case of the deaths of Louise Bamford and Victoria Irving, the latter without leaving issue surviving her and the said Louise Bamford, constitute the only present next of kin of Joseph Bamford, deceased, and complainant prays that they may be regard-

ed, for the purposes of this suit, and for answering the bill of complaint herein, as representing the next of kin of the said Joseph Bamford, deceased.

10. In case this Honorable Court should determine that the said trust deed was revocable in character, and is not now in full force and effect, but that the subject matter thereof passed under the last will and testament of Joseph Bamford, deceased, to his widow, then, and in that case only, the complainant is ready and willing, and hereby offers to transfer the whole of said securities. and all accrued income thereon, to the said Louise Bamford, executrix as aforesaid.

11. The said Louise Bamford's full name is Lillian Louise Bamford, but she was always called by her husband, and is known as, Louise Bamford.

Therefore, the complainant, being without remedy in the courts of law, prays:

1. That the said Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, as Lillian Louise Bamford, or Louise Bamford, Walter E. Bamford, Grace H. Johnson, Joseph C. Bamford and Victoria Irving, who are the defendants to this suit, may answer this bill of complaint, and each statement therein made.

2. That the said trust deed, executed by the said Joseph Bamford to the complainant, be construed by this Honorable Court, and the complainant's doubts be set at rest by the decree of this Honorable Court, and that the complainant be informed by said decree whether the said deed of trust was revocable or irrevocable in character, and as to the effect thereon (if any) of the said last will and testament and codicil thereto of the said Joseph Bamford, deceased,

dated March 8th and June, 1926, respectively, and whether the said trust as created by said trust deed is or is not in full force and effect, the complainant respectfully submitting that said trust deed was irrevocable in character, is still in force and unaffected by said last will and testament and codicil of the said Joseph Bamford. In case, however, this Honorable Court should determine that the said trust is at an end, or in any event, that the complainant may be allowed proper compensation for its services to date, including costs and counsel fees.

3. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

Humphreys & Sumner,
Solicitors and of counsel with the complainant.

SCHEDULE I.

Know all men by these presents, that I, Joseph Bamford, of the City of Paterson, in the County of Passaic and State of New Jersey, in consideration of the sum of One Dollar, lawful money of the United States, to me paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto The Hamilton Trust Company of Paterson, New Jersey, a corporation of New Jersey, and Walter Bamford, of the said City of Paterson, all and singular my investments, bonds, stocks and securities of every nature and character, an inventory or list of which is hereto annexed and hereby made a part hereof, and marked "Schedule," and

any other securities that I may acquire during my lifetime.

To have and to hold all and singular the above granted and assigned premises, and every part thereof, unto the said The Hamilton Trust Company of Paterson, New Jersey, and Walter Bamford, their successors, executors and administrators forever, upon the trusts nevertheless and to and for the uses, interests and purposes hereinafter limited, described and declared; that is to say, to invest, re-invest and keep invested the same, and to receive the issues, interest, income and dividends from time to time arising therefrom, and to pay the income thereof quarterly to me, the said Joseph Bamford, during the term of my natural life, and after my death to transfer the said securities and investments to my trustees named in my last will and testament bearing even date herewith, a true copy of which is hereunto annexed and hereby made a part hereof, to be administered by my said trustees named in said will in accordance and in conformity with the provisions thereof.

And I do direct that neither of my said trustees shall be required to give bond for the faithful performance of their trusts, or otherwise, and I do hereby give to them, and the survivor of them, full power and discretion as to the investments and reinvestments of my said estate, which shall not be limited to those classes of investment in which, by the statutes of New Jersey in that behalf provided, an executor, guardian or trustee may invest trust moneys, but may include other investments in any of the stocks and bonds (industrial or otherwise) of which my said trust estate is at this time composed, or may hereafter be composed, or other sim-

ilar stocks or bonds, and my said trustees shall not be liable for losses occurring on investments of any kind made in good faith by them.

In Witness Whereof I have hereunto set my hand and seal this 7th day of February, Nineteen Hundred and Twenty-five.

Signed, Sealed and Delivered in the presence of

Joseph Bamford.

Sophie Charney, (L. S.)
199 Godwin St.,
Paterson, N. J.

Walter R. Newton, (L. S.)
534 Broadway,
Paterson, N. J.

SCHEDULE WITHIN REFERRED TO

Inventory of Securities this day assigned by Joseph Bamford to The Hamilton Trust Company of Paterson, New Jersey, and Walter Bamford, upon the trusts by the foregoing instrument created.

BONDS—A. E. LIttle Company, 1st. Mtg. 7% viz:			
Bond No.	M 1004 par value	$1,000.	
	M 1131	1,000.	
	M 1132	1,000.	
	M 1133	1,000.	
	M 1178	1,000.	
	M 1179	1,000.	$6,000.00
	M 1130	1,000.00	1,000.00
	Coupons due April 1, 1925 attached to above bonds.		

STOCKS—Bamford Brothers Silk Mfg. Co.

Ctf. No.	9	Joseph Bamford, Jr.	100	shares
	16	" "	1898	"
	18	Joseph Bamford	1000	"
	19	" "	1000	"
	20	" "	400	"
	21	" "	11	"

Shoe Machinery Corp. Common

Ctf. No.	A 12624	Joseph Bamford, Jr.	100	shares
	A 18650	" "	100	"
	A 18700	" "	100	"
	A 19504	" "	100	"
	A 19505	" "	100	"
	A 19506	" "	100	"
	A 19507	" "	100	"
	A 19508	" "	100	"
	A 19509	" "	100	"
	A 19510	" "	100	"
	A 28203	Joseph Bamford	100	"
	A 28204	" "	100	"
	161354	" "	56	"
	93955	Joseph Bamford, Jr.	22	"
	72925	" "	20	"
	161098	Joseph Bamford	1	"

United States Smelting, Refining & Mining Co.

Ctf. No.	P 1002	Joseph Bamford	100	shs.	Pfd.
	P 1001	" "	100	"	"
	P010943	" "	50	"	"

Standard Oil Co. of New York

Ctf. No.	A 20481	Joseph Bamford	100	shares
	A 20482	" "	100	"
	A 20483	" "	100	"
	A 20484	" "	100	"
	A 20485	" "	100	"
	A 20486	" "	100	"

STOCKS—F. W. Woolworth Co.

Ctf. No. W 6208 Joseph Bamford 100 shs. Com.
W 6209 " " 100 " "
W 03416 " " 60 " "

Cities Service Corporation

Ctf. No. NY062456 Joseph Bamford 85 shs. Com.

United Fruit Company

Ctf. No. G 4841 Joseph Bamford 100 shares
G 4842 " " 100 "

The Great Northern Railway Co.

Ctf. No. 144814 Joseph Bamford 100 shares

Bethlehem Steel Corporation

Ctf. No. C 16626 Joseph Bamford 100 shs. Com.
C 16627 " " 100 " "

Delaware, Lackawanna & Western Railroad Co.

Ctf. No. 141663 Joseph Bamford 100 shares
141664 " " 100 "
141662 " " 100 "
141661 " " 100 "
141660 " " 100 "

Bethlehem Steel Corporation

Ctf. No. TB 1336 Joseph Bamford, 100 shs. Com
Class B.

Southern Pacific Company

Ctf. No. H 138609 Joseph Bamford 100 shares
H 138610 " " 100 "

New Jersey Worsted Mills

Ctf. No. T 787 Joseph Bamford 50 shs. Pfd.

Tide Water Oil Company

Ctf. No. F 17009 Joseph Bamford 83 shares

Todd Shipyards Corporation

Ctf. No. 015379 Joseph Bamford 50 shares

The Travelers Insurance Co.

Ctf. No. 24772 Joseph Bamford 8 shares

The Automobile Insurance Co.

Ctf. No. 2316 Joseph Bamford 5 shares

Aetna Life Ins. Co.

Ctf. No. 15648 Joseph Bamford 5 shares

Hartford Fire Ins. Co.

Ctf. No. 4835 Joseph Bamford 10 shares

United Gold Mines Co.

Ctf. No. 2776 Joseph Bamford, Jr. 1000 shares
3112 " " 3500 "
3209 " " 1000 "
3546 " " 500 "

Bamford Brothers, Inc.

Ctf. No. 14 for 1008 shares Bamford Brothers, Inc. in name of Joseph Bamford.

and all other securities that may hereafter be acquired by the said Joseph Bamford.

Dated: February 7th, 1925.

Joseph Bamford.

Witness:
Sophie Charney
Walter B. Newton.

In the Name of God, Amen.

I, Joseph Bamford, being of sound and disposing mind and memory, hereby revoking and cancelling all other wills which I have heretofore made, do make and publish this my last will and testament as follows:—

FIRST. I direct all my just debts and funeral expenses to be paid as soon as may be reasonable after my decease.

SECOND: I give, devise and bequeath my residential property in Paterson, New Jersey, known as 19 Arlington Street, together with the furniture

therein, and all other real estate wheresoever situate, which shall belong to, or be owned by, me at the time of my death, and all my personal property pertaining to said real estate, and used in connection therewith, and all my household furniture, books, pictures, silver, jewelry, automobiles, carriages, and other personal belongings, to my beloved wife, Louise Bamford, her heirs, executors, administrators and assigns forever.

THIRD: I give and bequeath unto my daughter, Victoria Irving, the sum of One Thousand Dollars ($1000.).

FOURTH: The above devise of real estate and legacy of money are made free and clear of all governmental, state and local taxes and charges, said taxes and charges, whenever lawfully made, to be paid by my executors or trustees out of the residue of my personal estate.

FIFTH: I give and bequeath all the rest, residue and remainder of my personal estate, which shall belong to, or be owned by, me, or which shall be held in trust for me, at the time of my death, of whatever the same may consist, and wheresoever situate, including all my investments, cash in hand or on deposit, bonds, stocks and securities of every nature and character, to my trustees hereinafter named, upon trust, to invest, re-invest and keep invested the same, the income thereof to be paid by them quarterly to my said wife, Louise Bamford, during the term of her natural life, and after her death the income thereof to be paid by them quarterly to my said daughter, Victoria Irving, if then living, during the term of her natural life, and after the death of my said daughter, Victoria Irving, the income there-

of to be applied by my said trustees in such amounts as they may deem necessary and proper to the support, maintenance and education of the child or children (if any) of the said Victoria Irving as shall still remain under the age of twenty-one years, and to pay the corpus of my said residuary personal estate to the child, or in equal shares, to the children of the said Victoria Irving as they respectively attain the age of twenty-one years, and in case my said daughter, Victoria Irving, should die without leaving any child or children her surviving, then that is to say, upon the death of the said Victoria Irving, to pay the corpus of my said residuary personal estate to those at that time answering the description of my next of kin under the statute of distributions then in force in the State of New Jersey. In case my said daughter, Victoria Irving, shall predecease my said wife, Louise Bamford, leaving a child or children her surviving, and also surviving my said wife, Louise Bamford, then upon the death of my said wife, Louise Bamford, the corpus of my said residuary personal estate shall be paid to such child, or in equal shares to such children of the said Victoria Irving surviving my said wife as each arrives at the age of twenty-one years, and until so arriving at the age of twenty-one years, the income of my said residuary personal estate shall be applied by my said trustees after the death of my said wife to the support, maintenance and education of the said child or children in manner aforesaid.

In case my said daughter, Victoria Irving, shall predecease my said wife, Louise Bamford, leaving no child or children her surviving, or no child or children surviving my said wife, then upon the death

of my said wife, my said trustees shall pay the corpus of my said residuary personal estate to those at that time answering the description of my next of kin under the statute of distributions then in force in the State of New Jersey.

SIXTH: All the above bequests to my daughter, Victoria Irving, and all rights and interests bestowed on her or in her favor by the trusts created by this will, to be held by her in her own right absolutely, free of any control whatsoever in regard thereto on the part of her husband.

SEVENTH: I hereby nominate and appoint The Hamilton Trust Company of Paterson, New Jersey, and my brother, Walter Bamford, of the City of Paterson, New Jersey, executor of this my last will and testament and trustees thereunder, and I do direct that neither of them shall be required to give bond for the faithful performance of their trusts or otherwise.

EIGHTH: I do hereby give to my said executors and trustees full power and discretion as to the investments and reinvestments of my said estate, which shall not be limited to those classes of investment in which, by the statutes of New Jersey in that behalf provided, an executor, guardian or trustee may invest trust moneys, but may include other investments in any of the stocks and bonds (industrial or otherwise) of which my said residuary personal estate may be composed at the time of my death, or other similar stocks or bonds, and my said executors and trustees shall not be liable for losses occurring on investments of any kind made in good faith by them.

In Witness Whereof I have hereunto set my hand and seal the seventh day of February, in the year of our Lord, Nineteen Hundred and Twenty-five.

Joseph Bamford (L. S.)

The foregoing instrument, consisting of three typewritten sheets, including this sheet, each signed by the testator, Joseph Bamford, was signed, sealed, published and declared by the said Joseph Bamford as and for his last will and testament, in the presence of us, who were both present at the same time, and who, at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

Sophie Charney, 199 Godwin Street, Paterson, N. J.
Walter R. Newton, 534 Broadway, Paterson, N. J.

The above will and trust deed were signed Feb. 11, 1925, although dated Feb. 7th, 1925.

SCHEDULE II.

I, Joseph Bamford, of the City of Paterson, County of Passaic, State of New Jersey, being of sound and disposing mind, memory and understanding, do make, publish and declare this as and for my last will and testament.

1. I order and direct all my just debts, funeral and testamentary expenses be fully paid and satisfied as soon as conveniently can be after my decease.

2. I give and bequeath to my daughter Victoria Irving the sum of one thousand Dollars.

3. I give, devise and bequeath unto my beloved wife Louise Bamford, all the rest, residue and remainder of my estate, real and personal, of whatso-

ever kind or nature, and wheresoever situate, to be hers absolutely and forever.

4. I hereby revoke and make null and void any and all former wills by me made, including the will made by me bearing date Feb. 7, 1925. (Feb. 7, '25.)

In witness whereof I have hereunto set my hand and seal this eighth day of March nineteen hundred and twenty-six.

Joseph Bamford (L. S.)

Signed, sealed, published and declared by the said Joseph Bamford, the testator, to be his last will and testament, in the presence of us who were both present at the same time, and we, in his presence, and in the presence of each other, at his request, have subscribed our names hereto as witnesses.

Wm. H. Irving,
106 Woodridge Place,
Leonia, N. J.
Arthur Van Buskirk,
Hackensack, N. J.

I, Joseph Bamford, of the city of Paterson, in the county of Passaic and State of New Jersey, being of sound mind, memory and understanding do hereby make, publish and declare this as and for a codicil to my last will and testament, which last will bears date March 8, 1926.

Whereas in said will I did not appoint an executor, I do now constitute and appoint my said wife, Louise Bamford the sole executor thereof, without bond.

In all other respects I ratify and confirm said will.

In Witness Whereof I have hereunto set my hand and seal this day of June, 1926.

Joseph Bamford (L. S.)

Signed, sealed, published and declared by the said Joseph Bamford, the testator, as and for a codicil to his last will and testament of March 8, 1926, in the presence of us, who were both present at the same time, and we, in his presence and in the presence of each other, at his request, have subscribed our names hereto as witnesses.

May F. Proskey
366 E. 31st Street,
Paterson, N. J.
Thomas L. Irving, Jr.
206 Van Winkle Ave.,
Hawthorne, N. J.

SCHEDULE III.

Isadore V. Klenert, Counsellor at Law,
121 Ellison Street,
Paterson, N. J.

September 22nd, 1926.

The Hamilton Trust Company of Paterson, N. J.
Paterson, N. J.

Gentlemen:

Whereas the will and trust deed annexed thereto and made part thereof, made by my late husband, Joseph Bamford, and dated February 7th, 1925, was, in expressed terms, revoked by him by his last will and testament dated March 8th 1926, and duly admitted to probate by the Orphans' Court of Passaic County on September 17th, 1926, demand is hereby

made that you immediately transfer and deliver to me all the securities now held by you under and by virtue of said will and trust deed belonging to my said husband's estate, with an account of your dealings with said trust estate to date, and to that end, if you appoint a date in the near future when I can call with my attorney at your bank to receive the same, the matter can thus be brought to a conclusion.

Yours very truly,
(Signed) Lillian L. Bamford.

SCHEDULE IV.

Oct. 4, 1926.

Mrs. Lillian L. Bamford,
c/o Isadore V. Klenert,
Counsellor at Law,
121 Ellison Street,
Paterson, N. J.

Dear Madam:

We have referred your letter addressed to us dated September 22, 1926, but not received by us until September 30th ulto., to our counsel, Mr. John B. Humphreys of this city, and he has advised us that in his opinion the trust deed referred to by you in your said letter was and is irrevocable in character. On that account we must at present decline to accede to your request.

Our counsel will, however, at once file a bill in the Court of Chancery of New Jersey for advice from that court as to whether the trust deed referred to,

was in fact revocable or irrevocable in character, and as to the effect thereon, if any, of said will and codicil of the said Joseph Bamford, deceased, dated March 8th and June—, 1926, respectively.

We may say further that in the meantime we are willing at any time to furnish to you, as present beneficiary under the trust deed, an account of our dealings with said trust estate as trustee under said trust deed, and to pay you the income falling due from time to time thereunder without prejudice to either you or to us in regard to the final decision by the Court of Chancery or by the Court of Errors and Appeals should the case go to that forum in the contemplated proceedings by bill of complaint which will be filed by us without any delay, in all probability this week.

Yours very truly,
(Signed) Henry H. Parmelee,
President.

Answer of Louise Bamford

(Filed November 1, 1926.)

IN CHANCERY OF NEW JERSEY

Between Hamilton Trust Co., of Paterson, New Jersey, Complainant, and Louise Bamford, as Executrix, and in her individual capacity, et als., Defendants.	On Bill, etc.

ANSWER OF LOUISE BAMFORD

The answer of the defendant, Louise Bamford, as Executrix of the last will and testament of Joseph Bamford, deceased, and Lillian Louise Bamford, also known as Louise Bamford, individually.

This defendant, Louise Bamford, as Executrix of of the last will and testament of Joseph Bamford, deceased, and Lillian Louise Bamford, also known as Louise Bamford, individually answering the Bill of Complaint, says that:—

(1) Defendant admits paragraph one.

(2) Defendants admits paragraph two.

(3) Defendant admits that the said securities referred to in said inventory were handed over and delivered to the complainants as trustee, pursuant to said trust deed, but this defendant has no knowledge or information sufficient to form a belief as to whether the complainant has ever since held the

same in its custody, and has received the issues, incomes and dividends from time to time arising therefrom, and that during the lifetime of the said Joseph Bamford, has paid to him quarterly such income, or as much thereof as he from time to time required and called for.

(4) Defendant admits that Walter Bamford died on June 13th, 1926. but whether he left a last will and testament by which he appointed complainant executor thereof, defendant has no knowledge or information sufficient to form a belief.

(5) Defendant admits paragraph five.

(6) The defendant, Louise Bamford, wife of Joseph Bamford. as executrix of the last will and testament of her deceased husband, and in her individual capacity, says that the execution by her deceased husband, Joseph Bamford, in his lifetime of his said last will and testament bearing date March 8th. 1926. and the codicil thereto bearing date June, 1926, which said last will and testament and the codicil thereto, as aforesaid, was admitted to Probate by the Orphans' Court of Passaic County, by an order of said Court on the 17th day of September, 1926. In and by said order, it was adjudged by the said Court that the probate of the will and testament heretofore probated as the last will and testament of the said Joseph Bamford, deceased, on July 19th, 1926, which is the will and testament and document annexed to said trust deed and made a part thereof, as referred to by the complainant in said Bill of Complaint, expressly revoked the trust deed, and the will and testament which was part thereof, mentioned in the Bill of Complaint, thereby entitling this defendant, under the last will and

testament of her deceased husband, as heretofore mentioned, to the delivery of all the securities belonging to said estate, now in the hands of complainant. Defendant denies the fact and the law to be that trust deed was irrevocable in character, and created an irrevocable trust, of which complainant is the trustee, but on the contrary, defendant says that the trust deed was revoked in character, and was a revocable trust deed, and that the said trust deed became and was revoked upon the execution of the last will and testament of the said Joseph Bamford, deceased, dated March 8th, 1926, and the codicil, dated June, 1926; but defendant admits that the document or will annexed to said trust deed, and referred to therein by the said Joseph Bamford as his last will and testament, has, by the execution by the said Joseph Bamford, of a later will, lost its efficacy as the last will and testament of the testator, but defendant denies that said document, by reason of its annexation to and the reference to it in said trust deed, and by the fact that it was made a part of said trust deed, still serves as a document setting forth the trusts subject to which said trust deed was executed and delivered. Defendant denies the fact and the law to be, that the use of the term "last will and testament" in said trust deed, was merely to identify the paper annexed to said trust deed, but defendant says that the trust deed was part of, and depended absolutely upon, the said last will and testament annexed thereto, and further says that all of the securities mentioned in said inventory or which have since come to the hands of the complainant, are subject to the provisions of the said testator's last will and testament, dated March 8th,

1926, and of the codicil thereto, dated June, 1926, and were not conveyed in his lifetime by the said Joseph Bamford, by said trust deed to said complainand, and the said Walter Bamford, and are not, by reason of the death of said Walter Bamford, of whose estate complainant is also executor, vested exclusively in complainant as trustee.

(7) Defendant admits paragraph seven.

(8) This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph eight, except that the complainant should not be in doubt as to its duties, rights, and obligations under the said trust deed, and the last will and testament annexed thereto, but that the said trust deed was revoked by the last will and testament of the said Joseph Bamford, deceased, dated March 8th, 1926, and the codicil thereto, bearing date June, 1926, which said will and codicil was probated by the Passaic County Orphans' Court, on the 17th day of September, 1926, as aforesaid, a copy of which order of probate is hereto annexed and made part hereof, marked Schedule A.

(9) This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph nine, except that this defendant is the wife of Joseph Bamford, deceased, and executrix.

(10) This defendant again says that the trust deed was revoked by the last will and testament of Joseph Bamford, deceased, dated March 8th, 1926, and the codicil thereto, bearing date June, 1926, which said last will and testament was admitted to Probate by the Passaic County Orphans' Court, on the 17th day of September, 1926, and that letters tes-

tamentary were issued to her as executrix on the 22nd day of September, 1926, and that the said trust deed, with the will thereto annexed, is not in full force and effect and that the subject matter thereof passed under the last will and testament of Joseph Bamford, deceased, as aforesaid, to the defendant as executrix, and to her individually.

(11) Defendant admits paragraph eleven.

(Signed) Isadore Klenert.
Solicitor of defendants.

(SCHEDULE A.)

PASSAIC COUNTY ORPHANS' COURT

Louise Bamford, Proponent, vs. The Hamilton Trust Company of Paterson, New Jersey, Executor of a document purporting to be the last will and testament of Joseph Bamford, deceased, and duly probated as such last will on July 19, 1926.	In re probate of will of Joseph Bamford, deceased.

DECREE

This matter being opened to the Court by Isadore Klenert, Esquire, of counsel with proponent, and the Court having taken testimony and heard the allegations of the parties herein, and being satisfied that the instruments in writing offered by proponent for probate bearing date respectively March 8, 1926 and June, 1926, were duly executed by the said Joseph Bamford, as and for his last will and testament and a codicil thereto, and that the will heretofore probated in this cause was not the last will and testament of the said Joseph Bamoford, deceased: It is thereupon, on this Seventeenth day of September, Nineteen Hundred and Twenty-Six, on motion of Isadore Klenert, of counsel with proponent, and counsel for the said Hamilton Trust Company offering no objection thereto, ordered, adjudged and decreed

that the said instruments offered for probate by the said proponent, be, and the same hereby are, established as the last will and testament and a codicil thereto of the said Joseph Bamford, deceased, and that the same be, and hereby are, admitted to probate, and it is further ordered that letters testamentary be issued upon the aforesaid will and codicil to Louise Bamford, the executrix therein named.

And it is further ordered that the probate of the said document heretofore probated as the last will and testament of the said Joseph Bamford, deceased on July 19th, 1926, be, and the same is hereby revoked, and that a counsel fee of one hundred dollars be allowed to Humphreys & Sumner, counsel for the Hamilton Trust Company, executor of said first will, together with the sum of fifteen dollars, for disbursements incurred in obtaining such probate, and that said counsel fee, together with the costs of this matter, to be taxed, be paid by the said Louise Bamford, executrix as aforesaid, from the estate of the said Joseph Bamford, deceased, in her hands.

(Signed) Jos. A. Delaney,
Judge.

30 Filed Nov. 1, 1926.

Answer of Victoria Irving

IN CHANCERY OF NEW JERSEY

Between Hamilton Trust Co., of Paterson, New Jersey, Complainant, and Louise Bamford, as Executrix, and in her individual capacity, et als., Defendants.	On Bill, etc.,

ANSWER OF VICTORIA IRVING

The answer of the defendant, Victoria Irving.

This defendant, Victoria Irving, answering the Bill of Complaint, says that:

(1) Defendant admits paragraph one.

(2) Defendant admits paragraph two.

(3) Defendant admits that the said securities referred to in said inventory were handed over and delivered to the complainant as trustee, pursuant to said trust deed, but this defendant has no knowledge or information sufficient to form a belief as to whether the complainant has ever since held the same, or re-investments representing some parts of th same, in its custody, and has received the issues, incomes and dividends from time to time arising therefrom, and that during the lifetime of the said Joseph Bamford, has paid to him quarterly such income, or as much thereof as he from time to time required and called for.

(4) Defendant admits that Walter Bamford died

on June 13th, 1926, but whether he left a last will and testament by which he appointed complainant executor thereof, defendant has no knowledge or information sufficient to form a belief.

(5) Defendant admits paragraph five.

(6) This defendant, Victoria Irving, says that the execution by Joseph Bamford in his lifetime of his said last will and testament bearing date March 8th, 1926, and the codicil thereto bearing date June, 1926, which said last will and testament and the codicil thereto, as aforesaid, was admitted to Probate by the Orphans' Court of Passaic County, by an order of said Court, on the 11th day of September, 1926. In and by said order, it was adjudged by the said Court that the probate of the will and testament heretofore probated as the last will and testament of the said Joseph Bamford, deceased, on July 19th, 1926, which is the last will and testament and document annexed to said trust deed, and made a part thereof, as referred to by the complainant in said Bill of Complaint expressly revoked the trust deed, and the will and testament which was part thereof, mentioned in the Bill of Complant, thereby entitling the said Louise Bamford, under the last will and testament of her deceased husband, to the delivery of all the securities belonging to his said estate, now in the hands of complainant; defendant denies the fact and the law to be that the trust deed was irrevocable in character, and created an irrevocable trust, of which complainant is the trustee, but on the contrary, defendant says that the trust deed was revoked in character, and was a revocable trust deed, and that the said trust deed became and was revoked upon the execution of the last will and tes-

tament of the said Joseph Bamford, deceased, dated March 8th, 1926, and the codicil, dated June, 1926; but defendant admits that the document or will annexed to said trust deed, and referred to therein by said Joseph Bamford as his last will and testament, has, by the execution by the said Joseph Bamford, of a later will, lost its efficacy as the last will and testament of the testator, but defendant denies that said document, by reason of its annexation to and the reference to it in said trust deed, and by the fact that it was made a part of said trust deed, still serves as a document setting forth the trusts subject to which said trust deed was executed and delivered. Defendant denies the fact and the law to be, that the use of the term "last will and testament" in said trust deed, was merely to identify the paper annexed to said trust deed, but defendant says that the trust deed was part of, and depended absolutely upon the said last will and testament annexed thereto, and further says that all of the securities mentioned in said inventory, or which have since come to the hands of the complainant, are subject to the provisions of the said testator's last will and testament, dated March 8th, 1926, and of the codicil thereto, and were not conveyed in his lifetime by the said Joseph Bamford by said trust deed to said complainant and the said Walter Bamford, and are not, by reason of the death of said Walter Bamford, of whose estate complainant is also executor, vested exclusively in complainant as trustee.

(7) Defendant admits paragraph seven.

(8) This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph eight, except that the complain-

ant should not be in doubt as to its duties, rights, and obligations under the said trust deed, and the last will and testament annexed thereto, but that the said trust deed was revoked by the last will and testament of the said Joseph Bamford, deceased, dated March 8th, 1926, and the codicil thereto, bearing date June, 1926, which said will and codicil was probated by the Passaic County Orphans' Court, on the 17th day of September, 1926, as aforesaid.

(9) This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph nine, except that this defendant is one of the next of kin of the said Joseph Bamford, deceased.

(10) This defendant joins with the complainant in the request made in paragraph ten, but again says that the trust deed was revoked by the last will and testament of Joseph Bamford, deceased, dated March 8th, 1926, and the codicil thereto, bearing date June, 1926, which said last will and testament was admitted to probate by the Passaic County Orphans' Court, on the 17th day of September, 1926, and that letters testamentary were issued to Louise Bamford, as Executrix, on the 22nd day of September, 1926, and that the said trust deed, with the will thereto annexed, is not in full force and effect, and that the subject matter thereof, passed under the last will and testament of Joseph Bamford, deceased, as aforesaid, to Louise Bamford, as Executrix, and to her individually.

(11) Defendant admits paragraph eleven.

Isadore Klenert,
Solicitor for Defendants.

Answer of Defendants

(Filed October 26, 1926.)

IN CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, et als., Defendants.	On Bill, etc.

ANSWER OF DEFENDANTS GRACE H. JOHNSON, WALTER E. BAMFORD AND JOSEPH C. BAMFORD

Defendants, Grace H. Johnson, Walter E. Bamford and Joseph C. Bamford, of the City of Paterson, County of Passaic and State of New Jersey, answering the bill of complaint herein, say:

1. They admit the statements contained in paragraph 1.

2. They admit the statements contained in paragraph 2.

3. They admit the statements contained in paragraph 3.

4. They admit the statements contained in paragraph 4.

5. They admit the statements contained in paragraph 5.

6. They admit the statements contained in paragraph 6.

7. They have no knowledge of the statements contained in paragraph 7 but have no reason to doubt the accuracy of said statements.

8. They admit the statements contained in paragraph 8.

9. They admit the statements contained in paragraph 9.

Further answering the bill these defendants say that the effect of the instrument of February 11th, 1925, executed by Joseph Bamford, referred to in the bill of complaint, was to create an irrevocable trust of the securities and property actually handed over by the said Joseph Bamford to the complainant and Walter Bamford, his brother, said securities to be dealt with in accordance with the terms of said agreement and ultimate distribution of said securities were to be as stated in the paper writing annexed to and made a part of said agreement and that it was the intent and purpose of the said Joseph Bamford to create such irrevocable trust and that said purpose appears from the terms of said instrument and will also appear from the circumstances surrounding the parties at the time said instrument was executed and from the statements of the said Joseph Bamford made at the time of the execution of said paper writing and prior and subsequent thereto and that the said Joseph Bamford had no power to revoke said trust and did not in effect, revoke same.

These defendants pray that the rights and interests of these defendants in said trust res may be fixed and determined.

Merritt Lane,
Solr. for defendants, Grace H. Johnson, Walter E. Bamford and Joseph C. Bamford.

Replication 13, 1926.

(Filed November ~~16, 1928~~)

IN CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Louise Bamford as executrix and in her individual capacity and others, Defendants.	On Bill, etc.

REPLICATION

The complainant joins issue on the answers of the defendants.

Humphreys & Sumner,
Solicitors of Complainant.

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Counterclaim

(Filed November 16, 1926.)

In CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Respondent Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, et als., Defendants.	On Bill, etc.

COUNTER-CLAIM

The counter-claim of the defendants, Grace M. Johnson, Walter E. Bamford and Joseph C. Bamford, against the complainant, Hamilton Trust Company of Paterson, New Jersey, and the defendants, Louise Bamford, as executrix of the last will and testament of Joseph Bamford, and in her individual capacity as Louise Bamford, and Victoria Irving.

1. They are children of Walter Bamford, who died on the 13th day of June, 1926; said Walter Bamford was the brother of Joseph Bamford referred to in the bill of complaint, who died on July 8th, 1926 and in case of the deaths of Louise Bamford, the widow of Joseph Bamford, and Victoria Irving, his daughter, the latter without leaving issue surviving her and the said Louise Bamford, constitute the only present next of kin of Joseph

Bamford, deceased, and they pray that they may be regarded for the purposes of this suit, as representing the next of kin of the said Joseph Bamford, deceased.

2. They repeat the allegations of paragraphs 1, 2, 3, 4, 5, 6 and 7 of the bill of complaint.

3. They allege that the effect of the instrument of February 11th, 1926 executed by Joseph Bamford referred to in the bill of complaint was to create an irrevocable trust of the securities and property actually handed by the said Joseph Bamford to the complainant and Joseph Bamford, his brother, said securities to be dealt in accordance with the terms of said agreement and that the ultimate distribution of said securities were to be as stated in the paper writing annexed to and made a part of said agreement and that it was the intent and purpose of the said Joseph Bamford to create such an irrevocable trust and that said purpose appears from the terms of said instrument and will also appear from the circumstances surrounding the parties at the time said instrument was executed and from the statements of the said Joseph Bamford made at the time of the execution of said paper writing and prior and subsequent thereto and that the said Joseph Bamford had no power to revoke said trust and did not in fact, revoke the same.

4. These defendants further allege that the will of Joseph Bamford had no effect whatever upon the trust herein set forth and that these defendants have an interest in said trust properties subject to being diverted by the death of Victoria Irving, leaving issue surviving her.

These defendants therefore pray:

Counterclaim

1. That the complainant and Louise Bamford, as executrix of the last will and testament of Joseph Bamford and in her own individual capacity as Louise Bamford and Victoria Irving may answer this counter-claim.

2. That it may be adjudged and decreed that the will of Joseph Bamford does not in any wise affect the trust agreemnt set forth in the bill of complaint and that the Hamilton Trust Company of Paterson, New Jersey, continues to hold the trust securities charged with the trust evidenced by the said agreement and the paper writing thereto annexed and that said Hamilton Trust Company shall continue to hold said securities as trustee as aforesaid and administer the same as such trustee.

3. That the next of kin of Joseph Bamford have an interest in said trust properties subject to being divested only by the death of Victoria Irving, leaving issue surviving her and the said Louise Bamford.

That counter-claimants may have such other and further relief as may be proper.

Merritt Lane,
Sollr. for and of counsel with
counter-claimants.

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Answer

(Filed November 17, 1926.)

IN CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her individual capacity, et als., Defendants.	On Bill, etc.

ANSWER

The answer of the complainant, The Hamilton Trust Company of Paterson, New Jersey, to the counter-claim of Grace H. Johnson, Walter E. Bamford and Joseph C. Bamford.

This complainant, answering the said counter-claim, says that:

All the allegations in said counter-claim are admitted.

Humphreys & Sumner,
Solicitors and of counsel with the complainant.

Answer to Counterclaim

(Filed December 2, 1926.)

IN CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, Defendants.	On Bill, etc.

ANSWER TO COUNTER-CLAIM

The answer of the defendant Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity to the counter-claim of the defendants, Grace M. Johnson, Walter E. Bamford and Joseph C. Bamford.

This defendant, Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, answering said counter claim says that:—

(1) This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph "one" except that Walter Bamford died June 13, 1926, and was a brother of Joseph Bamford who died July 8, 1926.

(2) Defendant admits paragraph one of the Bill of Complaint; defendant admits paragraph two of the Bill of Complaint; as to paragraph three of the Bill of Complaint defendant admits that the said securities referred to in said inventory were handed over and delivered to the complainant as trustee, pursuant to said trust deed, but this defendant has no knowledge or information sufficient to form a belief as to whether the complainant has ever since held the same in its custody, and has received the issues, incomes and dividends from time to time arising therefrom, and that during the lifetime of the said Joseph Bamford, has paid to him quarterly such income, or as much thereof as from time to time required and called for; as to paragraph four of the Bill of Complaint defendant admits that Walter Bamford died on June 13th, 1926, but whether he left a last will and testament by which he appointed complainant executor thereof, defendant has no knowledge or information sufficient to form a belief; as to paragraph five of the Bill of complaint defendant admits said paragraph five; as to paragraph six of the Bill of Complaint the defendant says that the execution by her deceased husband, Joseph Bamford, in his lifetime of his said last will and testament bearing date March 8th, 1926, and the codicil thereto bearing date June, 1926, which said last will and testament and the codicil thereto, as aforesaid, was admitted to probate by the Orphans' Court of Passaic County, by an order of said Court on the 17th day of September, 1926. In and by said order, it was adjudged by the said Court that the probate of the will and testament heretofore probated as the last will and testament of the

said Joseph Bamford, deceased, on July 19th, 1926, which is the will and testament and document annexed to said trust deed and made a part thereof, as referred to by the complainant in said Bill of Complaint, expressly revoked the trust deed, and the will and testament which was part thereof, mentioned in the Bill of Complaint, thereby entitling this defendant, under the last will and testament of her deceased husband, as heretofore mentioned, to the delivery of all the securities belonging to said estate, now in the hands of complainant and defendant denies the fact and the law to be that trust deed was irrevocable in character, and created an irrevocable trust, of which complainant is the trustee, but on the contrary, defendant says that the trust deed was revoked in character, and was a revocable trust deed, and that the said trust deed became and was revoked upon the execution of the last will and testament of the said Joseph Bamford, deceased, dated March 8th, 1926, and the codicil, dated June, 1926; but defendant admits that the document or will annexed to said trust deed, and referred to therein by the said Joseph Bamford as his last will and testament, has by the execution by the said Joseph Bamford, of a later will, lost its efficacy as the last will and testament of the testator, but defendant denies that said document, by reason of its annexation to and the reference to it in said trust deed, and by the fact that it was made a part of said trust deed, still serves as a document setting forth the trusts subject to which said trust deed was executed and delivered. Defendant denies the fact and the law to be, that the use of the term "last will and testament" in said trust deed, was merely to identify

the paper annexed to said trust deed, but defendant says that the trust deed was part of, and depended absolutely upon, the said last will and testament annexed thereto, and further says that all of the securities mentioned in said inventory, or which have since come to the hands of the complainant, are subject to the provisions of the said testator's last will and testament, dated March 8th, 1926, and of the codicil thereto, dated June, 1926, and were not conveyed in his lifetime by the said Joseph Bamford, by said trust deed to said complainant and the said Walter Bamford, of whose estate complainant is also executor, vested exclusively in complainant as trustee; as to paragraph seven of the Bill of Complaint defendant admits paragraph seven.

(3) Defendant denies paragraph three of the counter-claim and repeats that part of the answer to the counter-claim in which refers to paragraph three of the complaint.

(4) Defendant denies paragraph four of the counter-claim.

Isadore V. Klenert,
Solicitor for Defendant.

 Filed Dec. 2, 1926.

Answer to Counterclaim

IN CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, et als., Defendants.	On Bill, etc.

ANSWER TO COUNTER-CLAIM

The answer of the defendant, Victoria Irving to the counter-claim of the defendants, Grace M. Johnson, Walter E. Bamford and Joseph C. Bamford.

This defendant, Victoria Irving answering said counter-claim, says that:

(1) This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph "one" except that Walter Bamford died June 13, 1926, and was a brother of Joseph Bamford who died July 8, 1926.

(2) Defendant admits paragraph one of the Bill of Complaint; defendant admits paragraph two of the Bill of Complaint; as to paragraph three of the Bill of Complaint defendant admits that the said securities referred to in said inventory were handed over and delivered to the complainant as trustee, pursuant to said trust deed, but this defendant has no knowledge or information sufficient to form a be-

lief as to whether the complainant has ever since held the same in its custody, and has received the issues, incomes and dividends from time to time arising therefrom, and that during the lifetime of the said Joseph Bamford, has paid to him quarterly such income, or as much thereof as he from time to time required and called for; as to paragraph four of the Bill of Complaint defendant admits that Walter Bamford died on June 13th, 1926, but whether he left a last will and testament by which he appointed complainant executor thereof, defendant has not knowledge or information sufficient to form a belief; as to paragraph five of the Bill of Complaint defendant admits said paragraph five; as to paragraph six of the Bill of Complaint the defendant says that the execution by her deceased husband, Joseph Bamford, in his lifetime of his said last will and testament bearing date March 8th, 1926, and the codicil thereto bearing date June, 1926, which said last will and testament and the codicil thereto, as aforesaid, was admitted to probate by the Orphans' Court of Passaic County, by an Order of said Court on the 17th day of September, 1926.

In and by said order, it was adjudged by the said Court that the probate of the will and testament heretofore probated as the last will and testament of the said Joseph Bamford, deceased, on July 19th, 1926, which is the will and testament and document annexed to said trust deed and made a part thereof, as referred to by the complaint in said Bill of Complaint, expressly revoked the trust deed, and the will and testament which was part thereof, mentioned in the Bill of Complaint, thereby entitling this defendant, under the last will and testament of her

deceased husband, as heretofore mentioned, to the delivery of all the securities belonging to said estate, now in the hands of complainant and defendant denies the fact and the law to be that trust deed was irrevocable in character, and created an irrevocable trust, of which complaint is the trustee, but on the contrary, defendant says that the trust deed was revoked in character, and was a revocable trust deed, and that the said trust deed became and was revoked upon the execution of the last will and testament of the said Joseph BaBmford, deceased, dated March 8th, 1926, and the codicil, dated June, 1926, but defendant admits that the document or will annexed to said trust deed, and referred to therein by the said Joseph Bamford as his last will and testament, has by the execution by the said Joseph Bamford, of a later will, lost its efficacy as the last will and testament of the testator, but defendant denies that said document by reason of its annexation to and the reference to it in said trust deed. and by the fact that it was made a part of said trust deed, still serves as a document setting forth the trust subject to which said trust deed was executed and delivered. Defendant denies the fact and the law to be, that the use of the term "last will and testament" in said trust deed, was merely to identify the paper annexed to said trust deed, but defendant says that the trust deed was part of, and depended absolutely upon, the said last will and testament annexed thereto, and further says that all the securities mentioned in said inventory, or which have since come to the hands of the complainant, are subject to the provisions of the said testator's last will and testament, dated March 8th, 1926, and of the codicil therefrom dated

June, 1926, and were not conveyed in his lifetime by the said Joseph Bamford, by said trust deed to to said complainant, and the said Walter Bamford, and are not, by reason of the death of said Walter Bamford, of whose estate complainant is also executor, vested exclusively in complainant as trustee; as to paragraph seven of the Bill of Complaint defendant admits paragraph seven.

(3) Defendant denies paragraph three of the counter claim and repeats that part of the answer to the counter-claim in which refers to paragraph three of the complaint.

(4) Defendant denies paragraph four of the counterclaim.

Isadore V. Klenert,
Solicitor of Defendant.

Replication to Answer of the Defendants

(Filed December 3, 1926.)

IN CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Louise Bamford, as executrix, and in her individual capacity, et als., Defendants.	On Bill, etc.

REPLICATION TO ANSWER OF THE DEFENDANT LOUISE BAMFORD, ET ALS.,

The counter-claimants, Grace M. Johnson, Walter E. Bamford and Joseph C. Bamford, replying to the answer of the defendant, Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her individual capacity, to the counter-claim, and not anticipated in the counter-claim, say:

1. If by the allegations of paragraph 2 of the said answer to the counter-claim it is intended to allege that the order of the Orphans' Court made on the 17th day of September, 1926, adjudged that the last will and testament of Walter Bamford probated on the 17th day of September, 1926, and the probate thereof expressly revoked the trust deed, and the will and testament which was part thereof, as a part of said trust deed, these counter-claimants deny

the allegations and further say that the Orphans' Court had no jurisdiction to make such an order, not having jurisdiction of the subject matter nor jurisdiction over these defendants.

They join issue on the remaining statements contained in the answer to the counter-claim.

Merritt Lane,
Solr. for Defts., Grace M. Johnson, Walter E. Bamford
Joseph C. Bamford.

Stipulation
Sept.
(Filed ~~July~~ 7, 1927.)

IN CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Louise Bamford, as executrix, and in her individual capacity, et als., Defendants.	On Bill, etc.

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, by their respective solicitors, that the formal hearing of the above entitled cause, which was set down to take place on September 7, 1927, at the Court House, in the City of Paterson, before the Honorable Vivian M. Lewis, the Vice Chancellor to whom this cause has been referred by the Chancellor, be dispensed with, this stipulation as to the facts in the case to be taken as if proved at said hearing, and the case to be heard on the pleadings and the following documents, which shall be taken as if offered in evidence and proved in the case; to wit:

1. The original trust deed made by Joseph Bamford to The Hamilton Trust Company of Paterson, New Jersey, and to Walter Bamford, his brother, bearing date February 7, 1925, and the document annexed thereto described therein by the said Joseph

Bamford as "my last will and testament bearing even date herewith, a true copy of which is hereunto annexed and made a part hereof," and of the inventory annexed thereto, the inventory and document referred to as a will annexed to said trust deed bearing the same date as the trust deed, and copies of all of these instruments being annexed to the bill and made a part thereof, and the contents and execution of these documents being admitted by the answers and further proof thereof hereby dispensed with.

2. The later will of Joseph Bamford dated March 8, 1927, a copy of which is annexed to the bill of complaint and of the codicil thereto, a copy of which is also annexed to the bill of complaint, and the execution of which are admitted.

3. Decree of Passaic County Orphans' Court, a copy of which is annexed to the answer of Louise Bamford, and to be taken as offered in evidence without objection by the solicitor of the last mentioned defendant.

4. The correspondence between the defendant, Lillian Louise Bamford, otherwise known as Louise Bamford, and The Hamilton Trust Company of Paterson, New Jersey, copies of which are annexed to the bill, and the exchange of which correspondence between the parties to which the same are addressed being admitted by the pleadings, the letter from Lillian Louise Bamford being dated September 22, 1926, and the letter in reply being dated October 4, 1926.

5. Paragraph 3 of the bill of complaint is admitted without prejudice to any rights of the defendant Louise Bamford to an accounting by the

complainant in respect of the income received from said trust funds by it during the lifetime of the said Joseph Bamford, and the payments to him, the said Joseph Bamford, by the complainants of said income, or so much thereof as he from time to time required and called for.

And it is further stipulated that the Vice Chancellor shall determine the case on the pleadings and proofs thus offered.

In Witness Whereof the parties hereto, by their respective solicitors, have hereunto set their hands this 25th day of August, Nineteen Hundred and Twenty-seven.

Humphreys & Sumner,
Solicitors of Complainant.
Merritt Lane,
Solicitor of Defendants Grace H. Johnson, Walter E. Bamford and Joseph C. Bamford.
Isadore Klenert,
Solicitor of the defendants Louise Bamford and Victoria Irving.

Opinion

(Filed April 3, 1928.)

IN CHANCERY OF NEW JERSEY

Between
The Hamilton Trust Company of Paterson, New Jersey,
Complainant,
and
Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, Walter E. Bamford, Grace H. Johnson, Joseph C. Bamford and Victoria Irving,
Defendants.

OPINION

ON PLEADINGS AND BRIEFS

Mr. John B. Humphreys, for the complainant.

Mr. Isadore Klenert, for the defendant, Louise Bamford, executrix, etc.

Mr. Merritt Lane, for the defendants, Grace H. Johnson, Walter E. Bamford and Joseph C. Bamford.

Lewis, V. C.:

This is a bill for construction of a trust deed and accompanying documents, as to whether it is revocable.

Joseph Bamford, on February 7, 1925, assigned, transferred and set over unto the Hamilton Trust Company of Paterson, and Walter Bamford, by an instrument in writing, to which instrument there was annexed a schedule of the securities, upon trust, certain securities, etc., "To invest, re-invest, and keep invested the same, and to receive the issues, interest, income and dividends from time to time arising therefrom, and to pay the income thereof quarterly to me, the said Joseph Bamford, during the term of my natural life, and after my death to transfer the said securities and investments to my trustee named in my last will and testament bearing even date herewith, a true copy of which is hereunto annexed and hereby made a part hereof, to be administered by my said trustees named in said will, in accordance and in conformity with the provisions thereof."

Full power, by this instrument, was given to the trustees to invest and re-invest, without regard to the limitation of the classes of investment to which, by the statutes of New Jersey, an executor, guardian or trustee may be confined.

There was not only the absence in the instrument of any power of revocation, but likewise the absence of any control by the settlor in any manner, shape or form, after the creation of the trust.

The grant to the trustees was absolute so far as control was concerned.

The copy of the will annexed to the trust instrument disposed of the settlor's entire estate.

It gave to the wife the settlor's real estate and certain specific personal property, and to a daughter, Victoria Irving, $1,000.

It then gave all the rest of the settlor's personal estate to the Hamilton Trust Company of Paterson, and Walter Bamford, the same trustees named in the assignment in trust; upon trust to invest, re-invest, etc.: and to pay the income quarterly to the settlor's wife, Louise Bamford, during the term of her natural life; after the death of the wife, to pay the income quarterly to the daughter, Victoria Irving, if living, during the term of her life; after the death of the daughter Victoria Irving, to apply the income in such amounts as the trustees might deem necessary to the support, maintenance and education of the child or children, if any, of the said Victoria Irving as shall still remain under the age of twenty-one years; to pay the corpus of the residuary personal estate to the child, or, in equal shares, to the children of the said Victoria Irving, as they respectively attained the age of twenty-one years; in case the daughter, Victoria Irving, should die without leaving any child or children, then, upon the death of Victoria Irving "To pay the corpus of my said residuary personal estate to those at that time answering the description of my next of kin under the Statute of Distribution then in force in the State of New Jersey:" in case of the death of Victoria Irving, the daughter, before the death of the wife, Louise Bamford, leaving a child or children her surviving, also surviving the said Louise Bamford, then, upon the death of the wife, Louise Bamford, the corpus of the residuary personal estate to be paid to such child, or, in equal shares to such children of the said Victoria Irving surviving the wife as each arrives at the age of twenty-one years; and until so arriving at the age of twenty-one years, the income of the

said residuary personal estate to be applied, after the death of the wife, to the support, maintenance and education of the said child or children; if the daughter, Victoria Irving, shall predecease the wife, Louise Bamford, leaving no child or children her surviving, or no child or children surviving the said wife, then, upon the death of the said wife, Louise Bamford, the corpus of the residuary personal estate goes "to those at that time answering the description of my next of kin under the Statute of Distribution then in force in the State of New Jersey."

If the distribution of the securities delivered to The Hamilton Trust Company and Walter Bamford, as trustees under the trust instrument, is to be controlled by the copy of the will of Joseph Bamford annexed to and made a part of the trust instrument, they fall in the settlor's residuary personal estate.

Walter Bamford died June 13, 1926, and since that time The Hamilton Trust Company has been acting as sole trustee.

The settlor, Joseph Bamford, on March 8, 1926, made a last will and testament, which has since been probated, giving to the daughter, Victoria Irving, the sum of $1,000. and giving all the rest of his estate, real and personal, to his wife, Louise Bamford.

Paragraph 4 of that will reads:

> "4. I hereby revoke and make null and void any and all former wills by me made, including the will made by me bearing date February 7, 1925."

(which is the will, a copy of which is annexed to, and made a part of the trust instrument).

Walter Bamford had three children; Walter B. Bamford, Grace H. Johnson and Joseph C. Bamford; and, if the disposition of the securities delivered to the Hamilton Trust Company, under the trust agreement, is to be controlled by that instrument, taking as a part of it the copy of the will annexed to it, and by its terms expressly made a part of it, upon the death of Victoria Irving without child or children her surviving, if that death should now occur, they would take, upon the death of Louise Bamford, widow of the creator of the trust, if their personnel then remained unchanged, the securities as at this time they come within the designation of "those at that time answering the description of my next of kin under the Statute of Distribution then in force in the State of New Jersey."

Both Victoria Irving, the daughter of the settlor, and his wife, Louise Bamford, are living.

Notwithstanding the interest of the daughter, Victoria Irving, in her own right, and in the right of her unborn children, in the securities delivered in trust by the settlor to The Hamilton Trust Company, under the instrument of trust, hereto referred to, if their disposition is to be controlled by the trust instrument and the absence of any interest in her, or of her unborn children, in such securities, if their disposition is to be controlled by the latter will, she has joined with her mother, who is, in effect, the sole beneficiary under the later will, in contending that the latter will controls.

The question for determination is extremely narrow; is the copy of the will annexed to the trust instrument to be considered, not as a will, but as an instrument in writing, and part of the trust instru-

ment? For if that is the way in which the trust instrument is to be read, it is irrevocable, and the revocation of the will, as such, could not, in any respect, alter the trust instrument which had incorporated in it, not the will as such, but a copy of the will expressly made a part of the trust instrument.

> "If a trust has been once perfectly created, with an intelligent comprehension of the nature of the act, it is irrevocable, even though it be voluntary; and the subsequent acts of the settlor or the trustee cannot affect it."
>
> (England) Bill vs. Cureton 2 Myl. and K., 503; Rycroft vs. Christy, 3 Beav., 238.

And:

> "When a deed conveys lands upon such trusts as are declared in a will already made, neither the deed nor the will is revocable in the absence of a power of revocation, for the trust arises by the deed. But when lands are conveyed upon trusts to be afterwards declared by will or deed if the declaration is by will then the will may be revoked and new trusts declared; but if the power is executed by deed it is irrevocable in the absence of an express authority to revoke."
>
> "The omission of a power of revocation in a voluntary settlement has sometimes been considered as a circumstance of suspicion; while at one time its absence was regarded as conclusive against the application of the settlor to revoke. But the modern and better rule is that the absence of the power even in a voluntary settlement is only a circumstance to be taken into account, and is entitled to

more or less weight, according to the presence or absence of other circumstances in the case."

"Equity may relieve against the omission where the omission is due to fraud, or where the settlement was inadvised or improvident, or contrary to the settlor's intention; but this will be done only on the application of the settlor himself to the extent that it has not been acted upon in good faith, and so far as the parties may be placed in statu quo."

American and English Ency. of Law. 2nd ed., Vol. 28, p. 899 and 900.

The case of the Mayor and City Council of Baltimore vs. Nathaniel Williams and Joseph B. Williams, Maryland Reports, Vol. 6, page 235, is apropos to the instant case. In that case it was decided that:

"Where a deed conveys land in trust for such uses and trusts as are contained in a will already executed, and contains no power of revocation, the property passes under the deed, and the uses and trusts taking effect by virtue of the deed."

"Where a deed conveys land in trust for such uses as are declared or set out in a will already made, neither the deed nor the will is revocable, if no power of revocation is reserved in the deed."

"Where the deed refers to the will, and the will has limited the estate it is as if all the limitations had been comprised in the deed."

"But where a deed conveys lands in trust for such uses as the grantor may afterwards appoint by will or deed, and the appointment be made by will, it may be revoked and new uses declared; but if made by deed it cannot be revoked, if the deed executing the power reserves no authority to revoke."

"A deed conveying lands in trust for such uses as are declared and set out in a will already made, and reserving to the grantor a life interest in the property, but containing no power of revocation, is not a testamentary paper."

I am inclined to the view that the deed of trust is irrevocable and that the complainant must be directed to hold the securities for the uses and purposes, and for the benefit of those designated in the paper writing, which is referred to in the deed of trust as "My last will and testament, bearing even date herewith, a true copy of which is hereunto annexed and hereby made a part hereof," notwithstanding the revocation of that paper as a will by a later will, and and the subsequent probate thereof.

There have been many decisions in New Jersey on this question, amongst which are the following:

Garnsey vs. Munday, 24 N. J. Eq., 243; Hutchinson vs. Tindall, 3 N. J. Eq. 357; Isham vs. Delaware L. & W. R. R. Co., 11 N. J. Eq. 227; Gulich vs. Gulich, 39 N. J. Eq. 401; Beekman vs. Hendrickson, 21 Atl. 567; Filley vs. Fownes, 81 N. J. Eq. 498; N. J. Title Guaranty & Trust Co. vs. Parker, 84 N. J. Eq., 351 (aff.)

I shall advise a decree in accordance with these views.

Final Decree

(Filed April 16, 1928.)

IN CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, Walter E. Bamford, Grace H. Johnson, Joseph C. Bamford and Victoria Irving, Defendants.	On Bill, etc.

FINAL DECREE

This cause coming on to be heard before the Chancellor, in the presence of John B. Humphreys, of counsel with the complainant, The Hamilton Trust Company of Paterson, New Jersey, Isadore Klenert, of counsel with the defendants, Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, and Victoria Irving, and Merritt Lane, of counsel with the defendants, Grace H. Johnson, Walter E. Bamford and Joseph C. Bamford; and the parties having stipulated the facts; and the matter being argued; and the court having considered the facts stipulated and the argument of counsel, and being of the opinion as hereinafter decreed:

It is thereupon, on this 16th day of April, 1928,

Ordered, Adjudged and Decreed that the said trust deed so made, executed and delivered by the said Joseph Bamford in his lifetime to the complainant, and all the trusts and disposition of the trust estate therein prescribed, as set forth in the copy of the said will annexed thereto, copies of which said trust deed and of said copy of said annexed will being annexed to the bill of complaint filed in this cause, be, and the same are hereby established in all things and in all parts unaffected in any respect by the provisions of the later will executed by said Joseph Bamford as above set forth, and the said complainant is hereby directed accordingly, and is ordered and directed to proceed with the administration of said trust according to the provisions of said trust deed and the copy of the will annexed thereto.

And it is further ordered and decreed that there be allowed to complainant and to defendants Walter E. Bamford, Grace H. Johnson and Joseph C. Bamford their respective costs of suit to be taxed, and that there be allowed to Humphreys & Sumner, of counsel with The Hamilton Trust Company of Paterson, New Jersey, a counsel fee of $2500., and to Merritt Lane, of counsel with the defendants, Walter E. Bamford, Grace H. Johnson and Joseph C. Bamford collectively a counsel fee of $2500. and that there be allowed to the defendants Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, and Victoria Irving collectively their costs of suit to be taxed, and that there be allowed to Isadore Klenert, of counsel with the defendants, Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individ-

ual capacity, and Victoria Irving, a counsel fee of $2500.; the said counsel fees and taxed costs to be forthwith paid by the complainant out of the corpus of the estate in its hands, and to that end that the said complainant be, and it hereby is, authorized and directed to convert a sufficient number of securities forming part of said corpus into money wherewith to pay said costs and counsel fees, selecting for such sale securities which in its judgment can be most advantageously disposed of, regard being had to the welfare of the entire estate.

Respectfully advised,

V. C.

Notice of Appeal

(Filed November 9, 1928.)

IN CHANCERY OF NEW JERSEY

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant, and Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, Walter E. Bamford, Grace H. Johnson, Joseph C. Bamford and Victoria Irving, Defendants.	On Bill, etc.

NOTICE OF APPEAL

Defendants, Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, and Victoria Irving, hereby appeal, to the Court of Errors and Appeals in the last resort in all causes from so much of the Final Decree made in this Court in this cause by the Chancellor, on the advice of Vice Chancellor Lewis, as adjudges that the said trust deed so executed by the said Joseph Bamford, in his lifetime to the complainant, and all the trusts and disposition of the trust estate therein prescribed as set forth in the copy of the said will annexed thereto,

copies of which said trust deed and of said copy of said annexed will being annexed to the bill of complaint filed in this cause, be and the same hereby are established in all things and in all parts unaffected in any respect by the provisions of the later will executed by said Joseph Bamford as above set forth, and as directs the complainant accordingly and as orders complainant to proceed with the administration of said trust according to the provisions of said trust deed and the copy of the will annexed thereto.

Robert J. McDermott,
Solicitor for and of Counsel with Defendants, Louise Bamford, as executrix of the Last Will and Testament of Joseph Bamford, Deceased, and in her own individual capacity, and Victoria Irv-Irving.

I conceive there is good cause for appeal in the above stated cause.

Addison P. Rosenkrans,
Of Counsel with Defendants, Louise Bamford, as executrix of the Last Will and Testament of Joseph Bamford, Deceased, and in her own individual capacity, and Victoria Irving.

A True Copy,
Thomas Barber, Clerk.

Petition of Appeal

(Filed November 28, 1928.)

IN CHANCERY OF NEW JERSEY

Between
The Hamilton Trust Company of Paterson, New Jersey,
Complainant,
and
Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity,
Defendant-Appellant.
Walter E. Bamford, Grace H. Johnson, Joseph C. Bamford, and Victoria Irving,
Defendant-Appellant.

On Bill, etc.

PETITION OF APPEAL

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, and of Victoria Irving, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery of New Jersey, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the sixteenth day of April,

1928, wherein the said The Hamilton Trust Company of Paterson, New Jersey, was complainant, and the said Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, Walter E. Bamford, Grace H. Johnson, Joseph C. Bamford and Victoria Irving were defendants, in this respect, that the said decree adjudges that the said trust deed so executed by the said Joseph Bamford, in his lifetime, to the complainant, and all the trusts and disposition of the trust estate therein prescribed, as set forth in the copy of the said will annexed thereto, copies of which said trust deed and of said copy of said annexed will, being annexed to the bill of complaint filed in said cause, be and the same hereby are established in all things and in all parts unaffected in any respect by the provisions of the later will executed by said Joseph Bamford as above set forth, and as directs the complainant accordingly, and as orders complainant to proceed with the administration of said trust according to the provisions of said trust deed and the copy of the will annexed thereto. And your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said decree should have adjudged and declared that the said later will executed by said Joseph Bamford effectually revoked and annulled the said trust deed so executed by the said Joseph Bamford in his lifetime, to the complainant and all the trusts and disposition of the trust estate set forth in the copy of the said will annexed to said trust deed, and should have adjudged and decreed

that the said estate of the said Joseph Bamford should be administered and bestowed in accordance with the provision of his said later will.

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed and set aside and for nothing holden, and that your petitioners may have such further relief in the premises as to this Honorable Court shall seem meet.

Robert J. McDermott,
Solicitor of Appellants.
Addison P. Rosenkrans,
Of Counsel with Appellants.

Answer to Petition of Appeal

(Filed December 1, 1928.)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant-Respondent, and Louise Bamford and others, Defendants-Appellants.	On Bill, etc.

ANSWER TO PETITION OF APPEAL

The answer of the above named respondent to the petition of appeal of the above named appellants, Louise Bamford, as Executrix of the last will and testament of Joseph Bamford, Deceased, and in her own individual capacity, and Victoria Irving.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto nevertheless says and admits that a decree was, on the 16th day of April last made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to equity, and it prays that the same may be affirmed with costs to be adjudged to this respondent.

Humphreys & Sumner,
Solicitors and of counsel with respondent.

Dated November 30, 1928.

No 26
Briefs

New Jersey Court of Errors and Appeals

Between:

THE HAMILTON TRUST COMPANY OF PATERSON, NEW JERSEY,
Complainant-Respondent,

and

LOUISE E. BAMFORD, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity,
Defendant-Appellant,

and

WALTER E. BAMFORD, GRACE H. JOHNSON, JOSEPH C. BAMFORD and VICTORIA IRVING,
Defendants-Respondents.

On Appeal from Chancery.
Lewis, V. C.

Bill to determine whether trust instrument revocable and revoked.

Brief for defendants Grace H. Johnson, Walter E. Bamford and Joseph C. Bamford, respondents in support of the decree which held that the trust instrument is irrevocable and controls the disposition of the securities delivered in trust notwithstanding the revocation of the will, a copy of which is annexed to, and claimed by me to be, a part of the trust instrument, by latter will.

Statement of the Case.

(Italics mine except where otherwise noted.)

The Vice Chancellor has, in his opinion (pp. 54 to 59), so fully stated the case as that it is un-

necessary to add thereto. The assignment or trust instrument appears on p. 9; the copy of the will annexed to and made a part of it, on p. 14; the schedule of securities delivered at the time of the signing of the trust instrument, on p. 11, etc., final decree on p. 28. The Vice Chancellor has, in his opinion at the bottom of p. 58 and the top of p. 59, stated the point involved. There is nothing to add to what he there says.

Argument.

The widow, Louise Bamford, appellant, argues the matter under two heads:

1. The author of the trust intended it to be revocable.

2. The trust, except for the life estate created in favor of its author, was testamentary and, because of its testamentary quality, revocable and revoked by his subsequent will.

It is rather difficult to so sub-divide the argument, for, as it seems to me, the solution of both matters is to be found in the construction to be put upon the trust instrument, and I submit that that construction is clear from the words of the instrument itself.

After providing for the payment of the income to the settlor for life, the settlor proceeds to instruct the trustees upon his death "to transfer the said securities and investments to my trustees named in my last will and testament, *bearing even date herewith,* a true copy of which is hereunto annexed *and made a part hereof,* to be administered by my said trustees named *in said will* in accordance and in conformity with the provisions *thereof.*"

The effect of this is to *read into the trust assignment the words of the will,* so far as those words appertain to the settlor's residuary personal estate, for it is in that class that the securities, delivered to the trustees, fall, and to *make those words a part of the trust assignment.*

It is precisely the same as if the settlor had said "and after my death to hold said investments, pay the income thereof quarterly to my said wife, Louise Bamford, during the term of her natural life, and after her death" and then went on for a page and a half and set out, specifically, what the trustees should do.

No other construction can be put upon the trust instrument without doing violence to its language.

The question is asked by appellant (p. 6 of her brief) why the settlor turned to a will at all for a statement and expression of the disposition of the trust securities when the simpler and more natural and less artificial course would have been to have set down the trust in all its terms and scope in the original instrument, and she argues that, because the settlor turned to a will, *that* is evidence that he intended to reserve the right to change his mind and intended not to place the matter beyond his control.

If the language of the trust instrument is clear, and I submit it is, the investigation of motives is bootless.

But the answer to appellant's question upon the facts is as obvious as is the construction to be put upon the language of the trust instrument. At the time of the making of the trust instrument, February 7, 1925, the testator had in mind two subdivisions of his property; one consisted of the securities which he gave to the trustees, in trust, by the trust instrument; the other of all the rest of his property.

As the event showed, he considered dealing with these two subdivisions at the then moment in two different ways; the first he intended to immediately place beyond his control, and to provide for their disposition during his life and after his death; the second, he intended to retain control of.

With respect to the second, he intended, at the *then* moment, that the ultimate disposition should be the same as the first, but, with respect to this latter class, he did not intend to surrender either present or future control.

To carry out his intent he had to provide for the ultimate disposition of the latter class, but, without binding himself, irrevocably, to that act, and it was *therefore necessary that he should make a will.*

That will, when drawn, expressed his idea as to the ultimate disposition of the *first* class, which he desired to *then irrevocably settle.*

What more natural than that, having in hand an instrument which it had been necessary for him to make to carry out his intent of then providing, but not irrevocably, for the disposition, upon his death, of the second class, which instrument expressed his idea of the ultimate disposition of the property of the first class, which he intended *to irrevocably settle,* he should have, instead of, in the trust assignment, reciting in full the language of his will, taken a copy of that will, annexed it to the trust instrument, referred to it therein and made it, not *the* will but a *copy* of *the will,* a *part of the trust instrument.*

Appellant's question may be answered by another: Why, if the settlor intended the final disposition of these securities delivered in trust to be revocable, knowing, as appellant says (p. 6) that a deed is irrevocable and a will revocable, did he not, in the trust instrument, provide, in very

simple language, that, upon his death, his trustee *"should deal with the property as he, by his last will and testament, should direct"*.

This is very often done.

Appellant says (p. 5) that it is apparent that the trust instrument was not drawn by a layman but by one skilled in the law.

Certainly, one skilled in the law, had the settlor informed him that he desired the ultimate disposition of these securities delivered in trust to be as the settlor, by his last will (any will) should determine, would have immediately thought of the phrase, which is so often used, "to be disposed of as I, by my last will and testament, may direct", and would have used these simple words in the trust instrument instead of going to the effort of using more numerous words, and of referring, in the trust instrument, not to the "last will and testament" of the settlor, but to "my last will and testament *bearing even date herewith,* and further "a true copy of which is hereunto annexed *and made a part hereof"*.

It is not to be assumed that a person learned in the law would have used *this* language had the settlor meant "to be disposed of as I, by my last will and testament (any will), direct".

To say the best for such a person (if appellant's contention be correct), the language could not help but create doubt as to the intent of the settlor, when the very simple phrase, which I have used above, would have made his intent beyond question.

There is another answer to the question of appellant and also to her contention that it was the intent of the settlor to reserve in himself some power over the ultimate disposition of these securities.

If the instrument is to be construed, as appellant contends, and the ultimate disposition of the

securities is to be held revocable, then there was absolutely no purpose, either in annexing a copy of the last will and testament to the trust instrument, or of referring to *that particular last will and testament,* or of making a copy of *that* last will and testament a *part of the trust instrument.* The settlor might have made any number of wills after the making of the trust instrument, which would have changed the ultimate disposition of the property delivered in trust, and this *specific* language used in the trust instrument would have no point, and was wholly unnecessary.

It is not to be considered that a person skilled in the law would have inserted these unnecessary and futile words in the trust instrument.

It is fundamental in the law of construction of written instruments that every word should speak, if possible.

To adopt the construction of the trust instrument contended for by appellant is to excise from the agreement the words *"bearing even date herewith, a true copy of which is hereunto annexed and made a part hereof"* leaving the instrument to read "and transfer the said securities and investment to my said trustees named in my last will and testament."

To excise these words from the trust instrument is to ignore the general rule that each word must be permitted to speak if it is *possible* to reasonably let it speak.

Appellant argues (p. 7) with respect to the *intent* of the settlor as to retaining the power to revoke. But the undisclosed intent would have no effect. It must appear from the written instrument.

There is no point, I submit, to the insistence of appellant (p. 7) that there is any weight to be given to where the "trust deed stops and the will

begins'' upon any intent of the settlor. It is not a fact that the trust created by the deed ends on the death of its author if the language of the will is to be read into the trust instrument, as it must be by the express terms of that instrument. It is quite immaterial whether the trustees, after the death of the settlor, are the persons who are named in the will. They are *also* the persons named in the trust instrument for *the words of the copy of the will are a part of the trust instrument.* If there had been different trustees named in the will it would make no difference in the situation for, at any time, there may be a change of trustee of a trust and the change of trustee does not terminate the trust and begin a new trust. From time to time there may be changes in the beneficiaries of a trust, and yet there is no *new* trust but a mere continuance of the old trust with new beneficiaries.

But even if there *were* a new trust created at the settlor's death, there would be no difference in the situation because *that* trust would be created, or rather the trust property would be transferred to *that* trust, *created by the settlor by the trust instrument,* by virtue of there being read into the trust instrument the words of the copy of the will, by the trustees, who first took the property under the trust instrument, by *virtue of a power conferred upon them by the settlor in the trust instrument.*

The present complainant is *not* a trustee at the present time ''by virtue of the will.'' It *is* a trustee by virtue of the trust instrument. The trust instrument comprises with in it, not the will as a will, but the words of *a copy of the will designating the uses.*

Appellant argues (p. 7) that the express absence of words of irrevocability in the trust in-

strument indicates an intent to retain the right to revoke. But both the law and common sense are otherwise. It is fundamental law that, to make a trust revocable (and it makes no difference whether the trust be voluntary or not) the power *to revoke must be expressly reserved* or must exist by *necessary implication.*

Any number of cases are cited in the note to *Fidelity & Guaranty Trust Co.* v. *Gwynn,* 38 A. L. R., at p. 941.

Isham v. *Delaware, L. & W. R. R. Co.,* 11 N. J. E. 227;
Gulick v. *Gulick,* 39 N. J. E. 401;
Beekman v. *Hendrickson,* 21 Atl. 567;
Filley v. *Fownes,* 81 N. J. E. 498;
New Jersey Title Guarantee & Trust Co. v. *Parker,* 84 N. J. E. 351, affirmed 85 N. J. E. 557.
Hutchinson v. *Tindall,* 3 N. J. E. 357;
Garnsey v. *Munday,* 24 N. J. E. 243.

There is nothing here to call the doctrine of the power to revoke existing by virtue of *necessary* implication into play.

Nor does anything in *Potter* v. *Fidelity Ins. and Safe Deposit Co.,* 49 Atl. 85, have any application here. In that case it was held that the trust there under consideration was irrevocable. It is true that it was expressly stated in the trust instrument to be irrevocable but the decision did not go upon that ground. The language quoted in the brief of appellant (p. 3) is a mere general observation of the judge delivering the opinion of the Supreme Court of Pennsylvania and, as a general observation, is correct. But this case does not fall within any of the exceptions stated by the Court.

(a) There was no fraud or imposition in the procurement of the trust.

(b) The design of the trust is not to give the settlor full enjoyment of his property for life with power of testamentary disposition and at the same time to protect it from his creditors. On the contrary, the instrument of trust transfers the securities to the trustee with no power reserved in the settlor.

(c) The instrument is not in itself, or in connection with other instruments, testamentary in character.

The instrument dealt with in *Potter* v. *Fidelity Ins. Trust & Safe Deposit Co.* was one which directed the income of the property transferred to the trustee to be paid to the settlor for life "and on his death" the principal to be conveyed to others.

Just as in the case at bar—the trust instrument provides that the income upon the securities should be paid to the settlor for life, and, upon his death, transferred to those named, not in his last will and testament, *but* in the last will and testament, *a copy of which is annexed to the instrument of trust and made a part thereof and therefore read into the trust instrument.*

(d) The intention to make the instrument revocable does *not* clearly appear.

How it can be said to *clearly* appear that this trust instrument is revocable, when the words of transfer are absolute and when the rule of law is that the power to revoke must be expressly reserved or must arise from necessary implication, is beyond my comprehension.

(e) The trust created is *not* a merely naked one.

In *Wilson* v. *Anderson,* Supreme Court of Pennsylvania, 186 Pa. 531, 44 L. R. A. 542, 40 Atl. 1096, 38 L. R. A. 952, it was held that a trust was not revocable by a subsequent will of the creator.

The Court referred to some of the earlier decisions in Pennsylvania (among others, Frederick's Appeal), and said as to the holding in that case:

> "A careful reading of the opinion will show that the judgment was based on the fact that the deed was made wholly for the convenience of the grantor, in that it relieved him from the management of his estate. Besides, there was nothing in the deed itself, or in the circumstances attending its execution, manifesting an intention that it should be irrevocable. On its peculiar facts that case stands by itself; it is not authority as argued by appellant, for the sweeping proposition that every voluntary trust conveyance of property which reserves to the grantor a life interest, with a direction to convey to others the principal of the estate at his death, is a testamentary instrument, and therefore revocable by a subsequent will . . . We do not favor an extension of the doctrine of Frederick's Appeal (1866) 52 Pa. 338, 91 Am. Dec. 159, *supra*,—an exceptional case,—to cases not clearly within it on their facts. The general rule, commencing with Reese *v.* Ruth, (1826) 13 Serg. & R. (Pa.) 435, and adhered to through all the subsequent cases of voluntary deeds of trust intended to be irrevocable by the grantor, is the one within which falls this case . . . The general rule is that if the intention of the grantor at the time he delivered the deed was to part with the legal title, the trust will be enforced in favor of the beneficiaries, even though their enjoyment of the estate is postponed until the death of their benefactor. Equity, because of exceptional facts in rare cases, has revoked the trust, or held it revocable by the grantor, because plainly a testamentary instrument, but the general rule has remained without change."

See also:

Kraft v. *Neuffer* (1902), 202 Pa. 558, 52 Atl. 100.

When counsel for Louise Bamford argues under Point II of his brief (p. 8, etc.), that this trust is testamentary in character and therefore revocable, he proceeds upon the theory that but one beneficial interest was created by the trust, *i. e.,* the right of the settlor to enjoy the income during his life and that the beneficiaries named in the will took no interest because the will was revocable. Therefore he says the testator, having reserved the right to change the ultimate beneficiaries by *any* last will and testament he might execute and having, in himself, the life estate, might revoke the trust and demand a re-transfer of the securities to himself. But this result is only reached by ignoring the language of the trust instrument. Counsel, on p. 9, says: "The instrument gave the property to trustees * * * to pay the income thereof quarterly to me the said Joseph Bamford, during the term of my natural life, and after my death to transfer the said property 'to my trustees named in my last will and testament.' *The trust instrument did not so read.* It read: 'and after my death to transfer the said securities and investments to my trustees named in any last will and testament *bearing even date herewith,* a true copy of which is hereunto annexed and hereby made a part hereof.' "

If the language of the will is to be read into the trust instrument, as I insist it must, then *immediately upon the creation of the trust instrument,* there was a right vested in the beneficiaries designated by the language of *the* will read into the trust instrument and if that is so, then upon all of the authorities, the instrument was *not* testamentary in character.

The rule is universal that, if the interest of the beneficiaries be *vested* by the trust instrument, it

is quite immaterial whether their beneficial enjoyment is postponed until after the death of the settlor. It is only where the designation of the beneficiaries, and the disposition of the property after the death of the settlor, is reserved to the settlor, which designation and disposition he may change from time to time, that the trust instrument is held to be testamentary in nature.

The moment the trust instrument is construed in the manner I submit it should be construed, the matter of its being testamentary passes out of the picture and, if it is not to be construed in that manner, then it is wholly immaterial whether it is testamentary or not, because, if construed as appellant insists it should be construed, it is revocable and has been revoked.

To say that the interest of the beneficiaries is rooted in the will and not in the trust instrument, as appellant does on page 9 of her brief, is to beg the question, for the statement ignores the fact that a *copy of the will* is a part of the trust instrument.

To argue upon the question as to when a trust is testamentary in nature is merely to confuse the issue.

I agree with appellant (p. 9) of her brief that, on the head as to the beneficial use of what person or persons the property, passing out of the donor, vested in the trustees under the terms of the trust deed, there is no room for division of opinion. But I deny her further statement that "there was but a single beneficial interest created by that instrument, or attempted to be raised thereby". On the contrary, there were several beneficial interests "created by that instrument, *or attempted to be raised thereby*" for the words of the copy of the will are read into the trust instrument, and the words of that copy, so read into

the trust instrument, create beneficial interests in the persons referred to by the language of that copy, so read into the trust instrument, to take effect upon the death of the settlor, and we are back again to the construction to be put upon the language of the trust instrument which refers to the will, and this brings me to the case of *Mayor and City Council of Baltimore* v. *Williams,* 6 Maryland 235, where the precise question here involved arose. The question was whether a will, which was referred to by a deed of trust *by date* should be considered as *irrevocably* designating the uses, although revocable as a will, and the Court decided that, notwithstanding the revocable nature of the will, *as such,* it *irrevocably* designated the uses of the property transferred by the trust deed, and, substantially upon the reasoning hereinbefore indulged in. Many English cases were referred to, and the case is so complete that I shall close this brief by copiously quoting from it.

In that case there was a deed of trust reading as follows:

> "to be held by them in trust, to suffer and permit the said Hannah Kitty Chase and her assigns, for and during the period of her natural life, to have, hold, use, occupy, possess and enjoy all and singular the estate, chattels, effects and property, and the rents, issues, income and profits thereof, during that period, to receive and take and the same to apply to such uses and purposes as she might think proper. 'And from and immediately after the decease of the said Hannah Kitty Chase, then in trust for the several and same uses and trusts, and under and subject *to the like powers, limitations, restrictions and conditions as are mentioned, expressed and declared of and concerning the estate and property generally mentioned in and devised by the last will and testament* of the said Hannah

> Kitty Chase to the trustees therein named; and in and by the three several codicils by her made to the said will.' Then giving *the date of* the will and the dates of the three codicils."

This is not as strong a situation as that at bar because here, not only is the will identified by date, but a copy of it *is annexed to the instrument of trust and made a part of it.*

Reference to the arguments of counsel printed in detail in the report will indicate that the same arguments were advanced as here. It was claimed that, notwithstanding the deed to the plaintiffs, there still remained in Mrs. Chase a power of revocation which enabled her, at any subsequent time during her life, either by will or by deed, to dispose of all or any portion of the property embraced by the trust deed and the previous will and codicils, and that consequently the latter deed to another was a revocation *pro tanto.*

The Court carefully considered many English authorities.

> *Hussey's Case,* Moores Rep. 789;
> *Bath* v. *Montague,* at p. 99 and said:

> "There a will was made devising a manor and subsequently the party made a feoffment of the manor for such persons and for such estates as he had declared by his will, referring to the will *by its date. It was held that the will was revoked, but yet it was a sufficient declaration of the uses.* This we understand as deciding that the feoffment operated as a revocation of the ambulatory or revocable character of the will, *but the reference to it by the feoffment made it a good declaration of uses.* Consequently, the disposition of the estate in the will became operative by virtue of the feoffment, and were dependent upon that for their efficacy. The revocation spoken of in the report, did not

mean such a revocation of the will as rendered it a perfect nullity in every respect, for it appears the feoffor was a bastard, and although the feoffment was decided to be a revocation of the will, *yet it remained good as a declaration of uses*, so that there was no escheat to the crown. *Thus it seems that by connecting a will already in existence with a feoffment, by a reference to the will in the manner stated, it does not impart its changeable character to the feoffment,* but, by the connection, becomes as staple as the feoffment itself."

And the Court further said:

"In Bath *v.* Montague, 3 Chan. Cases 55, a will was made in 1675 by the Duke of Albemarle, giving parts of his estate upon his dying without issue to several persons, but the bulk of his estate he gave to the Earl of Bath. In 1681 the Duke executed a lease and release, reciting in the latter the will. But although the recital differs from the will in some degree, it is stated to be the design and intention of the deed to dispose of the estate as it was disposed of in the will. And the reason for disinheriting the heir at law is said to be because he was regicide. Then the deed disposes of portions of the estate to certain persons, but the main part of it is settled upon the Earl of Bath; the deed reserving to the Duke of Albemarle the power of revocation at any time, upon the tender of a shilling, by writing under hand and seal in the presence of 6 witnesses, three of whom were to be peers of the realm, and then to limit new uses. In 1687, the duke executed a will making quite a different disposition of his estate. This will was attested by three witnesses only, not one of them being a peer. Of course it was not a writing in accordance with the power of revocation contained in the deed. But it was contended that the deed of 1681 was revocable as a will, irrespective of the express power contained in it, because it re-

lated to a will. Very elaborate opinions were given by Lord Keeper Somers, C. J. Holt and Treby and Baron Powell, deciding unanimously that the will could not operate as a revocation. Lord Ormond's case, and the two cases in Dyer, already mentioned, were cited and commented upon, but were not considered as authorizing the judges to hold that the deed of 1681 was revocable as a will. Notwithstanding these cases, the judges refused to sustain the argument which seems to have been pressed upon them, that the deed depended upon the first will, was ancillary to it, and leaned upon it, and therefore the second will revoked the first and the deed likewise.

To maintain that a deed reciting a will, and saying it is made to confirm the will, is revocable in its nature, in Equity, as a will is at law, is spoken of by Lord Holt as a notion that he never heard started before. And he condemns the idea that a deed is revocable because it relates to a will, as being a contradiction to the nature and essence of a deed; *for a deed takes effect immediately upon the sealing and delivery, and cannot be altered or revoked by the maker, unless it contains a power of revocation, and then only according to the power.* On page 99, after noticing the case of Dyer 49, Lord Holt says:

'But if a man make a deed of feoffment, and says it shall be to the use of such persons and for such estates as in his will, or as he shall give according to the will, there, though the will doth mention the names and limit the estates, *the uses do not arise by the will, but by the deed, for though the will be no part of the deed, yet when the deed doth refer to the will, and the will, hath limited the estate, it is as much as if all the limitations had been comprised in the deed.*' On the question as to the revocation of the deed, all the judges united in the conclusion of Lord Holt's opinion; and his reasoning on the subject was also sanctioned and adopted by the Lord Keeper,

who said: 'But my Lord Chief Justice has so fully and clearly answered that matter, that I shall not need trouble you with saying any more on it. The cases cited about it are in no sort applicable to this case.'

But the counsel for the appellants insist that the case just referred to cannot properly have much, if any, influence in deciding the one under consideration, because, *here* the deed simply refers to the will and the codicils, but does not recite or contain within it the disposition of the estate mentioned in the will and codicils whilst *there,* although the deed was made to confirm the will, it nevertheless contained within itself the actual limitations of the estate, some of which differed from the will to some extent.

Since the case of Maccubbin *vs.* Cromwell, 7 G. & J., 157, we suppose it will not be seriously contended that where a deed conveys land in trust for such uses and trusts as are contained in a will, or other instrument, properly described or referred to, the uses and trusts do not take effect. *And if they do, it must, of course, be by virtue of the deed.* And as deeds in their nature are not changeable, where they contain no power of revocation, *if the reference is to a will as containing the uses of the trust, the deed takes away or abolishes the changeable nature of the will,* unless the provisions of the deed indicate a different intention on the part of the grantor. This view is certainly correct, if Lord Holt is right, as we think he is, in saying that '*when the deed doth refer to the will, and the will hath limited the estate, it is as if all the limitations had been comprised in the deed.*' And this being so, we do not think the distinction between the two cases, which has been urged with much ingenuity, can avail the appellants to render the case of Bath *vs.* Montague of no influence on the present occasion.''

And further (p. 261):

> "We have been referred to 1 Sugden on Powers, 484, in 15 Law Lib., and 2 Ibid. 14, 15, in 16 Law Lib., in support of the principles contended for by the appellants. But we do not perceive anything in these references which can establish the proposition, that either the deed or the will in this case is revocable. On page 484 of the 1st Volume, it is stated, that as a general rule a will is in its nature revocable, and when a power is executed by will an express power of revocation is not necessary to be inserted, but it may be revoked, and the original power re-executed Toties Quoties. That when a power is executed by deed, a power of revocation and new appointment may be reserved, although the instrument creating the power does not in express terms authorize it. And such powers may be reserved Toties Quoties. But it will be seen on page 485, that when *under* a power an appointment is made by deed, it cannot be revoked, unless an express power is reserved in the deed executing the power."

And finally on this point (p. 262):

> "After a very careful examination of the authorities, we think that unless, under some peculiar circumstances, when a deed conveys lands in trust for such uses as are declared or set out in a will already made, neither the deed or the will is revocable, if no power of revocation is reserved in the deed. And when a deed conveys lands in trust for such uses as the grantor may afterwards appoint by will or deed, if the appointment be by will, then the will may be revoked and new uses declared. But if this power is executed by such an instrument as may properly be considered a deed, and not a testamentary paper, then the appointment cannot be revoked, provided the deed executing the power reserves no authority to revoke."

Now upon the question as to whether the deed was testamentary in nature, the Court said:

> "It has been said, that instruments in the form of deeds are frequently held to be testamentary papers, and, as such, subject to revocation, and that the instrument now before us should be so considered, because it limits the estate to the use of the grantor for life, and then in trust for the uses in the will and codicils, which can only take effect, beneficially, after the decease of the grantor, as they would by a will. In 1 Sug. on Pow., 275, it is said to have been well settled, that if the instrument executing a power is testamentary in its nature, the mere circumstance of its being in form a deed, sealed and delivered, will not prevent it from operating as a will. The writer then adds: 'But it will not be deemed testamentary merely because the limitations, from their nature and the state of the settlement, cannot take effect until the death of the appointor.' See 2 Sim. Rep., 95, in 2 Eng. Cond. Ch. Rep., 354, Hougham *vs.* Sandys, and 9 Gill, 440. It may be proper to remark, that Mr. Sugden is here treating of the nature of instruments executing powers previously created. In note 1, on the page just referred to, the decision in the Atty.-Gen. *vs.* Jones, 3 Price, 368, is noticed. There 3 judges against Wood, Baron, held that a voluntary deed assigning leasehold and personal estate, securing to the grantor a life estate and the property to others after his death, with a power of revocation, which he confirmed by his will, was a testamentary instrument within the stamp act. This note speaks of the opinion of Mr. Baron Wood as being undoubtedly sustained by the profession. In the more recent case of Thompson *vs.* Brown, 3 Myl. & Keene, 32, in 8 Cond. Eng. Ch. Rep., 264, the deed was for the purpose of securing to the grantor dividends of stock for his use during his life, and disposing of the stock to others after his death. The deed also contained a

power of revocation. This was held not to be a testamentary paper. And Sir C. C. Pepys, the then Master of the Rolls, but subsequently Lord Chancellor Cottenham, in speaking of the case of the Atty.-Gen. *vs.* Jones, says: 'If there be anything in that decision to support the notion that where a person by deed settles property to his own use during his life, and after his decease for the benefit of other persons, a power of revocation reserved in such a deed alters the character of the instrument and renders it testamentary, and consequently subject to legacy duty. I can only say that, if this were law, a great number of transactions of which the validity has never been doubted, would be liable to be impeached.' See what is said in reference to the 2 last mentioned cases, in 1 Jarman on Wills, from pages 14 to 19, inclusive (2 Amer. Ed.).

The present deed is not one executing a power, nor does it contain a power of revocation, but is to confirm a will previously made. If it must be regarded as a testamentary instrument, and therefore revocable as a will, it is difficult to perceive what motive could have induced its execution. *Without* it, the grantor was in the same situation as she was *with* it, under such a construction."

Appellant seeks to distinguish this case by the statement that it "differs widely from the present case. The deed there was given to confirm a will previously made".

So, in the case at bar, the will was made *previous* to the execution of the trust instrument for a copy of it showing its due execution, was attached to the trust instrument (p. 14). It is immaterial whether it was signed two minutes before the trust instrument. I do not know what appellant means when she says that in *Mayor and City Council of Baltimore* v. *Williams* the deed of trust was executed "to confirm a will". Testator was alive at the time of the making of the trust

deed which referred to the will by date only for the purpose of indicating the uses to which the trustee named in the trust deed took the property. The case is not as strong as that at bar, as I have already stated, because reference was only made to the will by date whereas in the case at bar a copy of the will is annexed to and made a part of the trust instrument.

It is respectfully submitted that the decree brought up should be affirmed.

Respectfully submitted,

MERRITT LANE,
Of Counsel for Respondents,
Grace H. Johnson, *et als.*

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New Jersey Court of Errors and Appeals

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant-Respondent, and Louise Bamford as Executrix of the Last Will and Testament of Joseph Bamford, deceased, and in her own individual capacity, Defendant-Appellant, Walter E. Bamford, Grace H. Johnson, Joseph C. Bamford, Defendants-Respondents, and Victoria Irving, Defendant-Appellant,	On Bill, etc.

BRIEF FOR RESPONDENT, THE HAMILTON TRUST COMPANY, OF PATERSON, NEW JERSEY

STATEMENT OF THE CASE

The bill in this cause was filed by The Hamilton Trust Company of Paterson, New Jersey, to obtain the construction by the Court of Chancery of a certain deed of trust executed in his lifetime by one Joseph Bamford to The Hamilton Trust Company of Paterson, New Jersey and to Walter Bamford, brother of the said Joseph Bamford, as trustees, and to receive information from the Court whether said deed of trust was revoc-

able or irrevocable in character, and as to the effect thereon (if any) of a last will and testament and codicil thereto executed by the said Joseph Bamford on March 8th and June, 1926, respectively, and to receive instructions whether the said trusts, as created by said trust deed, were not still in full force and effect, the complainant submitting, under advice of counsel, that the said trust deed was irrevocable in character and was still in force and unaffected by the said later or actual will and testament and codicil of the said Joseph Bamford.

As a stipulation as to the facts took the place of any proofs, it may be advisable for this brief to contain, not only the propositions of law for which the complainant contends, but the facts themselves upon which those contentions are based, so that this brief can be studied without reference to the pleadings themselves, or the stipulation, except so far as will be necessary to refer to the documents annexed to the pleadings, and this brief and those instruments will thus contain a concise statement of the entire facts and of the legal principles which the complainant contends are applicable thereto.

THE FACTS

On February 11, 1925, Joseph Bamford executed the trust deed in question bearing date February 7, 1925, and delivered the same to the complainant. A copy of the trust deed, and of the document annexed to said trust deed, and in said trust deed referred to by the said Joseph Bamford as "my last will and testament bearing

even date herewith, a true copy of which is hereunto annexed and hereby made a part hereof," is annexed to the bill of complaint marked Schedule 1 (State of Case, p. 9, line 21 to page 18, line 19).

The receipt by the trustee of the securities in question, is admitted. (Page 23, line 29, et seq.) And that the trustee has administered the trust to date is a fact in the case which is not denied.

Walter Bamford, one of the trustees, died on June 13, 1926, leaving a will, which has since been probated, and of which the complainant was appointed executor.

Joseph Bamford himself died on July 8, 1926, leaving a later will than that annexed to the trust deed, by which later will he devised and bequeathed all his residuary estate, real and personal, to his wife, Louise Bamford, and appointed her sole executor thereof, and by which he expressly undertook to revoke and make void any and all former wills made by him, including the document (referred to in said trust deed as the last will and testament of Joseph Bamford) bearing date February 7, 1925; and said last will and testament bearing date March 8, 1926, and codicil thereto of the said Joseph Bamford bearing date June, 1926, have been respectively admitted to probate. True copies of said later will and codicil are marked Schedule 2 and annexed to the bill of complaint. (State of the Case, p. 18, l. 20, et seq.)

The said Louise Bamford as Executrix of Jo-

seph Bamford, and in her individual capacity, claims that the execution by her deceased husband, Joseph Bamford, in his lifetime of his said last will and testament, bearing date March 8, 1926, and the codicil thereto bearing date June, 1926, operated as a ***revocation*** of the ***trust deed,*** thereby entitling her under the ***last*** will and testament of her deceased husband to the delivery of all the securities belonging to his said estate now in the hands of the complainant-respondent, but complainant has been advised and charges the fact and the law to be that said trust deed was irrevocable in character and created an irrevocable trust, of which complainant is the trustee, and that although the document annexed to said trust deed, and referred to therein by the said Joseph Bamford as his last will and testament may, by the execution by the said Joseph Bamford of a later will, have lost its efficacy as the ***last will and testament of testator,*** said document by reason of its annexation to, and the reference to it in, said trust deed, and the fact that it was made a part of said trust deed, still serves as a document setting forth the trusts subject to which said trust deed was executed and delivered. The complainant-respondent has been advised and charges the fact and the law to be that the use of the term "last will and testament in said trust deed" was merely to identify the paper annexed to said trust deed, and that none of the securities mentioned in said inventory, or which have since come to the hands of complainant, are subject to the provisions of the said testator's last will and testament dated March 8, 1926, or of the codicil thereto dated June, 1926, having been conveyed in his lifetime by the said Joseph Bamford by

said trust deed to said complainant and the said Walter Bamford, and being now, by reason of the death of the said Walter Bamford, of whose estate complainant is also executor, vested exclusively in complainant as trustee.

It is admitted in the case that the correspondence annexed to the bill of complaint took place between Louise Bamford and the complainant. (State of the case, p. 20, l. 20 to p. 22, l. 20; p. 52, l. 23, et seq.)

While the complainant has been advised and charges the fact and the law to be as already set forth, nevertheless in view of the claims to the contrary made by the said Louise Bamford, the complainant is in doubt as to its duties, rights and obligations under said trust deed, in the following respect, namely, whether the view entertained by it as a result of advice received from its counsel that the said trust deed is irrevocable, is correct, or whether the same was legally revoked by the later will probated by the said Louise Bamford.

Walter Bamford left Walter E. Bamford, Grace H. Johnson and Joseph C. Bamford his only children him surviving, all of whom are of full age, and they, in case of the deaths of Louise Bamford and Victoria Irving (the latter without leaving issue surviving her and the said Louise Bamford) constitute the only present next of kin of Joseph Bamford, deceased, and the bill prays that they may be regarded, for the purposes of this suit, as representing the next of kin of said Joseph Bamford, deceased.

The answer of the defendants Grace H. Johnson, Walter E. Bamford and Joseph C. Bamford, the present next of kin of Joseph Bamford, deceased (who are represented by Mr. Merritt Lane) claim, as the complainant does, that the trust was irrevocable. These last mentioned defendants have filed a counter-claim against the complainant and the defendants, Louise Bamford, as executrix and in her individual capacity, and Victoria Irving to the same effect as their answer to the bill.

The answer of the defendant Louise Bamford as executrix, etc. to the said counter-claim avers that by the order of the Orphans' Court probating the later will of the said Joseph Bamford, it was adjudicated that the last will and testament of Walter Bamford, probated on September 17, 1926, and the probate thereof, expressly revoked the trust deed and the will and testament which were part thereof. This is expressly denied by the counter-claimants, and it is claimed by them, as is obviously the case, that the Orphans' Court had no jurisdiction to make any order revoking the trust deed, not having jurisdiction of the subject matter nor jurisdiction over the defendants.

Notwithstanding the interest of the daughter, Victoria Irving, in her own right, and in the right of her unborn children, in the securities delivered in trust by the settlor to The Hamilton Trust Company under the instrument of trust above referred to ~~securities~~, if their disposition is to be controlled by the trust instrument, and the absence of any interest in her, or in her unborn children, in such

securities if their disposition is to be controlled by the later will, she has joined with her mother, who is in effect the sole beneficiary under the later will, in contending that the later will controls, so that this brief, although not in form, is in effect in support of the interests of the unborn children of the daughter, Victoria Irving, and of Victoria Irving herself.

THE ARGUMENT

The sole question before this court now is, was the trust created by the trust deed ***irrevocable*** or was it in fact revoked by the later will, which purported to be the last will and testament executed by Joseph Bamford (hereinafter called the settlor), which later will, in express terms, revoked ***not the trust deed per hoec verba,*** but only the will annexed thereto, and made a part thereof. Obviously the document annexed to the trust deed purporting at the time it was executed to be (and in fact then being) the last will and testament of Joseph Bamford might very well be revoked ***as a will*** by the later will executed by Joseph Bamford, but the complainant's contention is that it could not be so revoked as a mere document setting forth the trusts intended to be created by the trust deed, and if the later will be examined with care, it will be found that it contains no provision whatever undertaking to revoke ***the trust deed itself*** but simply a provision to revoke the ***will*** annexed thereto, treating the same as a will, and having no reference to its functions as a document setting forth the trusts intended to be created by the trust deed.

The solution of the question whether the trust deed was or was not *revocable* in character depends upon the *intent* of the settlor, which should be gathered from the trust instrument itself. There is no ambiguity in the language of the trust deed, or the papers annexed to it which form part of it. Counsel for all parties, therefore, by executing the stipulation, agreed that it was unnecessary to refer to evidence of *extrinsic* circumstances, because the intent of the settlor was clear upon the face of the instruments.

The complainant-respondent submits that the trust deed or instrument executed by the settlor on February 7, 1925, *not containing any reservation of power of revocation,* created an irrevocable trust, of which The Hamilton Trust Company of Paterson, New Jersey is the trustee.

The law seems to be well settled in this state that a voluntary trust, executed by the placing of the subject matter of the trust out of the control of the grantor, is, unless otherwise specifically stated in the trust instrument, irrevocable.

In addition to the opinion of Vice Chancellor Howell in New Jersey Title Guarantee & Trust Co. vs. Parker, 84 N. J. Eq., 351-357 (q. v.), which upon this point was expressly approved by the Court of Errors and Appeals in the same case, 85 N. J. Eq., 557, see an exhaustive note upon the subject in 38 American Law Reports at page 941, and also Gulick vs. Gulick, 39 N. J. Eq., 401.

The only question which can arise is whether the trust was properly and irrevocably evidenced by

the instrument of February 7, 1925, and this depends upon the question as to whether the instrument attached to it and designated as "my last will and testament a true copy of which is hereunto annexed and hereby made a part hereof" is still to be considered as a part of the trust instrument notwithstanding the fact that subsequently the settlor executed another last will and testament which has been probated.

In this connection it must be borne in mind that it is the intention (of the settlor) which exists when the deed is executed that controls. No subsequent change of intention will alter its character.

Doughty vs. Miller, 50 N. J. Eq., 529.

If the settlor, at the time he executed the trust deed and will annexed to it meant that it should operate as an irrevocable instrument (which the absence from it of any reservation of a power to revoke would imply), no subsequent change of intention (if such can be spelled out of the later will) would make the trust deed ***revocable.***

In referring in the trust deed to the distribution of the property after his death, the settlor does not use the language "as I may in my last will and testament direct," or "as my last will and testament shall direct," or any other language which would indicate that he was referring to a technical last will and testament, or that he had in mind reserving the right to change the devolution of the property. On the contrary he directs the securities and investments to be transferred "to my trustees named in my last will and testa-

ment bearing even date herewith, a true copy of which is hereunto annexed and made a part hereof"—and he directs said securities and investments "to be administered by my said trustees named in *said* will in accordance and in conformity with the provisions *thereof.*"

When he uses the language "my last will and testament" he uses it merely to identify a particular piece of paper. The complainant submits that the trust instrument should be read precisely as if the words used had been "named in the document, a copy of which is hereto annexed and made a part hereof."

It might therefore be conceded (though we do not concede) that the execution by the settlor of the later will was an attempt on his part to break the trust (under what influence it is for present purposes unnecessary for us to inquire), but the fact remains that the will annexed to the trust deed, insofar as it served to designate the trusts referred to by the trust deed, was absolutely irrevocable, by reason of the trust deed not containing any reservation therein of a power to revoke the same, although such will may have been revocable so far as it dealt with property not dealt with by the trust deed or constituting trust property thereunder.

On the subject of the irrevocability of the trust deed we quote from Vice Chancellor Howell's opinion in New Jersey Guarantee & Trust Co. vs. Parker, 84 N. J. Eq., 351-357:

"The general rule is that a completed

> trust, without reservation of power of revocation, can only be revoked by consent of all the ***cestuis;*** and that even a voluntary trust for the benefit wholly or partly of some person or persons other than the grantor if once perfectly created and the relation of trustee and ***cestui que trust*** is once established, will be enforced, though the settlor has destroyed the deed or has attempted to revoke it by making a second voluntary settlement of the same property, or otherwise, or if the estate by some accident afterwards becomes revested in the settlor."

(Vide this case for a discussion of the whole subject.)

The fact that the document annexed to the trust deed and designating the beneficiaries for whose benefit the trust was created was termed in the trust deed a ***last will and testament which, at the time it was executed it was evidently intended to be,*** in no way militates against the argument that this so-called will which, until revoked, was in fact the last will and testament of the testator—also operated as an ***irrevocable*** document setting forth the names of the beneficiaries and the nature of the trusts created by the trust deed.

In Brown ads Combs, 29 N. J. L., page 36, it was held that

> "to establish a trust no particular form of expression is necessary in a deed; it cannot be declared by parol, but may be created by any writing showing that a trust is intended."

> "The declaration of a trust need not be made by formal deed or will. A simple letter or memorandum, or any writing of a similar untechnical and informal character, will be sufficient if it clearly express the property to be in trust, and sufficiently connects the trustee with the subject matter of it."

Our position therefore we repeat is, that while it is possible that the settlor cannot be held to an intent of irrevocability of the will annexed to the trust deed so far as that paper might have operated as a last will and testament, he can be and should be held to an intent of ***irrevocability*** so far as the will operated as a part of the trust deed, for he physically placed the securities out of his control by an instrument which did not reserve the right to revoke, and directed a distribution under the trust agreement in a manner provided by a paper which he called a last will and testament, but which he intended, so far as it declared the trusts, to be final.

In support of the above argument, we refer to the following authorities:

New Jersey Title Guarantee & Trust Co. vs. Parker, 84 N. J. Eq., p. 351.

Perry on Trusts, paragraph 104.

Isham vs. D. L. & W. R. R. Co., 11 N. J. Eq., p. 227.

Gulick vs. Gulick, 39 N. J. Eq., p. 401.

Crue vs. Caldwell, 52 N. J. L., p. 215.

Beekman vs. Henderson, 21 Atlantic Reporter, p. 567.

Filley vs. Fownes, 81 N. J. Eq., 498.

See also cases in Massachusetts and New York cited in New Jersey Title Guarantee & Trust Co. vs. Parker, supra. Fritz vs. Roth, 70 N. J. Eq., page 764.

In Gulick vs. Gulick, 39 N. J. Eq., p. 407, it was held that:

> "If a voluntary trust, in which the settlor has reserved no power of revocation, is once perfectly created, and the relation of trustee and ***cestui que trust*** is once established, it will be enforced, though the settlor has destroyed the deed, or has attempted to revoke it by making a second voluntary settlement of the same property, or if the estate, by some accident, becomes revested in the settlor. In all these cases, the first perfectly created trust will be upheld with all its consequences, and the settlor will be declared to be a trustee."

In Crue vs. Caldwell, 52 N. J. L., 215, this Court, in construing a settlement, differing only in form from that now under consideration, uses this language:

> "The settlement was completely executed. It differs in form only from a

> settlement by conveyance expressly in trust without power of revocation reserved, which, when once perfectly created, cannot be annulled without the consent of all the ***cestuis que trust.***"

Counsel for the appellants seem to rely mainly on the case of Potter vs. Fidelity Trust & Safe Deposit Co., 49 Atlantic, 85, a Pennsylvania case —or rather upon certain ***"obiter dicta"*** therein contained. What that case actually held was that a voluntary settlement will be sustained and enforced in favor of the beneficiaries unless it is shown that it was procured by ***fraud*** or ***imposition*** or executed under a misapprehension of the facts, or of the law, and that as there was no evidence of fraud, imposition or mistake, and there was no room for doubt that the deed when executed expressed the deliberate intention of the settlor, the settlement should be and was sustained.

The ***"obiter dicta"*** contained in that case upon which reliance was made, consisted of this passage contained in the opinion:

> "Generally the cases in which voluntary settlements have been set aside have been where * * * the instrument was * * * in connection with other instruments, testamentary in character."

No authority is cited for this ***"obiter dictum"*** in the case in which it appears.

It may, however, with safety, be conceded that

if the trust in the instant case had read "to pay the income thereof quarterly to me, the said Joseph Bamford, during the term of my natural life, and after my death to transfer the said securities and investments to my trustees named in my last will and testament, without identifying any particular will by date or other ear mark, to be administered by my said trustees named in said will in accordance and in conformity with the provisions thereof," and no last will and testament had been annexed to the trust deed or made a part thereof, the beneficiaries intended to be benefited by such a trust deed would have been so uncertain and in the air until the creator of the trust died leaving a will and naming trustees therein and providing how his estate was to be administered by them that if the creator of the trust died leaving no will, or died leaving a will in which no trustees were named, the trust deed would then necessarily cease to exist, and in that sense might be said to be revocable..

But where the trust deed, as it did in the instant case, directed the trust funds to be transferred after the death of the settlor to certain trustees specifically named in a paper writing (described and intended at the time it was executed by the settlor to be his last will and testament) a true copy of which paper writing was annexed to the trust deed, and was referred to in the trust deed as so annexed, and was made a part of the trust deed, and was referred to in the trust deed as so made a part thereof, and where an inventory or list of the securities which were to form the subject matter of such trust was annexed to the trust deed, and was referred to

in the said trust deed as so annexed, and where said inventory was made a part of said trust deed and was described in said trust deed as so made a part thereof, and where the receipt by the trustees of the securities described in the inventory and the administration of the trust to date by the trustees were admitted or uncontroverted—all of which are facts in the instant case—the intention becomes clearly apparent on the part of the settlor when he executed the paper annexed to the trust deed that he intended it to serve as an irrevocable instrument ***at the time he executed it,*** describing the trusts created by the trust deed and the beneficiaries for whose benefit said trust was created, and we submit that any change of his mind on this subject afterwards arising could not, under the authorities cited, operate as a revocation of the trust deed or of the trusts thereby created.

We especially refer to Wilson vs. Anderson (Supreme Court of Pennsylvania, July 21, 1898), 40 Atl. Rep., page 1096.

Counsel for appellants argue that whatever may be the value or effect of the presumption that the originator of the trust was presumed to know the law, nothing is more obvious about this trust deed than that it was drawn not by the settlor, but by a member of the legal profession; that its phraseology was not that of a layman, but of a competent and skilled practitioner, and they ask why were not the entire terms of the trust in their full reach and complete effect incorporated in the trust instrument itself without resort to the cumbersome and artificial device of an annexed will,

unless it were that the originator, knowing that a deed was irrevocable and a will revocable, designed to reserve to himself the power of a final word and an ultimate control?

The answer to this inquiry lies in the fact that the paper writing or will ***which was prepared before*** but executed at the same time as the trust deed, and which formed part thereof, contained directions for the payment of the testator's debts and funeral expenses; a devise of his real estate and a bequest of the furniture therein, and other personal property, to his widow outright, and a legacy to his daughter, Victoria Irving, of $1,000, and that these provisions of the will were ***dehors*** the scope of the trust deed, which only related to the residuary personal estate. We submit that nothing more clearly appears from the papers than that the testator intended at the time he executed the will annexed to the trust deed that it should be his last will and testament, and that when he executed the second will it must have been because he had changed his mind on that subject as a result of some influence brought to bear upon him.

As no testimony has been taken in this case we are not allowed to state what reasons were given to us by Mr. Joseph Bamford for creating the trust in the manner he did. We think, however, we may be permitted to draw attention to the sixth clause of the will, (p. 17, l. 6, et seq.) from which it would clearly seem to appear that one of the reasons which influenced the settlor was forever to prevent any part of his trust estate from becoming subject by persuasions, influence

or otherwise to any control whatsoever on the part of his son-in-law, Victoria Irving's husband.

The testator by the will annexed to the trust deed made every provision possible for his widow and daughter, and nothing appears more clearly than that he did not wish, in case of his wife and daughter's death, the latter without leaving children, that as a result of any persuasion brought to bear upon himself or upon his wife any part of the securities included in ~~hte~~ the trust should ever go outside of his immediate family (excluding therefrom his son-in-law, the husband of Victoria Irving), or outside of his brother's immediate family. He wished to make it impossible for the husband of Victoria Irving to have any control whatsoever over any part of the trust estate, and the only change attempted to be made by his later will seems to have been an attempt to destroy the trust deed and to make the very thing possible which he, Joseph Bamford, desired to avoid. The estate was so large that Mrs. Louise Bamford would not be benefited in any way by the execution of the new will otherwise than she was benefited by the provisions of the previous will. The only difference between the effect of the two wills upon her interest was that by the will annexed to the trust deed it was put out of her power to use any part of the principal of the estate, but the income thereof was amply sufficient for all her necessities and comforts, while under the new will, if that should prevail, she could be influenced by any bad advisers to squander the principal.

Garnsey vs. Mundy, 24 N. J. Eq., 243, relied on

by counsel for Louise Bamford, has no resemblance whatever to the instant case. In that case the conveyance not only deprived the grantor of all her property without reserving a power of revocation to meet the exigencies of life, but the arrangement which it made was in other respects injudicious, disadvantageous and improvident.

In distinguishing that case from the instant case, see Fretz vs. Roth, 70 N. J. Eq., p. 764, decided by this court, the head note of which reads as follows:

> "A voluntary deed, executed by a husband through another, to his wife, conveying all his realty, will not, at the instance of the grantor, be declared void for improvidence, nor because of the absence of provision for revocation or reversion in the deed, nor because executed without the benefit of proper, independent and competent advice, unless there is satisfactory proof, also, that it was the act of a person whose mental capacity was so enfeebled that he did not understand the effect of the instrument, or of some other recognized ground for equitable interference."

We further rely on the case of City Counsel of Baltimore vs. Williams, 6 Maryland, 235, where the precise question here involved arose. This case is on all fours with the instant case, and we respectfully bespeak this court's careful perusal of it.

It is also argued by counsel for appellants that

because the trust deed provided for a transfer of the trust estate by the trustees named in the trust deed to the trustees named in the will, that in some way or other that indicated that the trust deed was not irrevocable, but ceased to have effect when the testator died leaving a later will and testament.

While it is true that we might have provided that the trustees named in the trust instrument should continue to hold the property upon such trusts *(naming them)* as were set out in the copy of the will annexed to the trust instrument, there was, we submit, nothing incongruous in our doing as we did, that is, directing the trustees upon the death of Joseph Bamford to transfer the trust property to themselves as trustees named in the copy of the will, (the will having been already prepared), the idea being that, after the death of Joseph Bamford, they would hold upon other trusts than those upon which they held the property prior to his death, and we therefore used the idea of a transfer to indicate a change in the trusts upon which the property was held, and reference to the will a copy of which was annexed to the trust deed for particulars of the trust created was a shorter and more convenient and concise method of setting forth the trusts than by a lengthy repetition of them in the trust deed itself.

It remains only for us to state that this brief is submitted to this Honorable Court for the sole purpose of aiding the court to arrive at a correct decision in the case. The defendants who attack the trust deed, viz., Louise Bamford and, for

some reason best known to herself, Victoria Irving also, and who claim that the trust deed was revoked by the settlor's later will, are represented by counsel, who will undoubtedly say all that there is to say on their behalf. The defendants Grace H. Johnson, Walter E. Bamford and Joseph C. Bamford, who are the present next of kin of Joseph Bamford, deceased, are represented by other counsel, who coincides in the views above expressed in regard to the irrevocability of the trust deed and who will look after their interests.

Further than to give this Honorable Court the benefit of what we have advised the complainant to be the law in this case, the complainant has no desire to figure as a partisan in the litigation There are, however, conflicting interests, the merits of which are to be determined in this case; Mrs. Louise Bamford's interests on the one hand, and the possible issue of Mrs. Irving, and the interests of those answering to the description of the next of kin of Joseph Bamford on the death of the survivor of Mrs. Louise Bamford and Mrs. Irving (the latter without issue) on the other hand.

Confronted with these conflicting interests The Hamilton Trust Company could not safely act without the guidance of this Honorable Court. We submit that it was not only the right but the duty of The Hamilton Trust Company to file its bill in the Court of Chancery praying for instructions. The trust is an active one, and The Hamilton Trust Company as trustee could not safely deliver any securities without the protection of the court.

With the above comments upon the case gen-

erally the complainant-respondent leaves the matter in the court's hands, desiring only to carry out its duties as trustee, (whatever those duties may be), in accordance with the construction placed upon the trust deed and accompanying documents by this Honorable Court.

Respectfully submitted,

John B. Humphreys,

Of counsel with the

Complainant-Respondent.

New Jersey Court of Errors and Appeals

Between The Hamilton Trust Company of Paterson, New Jersey, Complainant-Respondent, and Louise Bamford, as executrix of the last will and testament of Joseph Bamford, deceased, and in her own individual capacity, Defendant-Appellant. Walter E. Bamford, Grace H. Johnson, Joseph C. Bamford, Defendants-Respondents, and Victoria Irving, Defendant-Appellant.	On Bill, &c. Appeal from Court of Chancery

BRIEF FOR LOUISE BAMFORD, AS EXECUTRIX OF THE WILL OF JOSEPH BAMFORD, AND INDIVIDUALLY, AND VICTORIA IRVING

By a written instrument (Case, page 9), dated Feb. 7, 1925, Joseph Bamford assigned certain securities to Hamilton Trust Company of Paterson, N. J., and Walter Bamford, in trust, "that is to say, to invest, re-invest, and keep invested the same—and to pay the income thereof quarterly to me, the said Joseph Bamford, during the term of my natural life, and after my death to transfer the said securities and investments to my trustees named in my last will and testament bearing even

date herewith, a true copy of which is hereunto annexed and hereby made a part hereof, to be administered by my said trustees, named in said will, in accordance and in conformity with the provisions thereof."

The will (Case, pages 14-18), of which a copy was annexed to the instrument of trust, gave to the settlor's wife all his real property and certain specified personal property and to his daughter, Victoria Irving, $1,000. His residuary personal estate he bequeathed to Hamilton Trust Company of Paterson, N. J., and Walter Bamford (the identical trustees named in the deed of trust), that the same should be dealt with as detailed in the will.

On March 8, 1926, Joseph Bamford executed another will, which differs widely in its provisions from those of the prior will, and in and by which he not only revokes all former wills in general language, but revokes the will of Feb. 7th, 1925, by a specific identification of it. This later will was duly admitted to probate by the Orphans' Court of the County of Passaic (case, pages 28-29).

Walter Bamford predeceased Joseph Bamford, and the Hamilton Trust Company has acted, since the death of Walter Bemford, as sole trustee.

A dispute having arisen between the widow of Joseph Bamford and the Hamilton Trust Company in respect to the effect of the will of Mar. 8th, 1926, on the trust in its hands, it filed its bill (case, page 1 &c.) in the Court of Chancery, and asserted therein that the trust created by the trust deed remains in full force and effect, unaffected by the later will. The cause was heard on bill and answers and stipulation (case, pages

51-53), without oral proof, and resulted in a decree sustaining the contention of the trustee, (case, pages 62-64).

The issue here is whether the subsequent will revoked the trust.

The general rule touching the irrevocability of trusts is familiar law; but, like other rules, is not inflexible, but acknowledges qualifications and exceptions.

In Potter vs. Fidelity Ins. Trust & Safe Deposit Co. (Supreme Court of Pa.), 49 Atl., 85, the exceptions are accurately and comprehensively stated:

> "Generally the cases in which voluntary settlements have been set aside have been where there have been fraud or imposition in their procurement; where the design had been to give the settlor full enjoyment of his property for life, with power of testamentary disposition, and at the same time to protect it from his creditors; ***where the instrument was in itself, or in connection with other instruments, testamentary in character; where the intention to make the instrument revocable clearly appeared;*** where the purpose of the settlement failed; or where the trust created was a merely naked one."

We say, first that the originator of the trust in question ***intended*** it to be revocable, and that that intention is found in the very terms of the trust deed; and, secondly, that the trust, save in so far as it was designed for the benefit of its creator

in his lifetime, was ***testamentary,*** and because of its testamentary quality, revocable and revoked by his subsequent will.

I.

THE AUTHOR OF THE TRUST INTENDED IT TO BE REVOCABLE.

In ***Parker vs. New Jersey Title Guarantee & Trust Co.,*** 84 N. J. Eq., 351, at page 352, the conveyance was ***expressly declared*** to be irrevocable. The pertinent words are "has ***irrevocably*** granted, conveyed, transferred, assigned and set over, and does ***irrevocably*** grant, convey, transfer, assign and set over." There is no like language or equivalent expression in the instrument in question.

To over-emphasize the force of the absence of any such expression in the trust deed in question would be to invite the counter-argument that if it was in the mind of the author of the trust to reserve the right to change or recall it, he might have expressly reserved that right. Nevertheless the omission to ***declare*** the instrument to be irrevocable is not without effect, both alone, and in connection with other features of the deed.

In Garnsey, et ux. vs. Mundy, et als., 24 N. J. Eq., 243, at page 246, Chancellor Runyon observed:

> "Recent cases, however, have narrowed the doctrine, and have held not only that the absence of a power of revocation throws on the person seeking to uphold the settle-

ment the burden of proving that such a power was intentionally excluded by the settlor and that in the absence of such proof the settlement may be set aside, but that equity will set aside the settlement on the application of the settlor, where it appears that he did not intend to make it irrevocable, or where the settlement would be unreasonable or improvident for the lack of a provision for revocation."

The trust deed and the first will were executed at the same time. There are numerous cases in the books (Parker vs. N. J. Guarantee & Trust Co., supra, among them) where the original instrument created a life estate in the settlor, with remainder to such persons as he should by his last will appoint. But such cases are not this case. Here the instructions were "to pay the income thereof quarterly to ***me,*** the said Joseph Bamford, ***during the term of my natural life*** and after my death to transfer the said securities and investments to my trustees" (not named in the trust deed, but) "named in my last will and testament bearing even date herewith, a true copy of which is hereto annexed and hereby made a part thereof, to be administered by my said trustees ***named in said will*** in accordance with and in conformity with the provisions ***thereof.***"

Now the originator of the trust is presumed to know the law. Whatever may be the value or effect of that presumption, nothing is more obvious about this trust deed than that it was drawn, not by the settlor, but by a member of the legal profession; its phraseology is not that of a layman, but of a competent and skilled practitioner.

> "A will is ambulatory, revocable, subject to change, because it is a will, and takes effect only at death of testator. A deed takes effect when delivered to the grantee. And the estate granted (i.e., the estate granted by a deed) vests at once in the beneficiaries, in the absence of negative words, even if the period of enjoyment be postponed." ***Wilson, et ux vs. Anderson, et al.,*** (Supreme Court of Pa.) ***40 Atl. 1096.***

Why were not the entire terms of the trust in their full reach and complete effect incorporated in the trust instrument itself, without resort to the cumbrous and artificial device of an annexed will, unless it be that the originator, knowing that a deed is irrevocable and a will revocable, designed to reserve to himself the power of a final word and an ultimate control?

Having, when planning the scheme of the trust, a definite plan for the disposition of his property after his death, why did he turn to a will at all for the statement and expression of that disposition? The simpler, the more natural, the less artificial course would have been to have set down the trust in all its terms and scope in the original instrument, unless the originator wished not to place the matter beyond his control. We submit that the mere choice and adoption of the device of a will in these circumstances, when the recipients of his bounty after his death had then already (for the present) been resolved upon, signifies a purpose of retaining a right to change his mind.

This inference becomes stronger and more im-

perative when we consider at what point the trust deed stops and the will begins. The trust created by the deed ends on the death of its author. Without the will, there were neither trustees nor beneficiaries nor trust upon his demise. The deed was so contrived as to place the legal title to certain investments and securities in the named trustees, who were to hold for the advantage of the settlor as long as he lived; and at that point it stops. The will in no sense continues the trust created by the deed, but originates a new trust. This present complainant, if trustee at all, is trustee by virtue of the will and not of the deed. The defendants, other than Louise Bamford, if beneficiaries at all, are beneficiaries by virtue of the will.

The will, by the fifth clause, bequeaths to the trustees ***thereinafter named*** his investments, &c., upon trust (defining the various trusts); and in the seventh clause, constitutes the complainant and the testator's now deceased brother executors thereof and trustees thereunder.

The will altogether ignores the trust deed, and makes no allusion to it.

From the circumstances of the omission from the trust deed of any ***express*** words of irrevocability; from the fact of the use of the device of a will in connection with the deed, although the deed offered the readier and more convenient field for the erection of the complete fabric of the trust in all its ramifications and details; from the circumstance that the trust originated by the will is distinct from, and without connection with, the trust raised by the deed;—from all these

considerations the deduction is clear that Joseph Bamford ***intended*** to retain a right of revocation, if not of the trust created by the deed, at least of the trust created by the will, and probably both.

The right to revoke need not be reserved in express terms, but may exist by necessary implication. Russell vs. Passmore (Va. 1920) 103 S. E., 652. The right, as well as the intent appears from the revocable character of the instrument employed by the donor.

II.

THE TRUST, EXCEPT FOR THE LIFE ESTATE CREATED IN FAVOR OF ITS AUTHOR, WAS TESTAMENTARY AND, BECAUSE OF ITS TESTAMENTARY QUALITY, REVOCABLE AND REVOKED BY HIS SUBSEQUENT WILL.

> "Whether a perfectly created trust without power of revocation can be revoked by a subsequent will depends on whether the instrument creating the trust is testamentary in character. ***26 R. C. L. Trusts 48.***
>
> "If a trust is both voluntary and testamentary in character and no immediate interest vests thereunder in any beneficiary, it so far resembles a will that it may be revoked by the grantor at any time prior to his decease. A trust for the beneficial interest of the author during life is revocable as to that interest, and it seems that if no one had any interest in the fund but the settlor himself, he may require a convey-

ance of the trust property to himself." Idem 49.

The underlying question is, to the beneficial use of what person or persons did the property, passing out of the donor, vest in the trustees under the terms of the ***trust deed?*** On this head there is no room for division. ***There was but a single beneficial interest created by that instrument, or attempted to be raised thereby.*** The instrument gave the property to trustees "to have and to hold" the same "unto the said" trustees "upon the trusts nevertheless and to and for the uses, interests nad purposes hereinafter limited, described and declared; that is to say, to invest" &c., "and to receive" "and to pay the income thereof quarterly to ***me*** the said Joseph Bamford, during the term of my natural life, and after my death to transfer the "said property" to my trustees ***"named in my last will and testament."***

The only beneficial interest vesting under the terms of the original instrument of trust alone and standing by itself was a life estate in favor of Joseph Bamford; ***and every interest hostile to that of this defendant, Louise Bamford, asserted in this present suit is rooted in the will, and has no foothold elsewhere.***

This case unquestionably falls into one of the classes of cases which are said in Potter vs. Fidelity Ins. Trust & Safety Deposit Co., supra, to be exceptions to the general rule, namely, "where the instrument was in itself or in connection with other instruments, testamentary in character."

Now the original will, being a will, was revoc-

able; and it is conceded that Joseph Bamford revoked it by a subsequent will, not in general terms only, but also by a specific identification of it.

It was observed by complainant in the court below that this subsequent will revoked in expressed terms not the trust deed, but only the will annexed thereto. That is true; but the answer—the obvious and complete answer—is that the settlor did not attempt the futility of destroying by a will which could become operative only at his death, his own life estate under the trust deed (which, as we will see, was the only estate created thereby), and that there is no evidence that he ever desired to recall that estate. If he had so desired, it may or may not be that he could have effected its revocation; but of all conceivable instruments, the one instrument not apt for that purpose was a last will and testament.

When he revoked the will annexed to the trust deed, he destroyed the seat and lodgment of all the interests claimed in this caused in hostility to his widow; and that is precisely what he appears to have intended to achieve.

In support of the theory that the will annexed to the trust deed was destroyed by a subsequent will, and yet lives as a document supplementing the trust deed, no authority in this jurisdiction was cited in the court below.

In Brown ads. Combs, 29 N. J. L., 36, it is rightly said that a declaration of a trust need not be made by a formal instrument, but a simple letter or untechnical writing may effect it. But the point is that this settlor, in originating every

branch of the trust except the life estate in himself, chose, not a simple letter or untechnical writing, either of which might, like a formal deed, be irrevocable, but an instrument essentially revocable by virtue of its nature, namely, a will.

So far as N. J. Title Guarantee & Trust Co. vs. Parker, supra, is applicable at all to the present cause, it favors our position. It is like this case to the extent that the only trust created by the trust deed was a life estate in the author (one-third of the same to be paid to his wife). It provided that upon the author's death, the fund was to be paid over to such persons and in such proportions as the donor should by his last will and testament direct and provide, and that if he died intestate, then the intestate laws of the State of New York should control its disposition. Two wills were subsequently executed by the donor, in both of which he undertook the disposal of the fund. The first will gave the fund exclusively to his wife; the second to his brother's children. At a still later time the donor undertook, by a document not in the nature of a will, to ratify and adopt an antenuptial and oral agreement between himself and his wife, and thereunder made a disposition of a part of the fund repugnant to the provisions of the wills. No one appears even to have pretended that, having exercised his right of appointment in respect to the fund by the will in the exclusive favor of his wife, the donor exhausted his power over the fund. On the contrary, the subsequent will was upheld and enforced as well against the document ratifying the antenuptial agreement as the prior will.

Now beneficial interest when properly consti-

tuted, vest immediately, notwithstanding beneficiaries other than the donor are not to come into enjoyment until after his death. National Newark & Essex Banking Co. vs. Rosahl, 128 Atl. 586. But the trusts contended for in the present cause were never fully constituted because deriving their sole source, not from a trust deed, a deed of conveyance, a contract, a letter or any other irrevocable writing, however informal and untechnical, but from a will. Resting wholly in a will, they could be overthrown and annihilated by a subsequent will, and Joseph Bamford executed a subsequent will.

The case of Mayor and City Council of Baltimore vs. Williams, 6 Maryland, 235 (cited in the opinion of the Vice Chancellor) differs widely from the present case. The deed there was given to confirm a will previously made.

We think that it should be held that Joseph Bamford's will of March 8, 1926, revoking in expressed terms the will of Feb. 7th, 1925, operated to revoke the trust, and that the decree of the Court of Chancery should be reversed.

Respectfully submitted,
ROBERT J. McDERMOTT,
Sol'r. for and of counsel with Louise Bamford as Executrix of the Will of Joseph Bamford, and Individually and of Victoria Irving.