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.

question is whether, by the instrument or in pursuance of it, title to the trust property passed to the trustee and the beneficiaries took vested interests in it. On its face, the instrument operated to that effect. The reserved powers amounted to conditions subsequent, upon the happening of which vested interests would have become divested."

It is generally agreed that a reservation of the right to revoke,[2] to withdraw funds from the trust principal,[3] to use or possess the property,[4] to manage it,[5] to substitute new trustees,[6] to change the beneficiaries,[7] or to amend the trust instrument[8] is not sufficient to invalidate the instrument as testamentary. It is proper, furthermore, for the settlor to reserve a life income or a life estate.[9] The problem becomes much more acute, however, where the settlor reserves a combination of these powers, and as to this question the cases are in a state of confusion. Missouri is inclined to be liberal as is the Michigan case already referred to. In *Davis v. Rossi*[10] the settlor conveyed shares of stock to the trustee, reserving a life income, the power to revoke and the right to vote the shares. The trustee was prohibited from changing the name of the ownership of the stock on the corporation records until after the settlor's death except by the settlor's consent. In the case of *in re Soulard's Estate*[11] the settlor reserved a life income and the power to make reinvestments of the corpus. In both of these cases the trusts were held valid, the court in the latter case saying: "It is true, he retained a beneficial interest in the property, the right during his life to the interest and income therefrom, and of the proceeds. But these are parts of the declared purposes of the trust. The settlor could as well make the income payable to himself for life as to any other party."

Cases in which the instrument is held invalid as testamentary are relatively few. Where the settlor transferred a certificate of deposit in trust, reserving a life income and the right to draw from the principal, to change the investments, and to substitute a new trustee, the court said: "In the present case the only thing the donor parted with irrevocably, and that only in case of his death before the trust property was consumed, was that the

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[2] Stone v. Hackett (1858) 12 Gray (Mass.) 227; Lines v. Lines (1891) 142 Pa. St. 149, 21 Atl. 809; K. C. Theological Seminary v. Kendrick (Mo. App. 1918) 203 S. W. 628; Davis v. Rossi (1930) 326 Mo. 911, 34 S. W. 2d 8.

[3] Davis v. Ney (1878) 125 Mass. 590; White's Estate v. West (1885) 56 Mich. 126, 22 N. W. 217; Sims v. Brown (1913) 252 Mo. 58, 158 S. W. 624.

[4] Hall v. Burkham (1877) 59 Ala. 349; Kelly v. Snow (1904) 185 Mass. 288, 70 N. E. 89; Cramer v. Hartford Conn. Trust Co. (1929) 110 Conn. 22, 147 Atl. 139.

[5] Talbot v. Talbot (1911) 32 R. I. 72, 78 Atl. 535; Colonial Trust Co. v. Brown (1926 Conn.) 135 Atl. 555.

[6] Cribbs v. Walker (1905) 74 Ark. 104, 85 S. W. 244; Keck v. McKinstry (1928) 208 Ia. 851, 221 N. W. 851.

[7] Staples v. Murray (Kan. 1928) 262 P. 558; Siter v. Hall (1927) 220 Ky. 43, 294 S. W. 767.

[8] Roche v. Brickley (1926) 254 Mass. 584, 150 N. E. 866.

[9] In re Soulard's Estate (1897) 141 Mo. 642, 43 S. W. 617.

[10] (1930) 326 Mo. 911, 34 S. W. 2d 8.

[11] (1897) 141 Mo. 642, 43 S. W. 617.

remainder of the trust property should go as directed. But that was an attempted testamentary disposition of property, and not made in pursuance of the statute."[12] And a conveyance of realty in trust was held invalid for the same reason where the settlor retained the right to occupy and use the land, to collect and keep the rents and profits accruing during his life, and the right to direct the trustee to convey any part of the trust res to anyone designated by the settlor.[13]

The difficulty arises largely because of the unsatisfactory nature of the test which the courts attempt to apply. The test is whether the beneficiary receives a vested interest. It is submitted that this is no test but merely a restatement of the problem of whether the instrument is a trust or is a will. It has been suggested that the courts should be more liberal with trusts of real property than personalty,[14] but this distinction is not generally made in the cases and there is no apparent reason for making it. Another suggestion is that the test should be whether the settlor intended to evade the wills statutes, but although supported by dicta in a few cases,[15] it clearly is unsound, for it would seem that the true test should rest on what the settlor actually did, rather than his intention. The courts would do well to take a more practical approach, asking the question in each case, "Do the settlor's reservations of power have the actual effect of depriving the ultimate beneficiary of any present interest?"

J. C. L. '36.

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[12] Warsco v. Oshkosh Sav. & Trust Co. (1924) 183 Wis. 156, 196 N. W. 829.

[13] Johns v. Bowden (1914) 68 Fla. 32, 66 So. 155.

[14] Case note (1930) 39 Yale Law Journal 438.

[15] National Newark & Essex Bank v. Rosahl (1925) 97 N. J. Eq. 74, 128 Atl. 586; Stone v. Hackett (1858) 12 Gray (Mass.) 227.