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seem persuasive enough to justify denying a child recovery for an injury willfully and maliciously inflicted upon him by his parent.

The North Carolina Supreme Court adopted the general rule of nonliability in *Small v. Morrison*,¹⁹ a negligence case, notwithstanding the vigorous dissent of Chief Justice Clark, which closely parallels the opinion of the majority of the court in the Oregon case.²⁰ However, the question as to whether an unemancipated minor may sue his parent for a willful or malicious tort does not seem to have been yet presented in this state. The Oregon court, by refusing to apply a hard and fast rule of nonliability to the facts in this case, has recognized a trend which the North Carolina court should seriously consider when the question is presented in this state.

EARL W. VAUGHN.

Trusts—Exercise by Will of a Reserved Power of Revocation

In *Cohn v. Central National Bank of Richmond*¹ the revocation clause in an insurance trust agreement read:

“The right is reserved to the insured [settlor]; to revoke or annul this agreement in whole or in part, and to modify the terms in any respect . . . on the written demand of the insured, the trustee shall deliver to him any or all of the policies held under the terms of this agreement.”

Held, the attempted exercise by will of the reserved power of revocation was ineffectual to revoke the trust.

It is clear that a settlor may validly reserve a power to revoke a trust and stipulate the manner in which such power is to be exercised.² When a particular mode of revocation is specified in the reserved power of revocation, however, it is essential that it be strictly complied with in order to make the revocation effective.³ When the revocation pro-

¹⁹ 185 N. C. 577, 118 S. E. 12 (1923), 2 N. C. L. REV. 113 (1924).

²⁰ Clark argues that neither the common law nor statutes deny the child a right to sue his parent in tort and that the court should never create a precedent upon a supposed public policy which will deprive anyone of just rights.

¹ 191 Va. 12, 60 S. E. 2d 30 (1950).

² *E.g.*, *Nichols v. Emery*, 109 Cal. 323, 41 Pac. 1089 (1895); *Cramer v. Hartford-Conn. Trust Co.*, 110 Conn. 22, 147 Atl. 139 (1929); *Kelley v. Parker*, 181 Ill. 49, 54 N. E. 615 (1899); *Jones v. Old Colony Trust Co.*, 251 Mass. 309, 146 N. E. 716 (1925); *Nat. Newark & E. Banking Co. v. Rosahl*, 97 N. J. Eq. 74, 128 Atl. 586 (1925); *Richardson v. Stephenson*, 193 Wis. 89, 213 N. W. 673 (1927). The settlor may reserve a power to revoke the trust only during his lifetime, or he may reserve also a power to revoke by will. 3 SCOTT, TRUSTS §330.8 (1939). The settlor has power to revoke the trust if and to the extent that by the terms of the trust he reserved such power. RESTATEMENT, TRUSTS §330(1) (1935).

³ *Hill v. Cornwall & Bro.'s Assignee*, 95 Ky. 512, 26 S. W. 540 (1894) (power to revoke by deed is not exercised when deed is undelivered); *Brown v. Fidelity Co.*, 126 Md. 175, 94 Atl. 523 (1915) (settlor reserved power of revocation upon

vision is ambiguously worded, as in the principal case, then the problem is one of interpretation by the courts as to whether the agreement contemplated a revocation only during the settlor's lifetime or included revocation at death by his will.⁴

The landmark case of *Chase National Bank v. Tomagno*,⁵ where the trust agreement provided for "a written revocation filed with the trustee, executed by the settlor," indicates the criteria and factors to be taken into account in determining the modes of revocation actually reserved. The court there said: "This trust indenture does not specifically provide whether these powers of modification must be exercised during the lifetime of the settlor or whether they may be exercised by will. However, this indenture provides that the power reserved shall be exercised by filing with the trustee a written notice of the revocation, modification or change. In such circumstances it seems clear that the settlor intended that the power should be exercised only during her lifetime." In the recent case of *Leahy v. Old Colony Trust Co.*⁶ the revocation provision read: "The trust indenture may be amended or revoked at any time during the lifetime of the said J. M. L. by an instrument in writing signed by her, and also by A. A. C. if she be living." The court said that "it is settled that a power to revoke 'during the lifetime' of the settlor, means a revocation taking effect before the death of the settlor, and it cannot be exercised by a will that in the nature of things cannot take effect before the death of the testator."

giving 20 days' notice, same to be executed in office of trustee under hand and seal, properly attested and acknowledged; settlor sent letter evidencing intent to revoke and took no further action, held to be no revocation); *In re Solomon's Estate*, 332 Pa. 462, 2 A. 2d 825 (1938) (where two settlors reserved to themselves power to modify jointly a trust agreement, the power was extinguished when one of the settlors died and the trust was deemed irrevocable); *Reese's Estate*, 317 Pa. 473, 177 Atl. 742 (1935) (where the settlor reserved a right to revoke by giving 60 days' notice, gave the notice, but died before the 60 days had elapsed. there was no valid revocation); 4 BOGERT, TRUSTS AND TRUSTEES §996 (2d Ed. 1948); 3 SCOTT, TRUSTS §330.8 (1939); RESTATEMENT, TRUSTS §330, comment j (1935).

⁴ *Gall v. Union Nat. Bank of Little Rock*, 203 Ark. 1000, 159 S. W. 2d 757 (1942) (reserved right to revoke by giving written notice at least six months in advance; held, notice must be given in lifetime and there can be no valid revocation by will); *Broga v. Rome Trust Co.*, 151 Misc. 641, 272 N. Y. Supp. 101 (1934) (revocation provision was "grantor may, by instrument in writing, delivered to the trustee, modify or alter this agreement"; attempted revocation by will was ineffective); *In re Shapley's Deed of Trust*, 53 D. & C. 123, *aff'd*, 353 Pa. 499, 46 A. 2d 227 (1945) (right to revoke limited "to a proper instrument or instruments in writing executed by me and lodged with the trustee"; lodging of probated will so revoking held not a sufficient compliance); *In re Lyon's Estate*, 164 Pa. 140, 63 A. 2d 415 (1947) (trust agreement provided that 30 days' notice be given to trustee, same not revoked by settlor's will); RESTATEMENT, TRUSTS §330, comment j (1935).

⁵ 172 Misc. 560, 14 N. Y. S. 2d 759 (1939). For case in accord both as to facts and law see *Kelley v. Snow*, 185 Mass. 288, 70 N. E. 89 (1904).

⁶ 93 N. E. 2d 238 (Mass. 1950).

In the principal case⁷ the same reasoning was followed as the revocation provision was said to "carry with it the thought that whatever is done to effect a revocation must be done in the lifetime of the settlor." The court found no language authorizing the revocation of the trust agreement by will, or from which an inference to that effect could be drawn.

Conversely, where the settlor reserves a power to revoke only by will, an attempted revocation during his lifetime is ineffective as it is not in accord with the mode specified by the reserved power of revocation.⁸

A third situation exists where a power of revocation is reserved without specifying the manner in which it is to be exercised. An example of this type of reserved power in its simplest form is "this trust shall be revocable." It seems that this would allow the settlor to exercise his reserved power in any manner which clearly evidences his intention to revoke.⁹

In the cases where a settlor attempts to revoke an inter vivos trust by his will, or by an act during his life, and fails because he has not reserved the power to revoke in the manner attempted, his latest intention has been thwarted. The remedy, however, was within the grasp of the original draftsman. The settlor should be instructed as to his right to reserve a power to revoke by an inter vivos transaction or by his will. If the settlor is uncertain at the time as to which mode he will in the future prefer to exercise, the draftsman, by clear and concise language, should include both modes in the reserved power of revocation. This would leave no possibility of ambiguity. By the use of this method the settlor's intent as to the mode of future revocations could be effectuated, and the courts would be spared the troublesome problem of interpreting such agreements.

J. C. JOHNSON, JR.

Wills—Pretermission Statute—Sufficiency of Life Insurance As Provision for After-Born Child

Under the North Carolina pretermission statute,¹ children born after

⁷ *Cohn v. Central Nat. Bank of Richmond*, 191 Va. 12, 60 S. E. 2d 30 (1950).

⁸ *Underhill v. U. S. Trust Co.*, 227 Ky. 44, 13 S. W. 2d 502 (1929); *Dickey v. Goldsmith*, 60 Misc. 258, 111 N. Y. Supp. 1025 (1908).

⁹ *Security Trust Co. v. Spruance*, 20 Del. Ch. 195, 174 Atl. 285 (1934); *Hoffa v. Hough*, 181 Md. 472, 30 A. 2d 761 (1943); *Lambdin v. Dantzebecker*, 169 Md. 240, 181 Atl. 353 (1935); *Barnard v. Gantz*, 140 N. Y. 249, 35 N. E. 430 (1893). *But cf.* *Mayer v. Tucker*, 102 N. J. Eq. 524, 141 Atl. 799 (1928); *Stone v. Hackett*, 12 Gray 227 (Mass. 1858).

¹ N. C. GEN. STAT. §31-45 (1943): "Children born after the making of the parent's will, and whose parent shall die without making any provision for them, shall be entitled to such share and portion of the parent's estate as if he or she had died intestate, and the rights of any such after-born child shall be a lien on every part of the parent's estate, until his several share thereof is set apart in the manner prescribed in §28-153 to 28-158."