TRUSTS-POWER TO REVOKE THROUGH UNRESTRICTED POWER TO AMEND

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Plaintiff and defendant were the settlors and trustees of a twenty year trust created in 1945. Their wives were the beneficiaries. The settlors retained the unre-
stricted power to amend the trust, but reserved no power to revoke. In October, 1945 the trust was amended, giving to either trustee the power to terminate the trust at any time, upon notice to the other trustee. In 1947, plaintiff gave notice of revocation to the defendant, and when this notice was ignored, plaintiff petitioned for a decree of termination. A demurrer was sustained, and plaintiff appealed. Held, reversed. "If the power to modify is subject to no restrictions, it includes the power to revoke the trust." Stahler v. Sevinor, (Mass. 1949) 84 N.E. (2d) 447.

It was contended by the defendant that the settlor had only that power over the trust that he had reserved in the trust agreement, and since no power of revocation was originally reserved, the plaintiff had lost that power and could not regain it by subsequent amendment. The fallacy to this contention is that an unrestricted power to amend in the settlor is tantamount to a power to revoke, and if he is prevented from revoking directly, he will be able to accomplish his ends by some other means. For example, the settlor could amend by appointing himself beneficiary, and it is well established that when the settlor is also the beneficiary of a trust, he can revoke at will. The court recognized that a decision for the defendant would be useless, and therefore decided that the unrestricted power to amend a trust gives the settlor the power to revoke. The decision is chiefly of interest in that it is one of the few reported cases dealing directly with this seemingly clear point of law.

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1 Sands v. Old Colony Trust Co., 195 Mass. 575, 81 N.E. 300 (1907).
2 3 Scott, Trusts, §331.2 (1939).
4 Approving, 2 Trusts Restatement, §331.2 (1935); 3 Scott, Trusts, §331.2 (1939).