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## AGENCY-TERMINATION-POWER COUPLED WITH AN INTEREST

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## RECENT DECISIONS

AGENCY—TERMINATION—POWER COUPLED WITH AN INTEREST—Martin Gough died intestate leaving three brothers and an alleged wife as survivors. Since there was some doubt whether the woman was his widow and entitled to share in the estate as such, the three brothers agreed that one of their number, Luke, should negotiate a settlement for them with the woman. When this was done James refused to sign and revoked the power, whereupon Luke signed for him. A bill for specific performance of the agreement, brought by intestate's alleged wife, Margaret, and two brothers, Luke and Frank, against James, was dismissed by the lower court. On appeal, *held*, reversed. The instruments were specifically enforceable in equity as the brother's authority to reach a settlement was a power coupled with an interest. *MacDonald v. Gough*, (Mass. 1950) 93 N.E. (2d) 260.

It is the general rule that the authority or power of an agent coupled with an interest is not revocable by the principal, at least for the duration of the interest, whether it is expressly stated to be irrevocable or not, though the principal can make it revocable by expressly reserving the right.<sup>1</sup> The required interest has uniformly been said to be an interest in the subject matter of the power and not a mere interest in the proceeds of the exercise of the power.<sup>2</sup> It is also said that the power and the interest must co-exist in the agent<sup>3</sup> and that the interest must arise, if not from the same writing, at least as part of the same transaction.<sup>4</sup> Moreover, it is ordinarily considered necessary that the power and interest of the agent in the property must be derived from the same source.<sup>5</sup> It is universally felt that, where a power coupled with an interest exists, it would be inequitable to allow revocation, and specific performance of contracts entered into by the agent pursuant to the agency will be allowed though the principal should seek to revoke.<sup>6</sup> In the principal case it is difficult to discover an interest which the agent acquired in his brother's share of the estate. To be sure, the agent had an interest himself in the estate, but that is independent of the brothers' share and of the power as well. He also had an interest in negotiating a favorable settlement, but that would be merely an interest in the proceeds from the exercise of the power which is the type of agency specifically stated by Chief Justice Marshall as early as 1823 to be revocable.<sup>7</sup> The facts are somewhat analogous to the case where a joint owner of land is given the power to sell,<sup>8</sup> where one stockholder agrees that

<sup>1</sup> STORY, AGENCY §477 (1882); HUFFCUT, AGENCY §72 (1901); 1 CLARK & SKYLES, AGENCY §157 (1905); *Hunt v. Rousmanier*, 8 Wheat. (21 U.S.) 174 (1823); *Moore v. Garred*, 223 Ky. 20, 2 S.W. (2d) 1036 (1928).

<sup>2</sup> *Hunt v. Rousmanier*, supra note 1; *Taylor v. Burns*, 203 U.S. 120, 27 S.Ct. 40 (1906); *O'Connell v. Superior Ct.*, 2 Cal. (2d) 418, 41 P. (2d) 334 (1935); HUFFCUT, AGENCY §72 (1901).

<sup>3</sup> *Lane Mtge. Co. v. Crenshaw*, 93 Cal. App. 411, 269 P. 672 (1928); *Halloran-Judge Trust Co. v. Heath*, 70 Utah 124, 258 P. 342 (1927).

<sup>4</sup> *Moore v. Garred*, supra note 1; *Sanborn v. Rodgers*, (C.C. Mich. 1888) 33 F. 851.

<sup>5</sup> *Moore v. Garred*, supra note 1; *Hunt v. Rousmanier*, supra note 1.

<sup>6</sup> 19 ILL. L. REV. 596 (1925).

<sup>7</sup> *Hunt v. Rousmanier*, supra note 1.

<sup>8</sup> *Gilmer v. Veatch*, 56 Tex. Civ. App. 511, 121 S.W. 545 (1909).

his stock shall be voted as the majority of a group of stockholders shall decide,<sup>9</sup> or where the heirs of a decedent give another heir the sole power to manage the property.<sup>10</sup> In the absence of other factors, these powers are all held to be revocable. Therefore, it seems that the authorities, though somewhat confused on this subject,<sup>11</sup> would compel a finding that the agent was given authority to negotiate a settlement which would affect the size of the principal's share of the estate, but which give him no more a "power coupled with an interest" than is the bare authority to sell or dispose of land on a commission.<sup>12</sup> As revocation may create contractual liability in this type of case,<sup>13</sup> it would seem much better to leave the agent to his action at law for damages rather than to stretch the concepts of power coupled with an interest, as is often done, and as did the court in the principal case.

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<sup>9</sup> *Roberts v. Whitson*, (Tex. Civ. App. 1945) 188 S.W. (2d) 875.

<sup>10</sup> *Smith v. Brasseale*, 213 Ala. 387, 105 S. 199 (1925); but where the half-owner of a patent right was given the power to sell, the court held it was irrevocable in *Hollingsworth v. Lederer*, 125 N.J. Eq. 193, 4 A. (2d) 291 (1939).

<sup>11</sup> Seavey, "Proprietary Powers of Attorney," 31 *YALE L.J.* 283 (1921).

<sup>12</sup> *Clarkson v. Standard Brass Mfg. Co.*, 237 Mo. App. 1018, 170 S.W. (2d) 407 (1943).

<sup>13</sup> *Kilpatrick v. Wiley*, 197 Mo. 123, 95 S.W. 213 (1906).