

No. 4937 Equity.

Sarah C. Warner and
 Samuel C. Warner, her husband
 v.
 Petitioner.

No. 4937 Equity,
 in the Circuit Court for Frederick County
 in
 Equity.

On the 11th of October in the year Nineteen Hundred, a petition was filed in this court in No. 7264 Equity by Mrs. Sarah C. Warner and her husband asking this court to appoint trustees to carry out certain trusts and sell certain real estate set forth and described in a deed from Ann E. Kouck and Jacob J. Kouck her husband, to one Emma Kouck a copy of which deed is filed as Exhibit No. 1 in this cause, and a decree was passed in said No. 7264 Equity on said petition appointing John S. Newman and John E. Kouck to carry into effect said trust and make sale of said real estate.

They were about to advertise said property when another petition was filed in this cause by Mrs. Valeria E. Kouck, the surviving wife of the said Jacob J. Kouck, who married him after the death of his former wife Ann Elizabeth, praying this court to set aside the appointment of said trustees Newman and Kouck, and that she be allowed to execute a bond and make sale of said property as said trustee. It appears that Emma Kouck to whom said land was originally conveyed as trustee died before the cestui qui trust Jacob J. Kouck, and that on the 29th day of October in the year 1883 the said Valeria E. Kouck, by the decree of this court, was appointed trustee to execute the trusts set forth in said above mentioned deed and that she was required to execute a bond in the penalty of One thousand Dollars conditional for the faithful discharge of her duties as said trustee. After her appointment as such trustee, said Valeria E. never executed the required bond and never did in reality perform any of the functions or duties pertaining to said trust, but to the contrary it appears that she permitted said trust estate to be disposed and wasted, so that it is not near so valuable as when she was first made said trustee. The property originally belonged to the former wife of the said Jacob J. Kouck, and the said Valeria E. Kouck has no interest therein.

The answer to the petition alleges that she is hostile to all the parties interested in the division of the proceeds of sale of said real estate and that it would be to their manifest disadvantage and injury to have her make said sale. As the matter is being determined on the petition and answer which answer is duly sworn to, I must consider all the allegations of the answer to be true. Now it sets forth sufficient cause for the removal of Mrs. Kouck from said trusteeship, if that be deemed necessary. In addition all the parties in interest wish that one of those interested shall be appointed to make sale of said real estate, which must be done under the provision of said deed. It was contended by the learned Solicitor for Mrs. Kouck that she once having been appointed trustee, she is still the trustee, even though she failed to execute the required bond, the decree appointing her never having been set aside, and the appointment of Messrs. Newman and Kouck was inadvertent and is void. It seems that when the last two mentioned parties were appointed, the court was not aware of the appointment of Mrs. Valeria E. Kouck.