

THE TRUST AS A SUBSTITUTE FOR A WILL

C. W. LEAPHART

An examination of trust cases to determine the purposes for which the trust has been, and is being, used, reveals an infinite variety of such purposes. It is the purpose of this article to discuss its employment as a substitute for a will.

It is interesting to note in this connection that one of the very important early functions of the use was to accomplish the devise of land by will, a practice which the law had rigorously stamped out.¹ In 1536 this scheme was curtailed² by the passage of the Statute of Uses,³ but the abolition of the power to devise by means of the use aroused such hostility that within four years the power to devise freeholds was restored by the Statute of Wills of 1540.⁴ As the result of that act and subsequent ones, it is, of course no longer necessary to employ the use, or its successor, the trust. There are, however, reasons other than that of evading inheritance taxes⁵ why a person may desire to dispense with a will and yet provide that his property shall go to others than his heirs or next of kin. In the first place, there are the formalities of execution and the danger that the will may fail because they have not been complied with. Furthermore, it is a matter of common knowledge that a will is never safe from attack on the ground of incompetency of the testator at the time of the execution of the will. The third and most important reason is the expense and delay connected with the administration of estates.

As to the first point the advantages are with the trust. There are no formalities connected with its creation. If another than the creator of the trust is to be the trustee, the creator will have

¹ 3 MAITLAND, COLLECTED PAPERS (1911) 335.

² 4 HOLDSWORTH, HISTORY OF ENGLISH LAW (1924) 464.

³ 27 Hen. VIII, c. 10 (1536).

⁴ 32 Hen. VIII, c. 1 (1540). See 4 HOLDSWORTH, *op. cit. supra* note 2, at 465.

⁵ The use of the trust device to escape the payment of estate succession taxes and income taxes will be discussed in another article.

to take the steps necessary to transfer title to the trust property. If the creator is seeking to make himself trustee, any form of words that will show his intention to hold in trust will be sufficient in the case of personal property,⁶ while in the case of real property there will have to be some written memorandum to satisfy the prevailing Statute of Frauds.

As to the second point, just as in the case of wills, so in the case of trusts, attacks are made upon the validity of the trust because of the incompetency of the creator at the time of the creation of the trust. Any comparison of the respective numbers of the attacks would be valueless without a knowledge of the comparative number of trusts which are created in circumstances similar to those under which wills are executed. On this question the books do not contain nearly so many cases dealing with trusts as cases dealing with wills, but such attacks may well increase as the use of the trust device for this purpose increases.

As to the third and most important reason, the advantages are again with the trust. The expense of administration of estates varies with the state. That there is considerable expense and delay in the settlement is a matter of such common knowledge that we shall not attempt to cite any cases on the point. With the trust device there need be no delay and in some instances no expense at all,⁷ while in others there is merely the trustee's fee. The expenses are largely in the control of the creator.⁸ The trust process is so clearly superior on this score that, especially in the case of small estates, it may be well worth while to use the trust if testamentary results can be obtained by it.

What can be accomplished by means of the trust that makes it a satisfactory substitute for a will? First, the trust will be good and will not fall within the scope of the laws governing wills

⁶ There are many recent cases reiterating the proposition, in some of which the court has gone to great lengths to find a trust. *Morgan v. Hayward*, 115 Miss. 354, 76 So. 262 (1917); *In re Horkan's Estate*, 198 Wis. 286, 214 N. W. 438 (1929); *Neal v. Bryant*, 291 Mo. 81, 235 S. W. 1075 (1921); *Adams v. Black Rock Power and Irrigation Co.*, 297 Fed. 905 (C. C. A. 9th, 1924); *Union Trust Co. v. McCaughn*, 24 F. (2d) 459 (E. D. Pa. 1927); *Sturgis v. Citizens Bank*, 152 Md. 654, 137 Atl. 378 (1927).

⁷ See the tentative trust cases discussed *infra* page 634 *et seq.*

⁸ For figures see STEPHENSON, *LIVING TRUSTS* (1926) 273 *et seq.*

when the grantor creates a trust with the beneficial interest in himself for life, remainder over to another.⁹ In such a case, however, the grantor has created an estate in the remainderman at the time of the declaration of the trust. In one sense it is like a will, in that the remainderman comes into possession, in the lay sense of the term, at the death of the creator of the trust. On the other hand this disposition is not ambulatory. That the estate vests in the transferee and the creator cannot, like a testator, change his mind at any time before his death, is an elementary proposition.¹⁰

Suppose, however, that the creator reserves the power to revoke at any time before his death. The mere reservation of this power will not make the instrument testamentary and therefore subject to the statute.¹¹ In fact the omission of such power has caused voluntary settlements on trust to be set aside on the ground of mistake.¹² We now have a situation where the *cestui's* hold on the property is very little, if any, better than that of the expectant devisee or legatee whose devisor has not yet died, and the creator's power of changing his mind and undoing what he has done is closely akin to the power of one who has framed a will to revoke it.

But the creator may go further. Suppose he does not care to revoke the trust in its entirety. He may not only reserve the life interest and the power to revoke in whole, but he may also reserve the power to alter or amend the trust,¹³ or the power to recall either a part or the whole of the trust at any time,¹⁴ or the

⁹ In addition to cases cited in SCOTT, *CASES ON TRUSTS* (1919) 215, n. 1, see McGillivray v. First National Bank of Dickinson, 56 N. D. 152, 217 N. W. 150 (1928); Allen v. Hendrick, 104 Ore. 202, 206 Pac. 733 (1922); National Newark and Essex Banking Co. v. Rosahl, 97 N. J. Eq. 74, 128 Atl. 586 (1925).

¹⁰ PERRY, *TRUSTS* (7th ed. 1929) § 104.

¹¹ The cases are collected in SCOTT, *loc. cit. supra* note 9. Most of the cases subsequently discussed reiterate this.

¹² Garnsley v. Mundy, 24 N. J. Eq. 243 (1873).

¹³ Jones v. Old Colony Trust Co., 251 Mass. 309, 146 N. E. 716 (1924); Roche v. Brickley, 254 Mass. 584, 150 N. E. 866 (1926); Allen v. Hendrick, *supra* note 9.

¹⁴ Jones v. Old Colony Trust Co., *supra* note 13; Roche v. Brickley, *supra* note 13; Allen v. Hendrick, *supra* note 9. In Keck v. McKinstry, 221 N. W. 851 (Iowa, 1928) the creator also reserved the right to appoint new trustees.

power to change the beneficiaries.¹⁵ He must, however, expressly reserve the power to revoke in whole or in part, since the power to revoke the entire trust does not carry with it the power to revoke in part.¹⁶ With respect to the power of revocation there seems to be little reason for the distinction drawn in *Warsco v. Oshkosh Savings and Trust Co.*¹⁷ between a case where the creator has reserved the right to revoke in whole or in part and where he has provided that the trustee shall on demand "pay any . . . of the moneys . . . derived from the said certificate of deposit" to the creator. In substance they are the same and should be treated alike. The Wisconsin court considered such a trust, however, testamentary. The situation is now one where the creator may use as much of his property as he desires during his life, the remainderman getting its practical enjoyment at his death. The remainderman will have an estate of very little practical value during the creator's life. It would rarely be salable because of the strings attached to it. The creator, however, is perhaps not so completely an owner as before, for he must, according to some of the cases, be careful not to retain such control over the trustee as to make him simply an agent.¹⁸ The test as to what constitutes enough control to make the device an agency is not, according to *Jones v. Old Colony Trust Company*,¹⁹ the same as that used in determining whether a business organization is a business trust or a joint stock company. It would apparently take more control on the part of the creator to make it an agency than it would on the part of the purported *cestuis* of a business trust to make the latter a joint stock company. According to *McEvoy v. Boston Five Cent Savings Bank*,²⁰ however, the trustee's powers, in order to create more than a mere agency relationship, must be more than

¹⁵ *Siter v. Hall*, 220 Ky. 43, 294 S. W. 767 (1927); *Wilcox v. Hubbell*, 197 Mich. 21, 163 N. W. 497 (1917).

¹⁶ *National Newark and Essex Banking Co. v. Rosahl*, *supra* note 9.

¹⁷ 183 Wis. 156, 196 N. W. 829 (1924).

¹⁸ *McEvoy v. Boston Five Cent Savings Bank*, 201 Mass. 50, 87 N. E. 465 (1909); *Stoddard v. Eaton*, 22 F. (2d) 184 (D. Conn. 1927); *Hale v. Joslin*, 134 Mass. 310 (1883); *Nutt v. Norton*, 142 Mass. 242, 7 N. E. 720 (1886); *Stratton v. Athol Savings Bank*, 213 Mass. 46, 99 N. E. 454 (1912); *Russell v. Webster*, 213 Mass. 491, 100 N. E. 637 (1913).

¹⁹ *Supra* note 13, at 309, 146 N. E. at 717.

²⁰ *Supra* note 18.

simply to collect and pay over the trust fund in whole or in part to the creator whenever and however he wants it. In *Union Trust Company v. Hawkins*²¹ the court considered the trust company an agent, because all investments had to be submitted to and approved by the creator, whose decision was to be final. The court thought that this fact, plus the fact that on the death of the creator all the trust property should pass to and become the property of her personal representatives, made the disposition testamentary. In *Keck v. McKimistry*²² it was held not fatal that the creator reserved the actual management of the property during his life, the trustee's active duties beginning on his death. In *Jones v. Old Colony Trust Company* the trustee was to hold, manage, invest, and reinvest in its sole discretion, and to pay over the fund to the intestate during her life, and at her decease to liquidate or distribute it among numerous named beneficiaries. The case is distinguished from the *McEvoy* case in that the trustees had ostensible control of the property. However, since the creator may take back any portion or the whole of the property and may alter or amend the terms of the trust, there is little doubt about his ultimate control, for, if the trustee does not do as he says, the settlor may revoke the trust and create a new one with compliant trustees. There is a suspicion that *Jones v. Old Colony Trust Company* represents somewhat of a change in heart on the part of the court. In *Warsco v. Oshkosh Savings and Trust Co.*,²³ in holding an attempted trust testamentary in which the creator had transferred a certificate of deposit to the trustees upon trust, with provisions that the trustee should pay over to him upon request any of the money derived from the certificate of deposit, without the consent of the remainderman, the court considered that if the creator called for the money he would not be revoking the purported trust, but merely requesting its enforcement, and that with such a control the party named as trustee was simply an agent. Bearing in mind these cases, and taking care to use the language of revocation and to give the trustee some duties, it seems possible in most states to create a trust which will be in substance as

²¹ 161 N. E. 548 (Ohio, 1927).

²² *Supra* note 14.

²³ *Supra* note 17.

ambulatory as a will, in that the creator will be able to do practically as he pleases with the property until the day of his death, and prior to that time the remainderman has a vested right only in form. On the creator's death he comes into enjoyment like the beneficiary under a will.

*McEvoy v. Boston Five Cent Savings Bank*²⁴ has caused some confusion. Upon casual inspection it may convey the idea that there are limitations on the extent to which the power of revocation may be used. In *McGillivray v. First National Bank*²⁵ the court apparently so understood the case. But *Jones v. Old Colony Trust Co.*²⁶ shows that it does not make the disposition testamentary to reserve unlimited powers of revocation.

Another limitation is also suggested in the following passage from *McEvoy v. Boston Five Cent Savings Bank*:²⁷

“But if it be thought that this view of the construction and necessary legal effect of the instrument is too favorable to the claimant, the exceptions must be overruled on the ground that the evidence justified a finding by the trial judge that the paper was intended as a mere testamentary disposition of property, and not as a creation of a trust for any other purpose, and that therefore there was no error of law in the finding.”

In *Jones v. Old Colony Trust Co.*,²⁸ which, as we have noticed, permits a trust revocable in whole or in part where the creator retains a life interest, the court did not discuss this proposition; but again in *Roche v. Brickley*,²⁹ a case in which the creator left no will and no property at death other than the property which had been put in trust, this paragraph appears:

“The judge has found that there was no violation of the statute of wills. The fact that ‘the plaintiff conveyed only a small portion of her property by the trust agreement’ does

²⁴ *Supra* note 18.

²⁵ *Supra* note 9, at 157, 217 N. W. at 153; also *Warsco v. Oshkosh Savings and Trust Co.*, *supra* note 17; *Union Trust Co. v. Hawkins*, *supra* note 21.

²⁶ *Supra* note 13.

²⁷ *Supra* note 18, at 55, 87 N. E. at 466.

²⁸ *Supra* note 13.

²⁹ *Supra* note 13, at 588, 150 N. E. at 868.

not of itself establish that the conveyance was not testamentary and so not in violation of the statute of wills. A conveyance may be bad because of such violation, although it does not dispose of all one's property. But taken in connection with other facts, especially that the gift takes effect on the execution of the trust instrument, the fact that a small part only of the donor's property is affected is persuasive that the instrument is not testamentary. The first contention fails."

If it is admitted that a trust may be created in which the creator may reserve these rights, it seems foolish to try to set up a rule that he shall not do it to "violate the statute of wills". Does the court mean by this that he must not use the trust for the purpose of getting the benefit of a testamentary disposition without making a will? The Illinois Supreme Court is probably correct in *Patterson v. McClenathan*³⁰ in saying that most trusts in which a life estate is reserved to the creator are undoubtedly created in order to avoid making a will. It is hardly conceivable that Massachusetts would consider such a trust testamentary and void unless it complied with the Statute of Wills, no matter what the motive of the creator was. If it is conceded that trusts revocable in whole or in part can be created, why should it make any difference that the creator is using it in preference to leaving his property by will because of the disadvantages of the latter method? If the policy that surrounds the testator with safeguards of formality and the probate court is applicable at all, it seems applicable in all cases where the power to revoke is involved. In fact it would seem applicable where the trust is for the creator for life, remainder over on his death.³¹ Suppose one of sound mind, believing that he will die within a few days, should, in order to avoid the expenses of administration, make an outright, unconditional gift of all his property after paying all his debts and providing for burial expenses, etc. Would such a conveyance violate the Statute of Wills? If not, the use of the trust, another well known method of conveyancing of ancient lineage, should not be so treated just

³⁰ 296 Ill. 475, 129 N. E. 767 (1921).

³¹ *Contra*: Bogert, *Recent Developments in the Law of Trusts* (1929) 23 ILL. L. REV. 749, at 757.

because the creator intentionally uses that method in place of a will in order to get many of the results that would be achieved by a will.

There is no intimation in the statute of 1540,³² which restored the power to devise freeholds, nor in any of its successors, that they were designed to do away with trusts. If the spirit of these acts is violated by trusts which are created to avoid making a will or dying intestate, it is equally violated by outright gifts for this purpose. The only thing to be said against the trust is that it is much more efficient for this purpose, being more valuable in that respect than a gift *causa mortis* in that it can be made without reference to the near approach of death.

Having set up a device that is very effective for this purpose, by deciding that a trust may be revoked in whole or in part, or amended, altered, etc., it is absurd to say that it must not be used for the very purpose that led to its creation and for which it is well adapted.

Reverting to the case of *Roche v. Brickley* we find the court saying that the creator's intention in creating the trust was to place "her property in such a way that her husband would not share in its distribution on her death."³³ In other words, she is using the trust to get the advantages of a will without one of its disadvantages; namely, that if she left a will she could not deprive her husband of a share in the property disposed of therein. Though she did this long before her death and at a time when she had some property other than that which she put in trust, and therefore probably did not make a conveyance in fraud of creditors, a more likely case for finding that the settlor has created a trust in "violation of the statute of wills" is not likely to arise in Massachusetts.

While such a trust should not be condemned as testamentary, it does not follow that the creator of the trust may accomplish all that he sets out to do. For example, trusts which effect testamentary results do not thereby escape the Federal Estate Tax.³⁴ At

³² *Supra* note 4.

³³ *Supra* note 13, at 586, 150 N. E. at 867.

³⁴ See *Reineke v. Northern Trust Co.*, 278 U. S. 339, 49 Sup. Ct. 123 (1927), where the testator reserved the power to revoke, alter, or amend the trust, for the latest Supreme Court pronouncement on the subject.

first glance it might seem that the creator should not be able to use it to deprive his wife or children of property of which he could not deprive them by will. Since, however, he is allowed to do this by gift, it seems logical that he should be able to do so by trust, and so the court held in *Sturgis v. Citizens National Bank*,³⁵ and likewise, with the spouses reversed, in *Roche v. Brickley*.³⁶ Certainly he should not be able to use it to defraud creditors. Query whether the creditors should not have been allowed to get at the property in *Roche v. Brickley*, where the settlor created a trust with all the necessary strings for pulling the property back for her own enjoyment, and where at her death nothing was left for her creditors. It is true that at its creation the court found she had no creditors and had other property besides the portion put in trust. The *Roche* case, when all the facts are considered, indicates little likelihood that the trust will be declared bad for the reason that it "violates the statute of wills".

Thus far cases have been discussed wherein the trustee is not the creator of the trust. In such a case it appears that the only safe thing to do is to give the trustee real duties to perform. It remains to be seen how much further the process may go. Suppose the creator makes himself trustee with a beneficial interest in himself for life and power to revoke the trust in whole or in part. Will such a trust be testamentary? In this event the creator would have all the powers that the creator retained in *McEvoy v. Boston Five Cent Savings Bank*,³⁷ and the trust would logically be held bad in Massachusetts. In *McGillivray v. First National Bank*³⁸ the court, in refusing to find a trust on the slender evidence in the case, was fortified in its decision by the fact that the grantor would be also the trustee and could do everything she desired with the deposits while she was alive. At least in one class of cases many courts have gone that far, or perhaps somewhat further. In bank deposit cases many courts have adopted the so-called "tentative trust doctrine". The court which first laid down the doctrine stated it as follows:

³⁵ *Supra* note 6.

³⁶ *Supra* note 13.

³⁷ *Supra* note 18.

³⁸ *Supra* note 9.

"A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary. In case the depositor dies before the beneficiary without revocation, or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor."³⁹

Under this doctrine the depositor, without expressly reserving the power to revoke, may draw out and use as much of the deposit for himself as he may choose during his life, and at his death the beneficiary may draw out the balance. It seemed revolutionary at the time the decision was made, and it was criticized as judicial legislation. In an article by Wilbur Larremore,⁴⁰ in which such criticism was made, appears the following justification:

"On the other hand as a piece of constructive legislation the decision could hardly be too highly praised. It effectuates a custom which has grown up among the humbler class of people who, in placing their money on deposit for other persons, often intend to retain the right to use it, principal as well as interest, during life, but that whatever remains at the time of death shall go to the *cestuis que trust*. Under the law as it stood the estates of depositors, who as trustees had drawn money from accounts, would be liable to refund the same to the *cestuis que trust*. The validation of the business custom in question seems so unobjectionable, indeed so desirable, that the writer has on various occasions advocated the enactment of a statute on just the lines laid down in the Matter of Totten. He did not believe that the court would venture upon such a radical innovation and it is difficult to justify it as an exercise of judicial power."

The desirability of the doctrine and the fact that the bankers favor it have led to some legislation.

It is not an extreme step to imply a power to revoke. If the

³⁹ Matter of Totten, 179 N. Y. 112, 125, 71 N. E. 748, 752 (1904).

⁴⁰ Larremore, *Judicial Legislation* (1905) 14 YALE L. J. 312, 315.

depositor intends a trust at all, it seems rather clear that he intends a revocable trust. It is also true that he perhaps intends to "violate the statute of wills"; in other words, to escape the inconveniences of making a will and the consequent expenditure of money in administering. But should that be fatal? The creator's control of the property in such a case is absolute, and it may be questioned whether it is justifiable to take the step taken by the New York court. It is not likely that the state which decided *McEvoy v. Boston Five Cent Savings Bank*⁴¹ will take this view. New Jersey,⁴² Maine,⁴³ and perhaps North Dakota⁴⁴ have disapproved of the doctrine. Minnesota,⁴⁵ Kentucky,⁴⁶ Maryland,⁴⁷ and probably California⁴⁸ approve the doctrine.

In *Allen v. Hendrick*⁴⁹ a father endorsed and delivered to his son two time certificates of deposit made payable to the order of the father. The following letter was sent to the son: "Dear Son: Will send two deposit checks you will keep safely for me in case I come to need any part or all of them and if I never need them they are yours when I am done with them." There was other evidence that the grantor intended the son to have the property when he died. The court thought this created a trust revocable in whole or in part. While the father's control here is perhaps not so great as in the tentative trust case, it shows how far the courts will go in giving effect to trusts which may work as effective substitutes for wills.

Another method of using the trust to effect the same result as a testamentary disposition of property was that successfully

⁴¹ *Supra* note 18.

⁴² *Nicholas v. Parker*, 71 N. J. Eq. 777, 61 Atl. 267 (1905). In *Fiocchi v. Smith*, 97 Atl. 283 (N. J. Eq. 1916), the New Jersey court applied the New York rule to a New York trust.

⁴³ *Cazallus v. Ingraham*, 119 Maine 240, 110 Atl. 359 (1926).

⁴⁴ *McGillivray v. First National Bank*, *supra* note 9, at 161, 217 N. W. at 157; *Eschen v. Steers*, 10 F. (2d) 739 (C. C. A. 8th, 1926).

⁴⁵ *Walso v. Latterner*, 140 Minn. 455, 168 N. W. 353 (1918), *aff'd* 143 Minn. 364, 173 N. W. 711 (1919).

⁴⁶ *Schauberger v. Tafel*, 202 Ky. 9, 258 S. W. 953 (1924).

⁴⁷ *Milholland v. Whalen*, 89 Md. 212, 43 Atl. 43 (1899); *Sturgis v. Citizens National Bank*, *supra* note 6.

⁴⁸ *Estate of Seiler*, 176 Cal. 771, 170 Pac. 1138 (1917); rehearing denied, 176 Cal. 775, 179 Pac. 389 (1918).

⁴⁹ *Supra* note 9.

taken in *Milholland v. Whalen*.⁵⁰ The creator deposited money in a bank in her own name "in trust for herself and Mary Whalen, widow, joint owners, subject to the order of either; the balance at the death of either to belong to the survivor". The bank book was retained by her, and no notification was given to the co-cestui. The depositor drew on the fund at different intervals. The court held that a valid trust was created, and, on the death of the depositor Mary Whalen got what remained of the fund. This case is an interesting contrast to a preceding case in the same volume between the same parties, *Whalen v. Milholland*.⁵¹ The difference was that in the preceding case the depositor, Elizabeth O'Neill, made deposit as follows: "Elizabeth O'Neill and Mary Whalen. Payable to the order of either or the survivor." Here since the deposit was not made with apt words for creating a trust, the gift failed because there was no delivery of the pass book. The use of the words "in trust" or similar words is thus very essential to successful results. For a similar case see *McCullough v. Forrest*.⁵²

If the tentative trust doctrine is to stand, should not an owner of property be able to create a similar trust with reference to any of it, making himself a trustee of the property for life with ample powers of revocation reserved? Under such a trust his power of control of his property is absolute. A perfect substitute for a will is then found. The apparent objection is that this has dispensed with all need of a will and laws governing the administration of estates. The answer to this, perhaps, is to let those who desire their property safeguarded use the will, or die intestate without creating a trust, and permit others who prefer the trust to use it. Where the device contravenes some sound policy of the law, let the legislature speak.

At present it is not clear whether the courts which approve the tentative trust doctrine would apply it to trusts of other kinds of property. In *Ambrosius v. Ambrosius*,⁵³ which went up to the

⁵⁰ *Supra* note 47.

⁵¹ 89 Md. 199, 43 Atl. 45 (1899).

⁵² 84 N. J. Eq. 101, 92 Atl. 595 (1914). For a collection of cases on this point see *McGillivray v. First National Bank*, *supra* note 9.

⁵³ 239 Fed. 473 (C. C. A. 2d, 1917).

Circuit Court of Appeals from the District Court for the Eastern District of New York eleven years after the *Matter of Totten*⁵⁴ was decided, an argument might have been made for the application of the tentative trust doctrine by analogy. According to the facts stated in the opinion, a father had declared in writing that he held certain listed securities in an envelope in trust for his daughter during his lifetime. He continued to use the income from the securities. On his death the envelope was found containing a portion of the securities listed, and others which had probably taken the place of listed ones which he had sold. The court apparently did not consider the possibility of a trust with a life interest in the creator, revocable as to the principal in whole or in part, and thought such acts inconsistent with any idea of a trust. The creator exercised no more dominion over the securities than the depositor does in the bank deposit cases.

In conclusion, by means of a trust in which the power is reserved in the creator to alter, amend, or revoke in whole or in part, and to appoint new trustees, he may get that which for all practical purposes is a testamentary disposition of his property. He should be careful to give the trustees some rein in the management of the property, in order to be safe. In the light of such a case as *Warsco v. Oshkosh Savings and Trust Company*⁵⁵ the creator will be wise to use language of revocation rather than to direct the trustees to pay him on demand; and in view of *Union Trust Company v. Hawkins*⁵⁶ he should direct the trustee to convey the property on the creator's death to the remainderman, rather than provide that on his death all his property shall pass to the latter. It is submitted that such dispositions do not violate the Statute of Wills, and there is very little likelihood that they will be held to do so. With respect to trusts in which the creator is also the trustee, the chances are stronger that the courts will treat the disposition as testamentary. So far the tentative trust doctrine is just about holding its own. Whether it will be extended to other forms of property remains to be seen.

⁵⁴ *Supra* note 39.

⁵⁵ *Supra* note 17.

⁵⁶ *Supra* note 21.