liable for the slanderous statements of its agent, a special investigator, in a casual conversation struck up with another employee while waiting for a train, for it was held not to have been made in the furtherance of the company's business.

In the light of the facts given in the report of the case under discussion, there is nothing other than the bare fact that the statement was made to another employee which would seem to take it from the class of mere sociable conversation among fellow-employees. In view of the facts as we have them, it is submitted that a different result should have been reached at least in so far as the Brink's Express Co. was concerned.

F. L. K. '38.

TORTS—RELEASE—JOINT TORT-FEASORS.—There is a sharp division of authority among the various jurisdictions as to whether or not the release of one joint tort-feasor releases other joint tort-feasors.[1] The common law rule which is still adhered to in many states is that the release of one joint tort-feasor releases all.[2] This view is based on the theory that a person is entitled to only one compensation for an injury and he should not be allowed double payment for a single wrong.[3] Under this view the intention of the parties does not matter. In fact, it is held in some jurisdictions that even where the injured party has reserved his rights against another joint tort-feasor, the latter is released.[4] The prevailing tendency, however, is that if an intention not to release other joint tort-feasors appears, they are not released, if, first, the amount received as consideration for the release is not full satisfaction for the injury,[5] or, second, where rights of the person harmed against other parties jointly liable are reserved.[6] Courts tend to look more favorably at one or both of the preceding two views in cases where the amount of the losses can be accurately assertained, so that it can be readily determined whether or not the amount received in settlement with one tort-feasor is less than the total amount of the whole loss.[7]

In many jurisdictions statutes have given effect to the prevailing tendency by providing that a release must be given effect according to the

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[1] 50 A. L. R. 1057—annotation.

[2] For older Mo. cases holding to this view see Hubbard v. St. Louis & M. River Co. (1903) 173 Mo. 249, 72 S. W. 1073; Laughlin v. Excelsior Powder Mfg. Co. (1911) 153 Mo. App. 508, 135 S. W. 961.

[3] Dulaney v. Buffum (1903) 173 Mo. 1, 73 S. W. 125; Clark v. Union Electric Light & P. Co. (1919) 279 Mo. 69, 213 S. W. 851.

[4] Ruble v. Turner (1808) 2 Hen. & M. (Va.) 38; Mitchell v. Allen (1880) 25 Hun (N. Y.) 543; Gilbert v. Timms (1905) 28 Ohio C. C. 107; Flynn v. Manson (1912) 19 Cal. App. 400, 126 Pac. 181.

[5] 50 A. L. R. 1057; Burton v. Joyce (1930 Mo. App.) 22 S. W. (2d) 890; Clifton v. Caraker (1932) 50 S. W. (2d) 758; Knoles v. Bell Telephone Co. (1924) 218 Mo. App. 235, 265 S. W. 1005; S. W. Gas & Electric Co. v. Williams (1935) 76 F (2d) 49; Herberger v. Anderson Motor Service Co. (1934) 268 Ill. App. 403; Jamison v. Kansas City (1930) 17 S. W. (2d) 621.

[6] Harpers *On Torts*, sec. 302; Fidelity & Casualty Co. v. Christenson (1931) 183 Minn. 182.

[7] 50 A. L. R. 1057.

intention of the parties,[8] so that a release of one joint tort-feasor does not discharge others where it was not so intended.[9] In *Greenhalch v. Shell Oil Co.*[10] plaintiff had released one joint tort-feasor before he found out that defendant, by its relation[11] with the premises, was a joint tort-feasor. A statute of Utah permits an express reservation in a release against joint tort-feasors.[12] Plaintiff, however, had reserved his right only against a physician, not against the defendant. *Held*, there being no written reservation of right against the defendant and the reservation of rights against the physician having impliedly released all others, the release discharged the defendant from liability.

Such an interpretation of a release which involves unknown tort-feasors seemingly provides a loophole for fraud in that it may be to the advantage of the joint tort-feasors to mask their joint contribution to the tort, until the plaintiff has released one, without reserving his rights, so that the other is also released. For example, because of the small size of one offending establishment, the plaintiff may not be able to collect what he would from a much larger organization or from the two together, so that the plaintiff may be in a position where a smaller sum has to be accepted. The plaintiff would then have the burden of proving that the smaller sum was not really in full satisfaction of the injury.

Recent decisions, however, have indicated that a much sounder solution can be reached. In *Knoles v. S. W. Bell Telephone Co.*[13] an employee of a traction company who was injured by the company's property and the defendant's wires, sued for $15,000, but the traction company, denying all liability, paid the plaintiff $2,000 "in order to compromise, adjust, and forever settle" the plaintiff's claim, which he acknowledged *to be in full of all claims of every kind and character against the traction company. Held*, this release did not as a matter of law release the defendant company from liability as the release showed this was a compromise and was not a release in full of all demands arising from his injury, but "in full of *all claims* of every kind and character against the said defendant (traction company)." The court goes on to point out that "to say as a matter of law that, because of such a release as this the plaintiff is not entitled to recover damages from any other tort-feasor whose negligence also caused the injury is a refusal to allow any force or effect to the statute."[14] So also in *Clifton v.*

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[8] R. S. Mo., 1929, sec. 3268.

[9] Knoles v. S. W. Bell Telephone Co. (1924) 218 Mo. App. 235, 265 S. W. 1005.

[10] (1935) 78 F (2d) 942.

[11] The exact relationship is undisclosed in the case. Probably the Dooley Bros. Assoc. (the released joint tort-feasor) leased premises for a filling station from the defendant.

[12] Title 47, R. S. Utah (1933), see esp. secs. 47-0-3, 47-0-4, 47-0-5.

[13] (1924) 218 Mo. App. 235; cases construing similar releases; Burton v. Joyce (1930) 22 S. W. (2d) 890; S. W. Gas & Electric Co. v. Williams (1935) 76 F (2d) 49; Herberger v. Anderson Motor Service Co. (1934) 268 Ill. App. 403; Jamison v. Kansas City (1930) 17 S. W. (2d) 621.

[14] R. S. Mo., 1929, sec. 3268 (R. S. Mo., 1919, sec. 4223) is the statute concerned.

Caraker et al.,[15] a compromise agreement settling all matters in controversy "between the plaintiff and (named) defendant" *held* not to preclude plaintiff from collecting balance from joint tort-feasors. Again, courts of equity will restrict a general release to the thing or things intended to be released.[16].

The above cases seem to indicate that the courts are tending more and more to look, first, at the language of the release, and, second, at the apparent intention of the parties. Thus it is quite possible that in the *Greenhalch* case if the plaintiff had drawn his original release to read "in settlement of all claims of every kind and character"[17] against the Dooley Brothers Assoc., instead of "in full satisfaction" of "all claims, damages, etc., done by Dooley Bros. Assoc." he would have been able to recover against the defendant. The reservation of right against the physician should not be taken as the ground of the decision. This recent trend of the courts seems unsound for if the manner in which the release is drawn is to determine whether or not another (or an unknown) tort-feasor is to escape liability, not only fraud but undue technicality may creep in. The manifest intent of the parties should be construed not merely from the language of the release but also from the surrounding circumstances as brought out by all the evidence in the case. The courts must remember that in cases like this "language is at best an imperfect vehicle of expression."

E. M. F. '38.

TRUSTS—EFFECT OF RESERVATION OF POWERS BY SETTLOR.—Where the settlor of a trust reserves powers over the trust property the question arises whether the settlor has created a valid trust or whether he attempted to make a will. The cases have gone far in upholding such instruments as trusts. In the recent case of *Goodrich v. City National Bank and Trust Company*[1] the settlor conveyed both real and personal property to another in trust for a designated beneficiary. He reserved the net income for life, the right to change the beneficiaries, to revoke in whole or in part, to withdraw from the principal such sums as he wished, to direct the trustee in making investments, and the power to amend the trust in any respect. The settlor's heirs contended that the instrument created a mere agency, revoked by his death, and that the settlor's intent was testamentary, making the instrument invalid as not executed within the requirements for wills. In holding that a valid trust had been created the court said: "The essential

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[15] (1932) 50 S. W. (2d) 758; see also, Ligero et ux. v. Martins (1933 R. I.) 167 Atl. 112; Adams Express Co. v. Beckwith (1919) 126 N. E. 300, 100 Ohio St. 348, in which it was held that "where a written release by a person wronged to one or more joint tort-feasors expressly provides that the release is solely and exclusively for the benefit of the parties thereto, and expressly reserves a right of action as against any other wrongdoer, such reservation is legal and available to the parties thereto . . . ."

[16] 23 R. C. L. sec. 373.

[17] As in Knoles v. S. W. Bell Telephone Co.—see footnote 13 supra.

[1] (1935) 270 Mich. 222, 258 N. W. 253.