

vided and entered in the separate accounts. The property account of the single trust was closed and the items were transferred equally to separate accounts in the names of the beneficiaries, showing one-third of the assets of the old trust as representing the corpus of each of the three trusts. New principal was divided equally in the same way. If, at the outset, there had been three trust deeds, each creating a trust for the benefit of a distinct beneficiary in an undivided one-third of the property involved, no question would have arisen. We think the same result was achieved by the use of the power of amendment. We find no ground for concluding that the purpose of the parties to create the three trusts was not carried out.

The decision of the Circuit Court of Appeals is reversed and the order of the Board of Tax Appeals is affirmed.

Reversed.

HELVERING, COMMISSIONER OF INTERNAL
REVENUE, *v.* McILVAINE ET AL., TRUSTEES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT.

No. 566. Argued December 17, 1935.—Decided January 6, 1936.

Decided upon the authority of *United States Trust Co. v. Commissioner*, *ante*, p. 481.

78 F. (2d) 787, affirmed.

CERTIORARI * to review a judgment affirming a decision of the Board of Tax Appeals, 27 B. T. A. 304, which overruled an additional tax assessment on a trustee.

Mr. J. Louis Monarch, with whom *Solicitor General Reed*, *Assistant Attorney General Wideman*, and *Mr. Sewall Key* were on the brief, for petitioner.

Mr. Clay Judson for respondents.

* See Table of Cases Reported in this volume.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The question presented in this case is similar to that involved in *United States Trust Co. v. Commissioner*, decided this day, *ante*, p. 481. By amendments under a reserved power, the terms of an original trust created by John P. Wilson, in 1913, were altered with the intention of creating three separate trusts. The Board of Tax Appeals, upon findings supported by evidence, concluded that this purpose was accomplished and hence that there was no deficiency. 29 B. T. A. 304. The Circuit Court of Appeals affirmed the order of the Board. 78 F. (2d) 787. We granted certiorari because of the conflict with the decision of the Circuit Court of Appeals for the Second Circuit, in the case of the *United States Trust Company, supra*, 75 F. (2d) 973, and, for the reasons stated in our opinion in that case, the decree of the Circuit Court of Appeals is

Affirmed.

LEGG v. ST. JOHN, TRUSTEE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SIXTH CIRCUIT.

No. 54. Argued November 18, 1935.—Decided January 6, 1936.

1. The right of a bankrupt to receive future disability payments under a contract with an insurance company having no cash surrender value, is not insurance within the meaning of § 70 (a) of the Bankruptcy Act, and, if not exempted by the state law, passes to his trustee in bankruptcy. P. 493.

Provision for the payment of disability benefits in connection with life insurance was not introduced in the United States until about twenty years after the passage of the Bankruptcy Act.

2. The fact that the disability benefits were provided for in a supplementary contract issued on the same day as, and physically