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TRUSTS - WHAT CONSTITUTES REVOCATION WHEN NO METHOD SPECIFIED

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TRUSTS — WHAT CONSTITUTES REVOCATION WHEN NO METHOD SPECIFIED — By trust deed of 1927, settlor conveyed two mortgages (the first for $5,200, and the second for $1,000, both given by Harry E. Hough and wife) to trustees, in trust for herself for life, and providing for certain disposition upon her death. The trust deed was revocable with reserved power in the settlor to convey, release or otherwise dispose of the property. In 1928 the settlor released both mortgages but took in lieu thereof one mortgage for $6,200 from the same mortgagors on the same property. This substitution was effected to accommodate the mortgagors and no money changed hands. The settlor died in 1929, and now, twelve years after her death, some disappointed heirs bring this action, via administrator, to foreclose the mortgage upon the basis that the trust was revoked by the exchange of mortgages. The trustee intervenes. *Held,* for the trustee, on the ground that the substitution of a single mortgage on the same property for two mortgages on the realty was not equivalent to revocation of the trust.[1] *Hoffa v. Hough,* (Md. 1943) 30 A. (2d) 761.

[1] The court also indicated it would refuse to foreclose upon the further ground of 12 years of laches.

It is a general rule that if a trust is once completely established, the settlor cannot revoke it unless such power is reserved in its creation.[2] Some modern courts have indicated that the absence of power to revoke a voluntary settlement or trust is to be viewed as a circumstance of suspicion, and very slight evidence of mistake, misapprehension, or misunderstanding on the part of the settlor will be laid hold of to set aside the deed.[3] When the trust is created for the sole benefit of the settlor, it seems only logical that he may revoke or amend it, with or without the consent of the trustee.[4] But if the trust is expressly revocable, it is usual to provide in the instrument that it may be revoked by following a specified procedure, which, with minor variants, ordinarily contemplates a written instrument, signed and acknowledged by the settlor and delivered to the trustee.[5] In the absence of some provision specifying the method of revocation, revocation may be accomplished by the execution of any instrument intended for that purpose which sufficiently expresses the intention to revoke;[6] or by any act or conveyance sufficient to terminate the trust.[7] Just what acts, conveyances, instruments, or formalities constitute revocation when no special method is outlined is a vital and ever-present problem. A subsequent mortgage placed on the trust property by the settlor has been held a revocation;[8] a letter from the settlor to the trustee expressing a desire to revoke, followed by the trustee's formal surrender and execution of new trust deed, revoked the former;[9] a subsequent declaration of trust containing provisions inconsistent with those contained in the original declaration acts as revocation;[10] a subsequent will with appropriate disinheriting sentiments may revoke a tentative bank account trust.[11] Courts which are called upon to judge whether an apparent ambiguous act has revoked a trust or not should keep in mind just what revocation connotes. "Revoke" means to annul or make void by recalling or taking back, cancel, rescind, repeal,

[2] Eschen v. Steers, (C.C.A. 8th, 1926) 10 F. (2d) 739; Price v. Price, 162 Md. 656, 161 A. 2 (1932), trust validly and legally created without power of revocation cannot thereafter be revoked merely because settlor has undergone a change of heart; James v. James, 260 Mass. 19, 156 N.E. 745 (1927); Stephens v. Moore, 298 Mo. 215, 249 S.W. 601 (1923), where the court indicated that if consent of all beneficiaries is obtained, settlor might revoke in absence of reserved power; 4 BOGERT, TRUSTS AND TRUSTEES, § 993 (1935).

[3] Lambdin v. Dantzebecker, 169 Md. 240, 181 A. 353 (1935).

[4] O'Brien v. Holden, 104 Vt. 338, 160 A. 192 (1933).

[5] Broga v. Rome Trust Co., 151 Misc. 641, 272 N.Y.S. 101 (1934); 46 YALE L. J. 1005 (1937).

[6] 3 SCOTT, TRUSTS, § 330.7 (1939).

[7] Broga v. Rome Trust Co., 151 Misc. 641, 272 N.Y.S. 101 (1934); 46 YALE L. J. 1005 (1937); 65 C.J. 347 (1933); 2 TRUSTS RESTATEMENT, § 330, comment i (1935).

[8] Gaither v. Williams, 57 Md. 625 (1881).

[9] Holbert v. Jackson, 134 Misc. 618, 235 N.Y.S. 642 (1929).

[10] Lambdin v. Dantzebecker, 164 Md. 240, 181 A. 353 (1935); Barnard v. Gantz, 140 N.Y. 249, 35 N.E. 430 (1893), points out that no formal notice of revocation need be delivered to the original trustee.

[11] In re Beck's Estate, 260 App. Div. 651, 23 N.Y.S. (2d) 525 (1941).

reverse.[12] Thus a trust is not revoked by acts or conveyances consistent with its continued existence,[13] for revocation implies cessation and extinguishment of a trust, and when made operates to put an end to it.[14] It is not sufficient to constitute revocation that certain provisions be changed, or even the subject matter change form, but that the new agreement be clearly inconsistent with the prior existence of the trust, or the trusteeship after its date.[15]

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[12] O'Hagen v. Kracke, 165 Misc. 4, 300 N.Y.S. 351 (1937). In analogy to a will, the word "revoke" with reference to testator's revocation of will necessarily involves change of mind of testator, and involves some exercise of testator's will by which he either expressly recalls his previous disposition of property or from which the law implies he intended to do so. Pacetti v. Rowlinski, 169 Ga. 602, 150 S.E. 910 (1929).

[13] Reel v. Hansboro State Bank, 52 N.D. 182, 201 N.W. 861 (1924); 39 CYC. 95 (1912).

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

[15] Patterson v. Johnson, 113 Ill. 559 (1885). It is not the purpose of this note to discuss the destruction of trusts by merger of interests, statutes, or destruction of the trust corpus. See 4 BOGERT, TRUSTS AND TRUSTEES, §§ 997, 998, 999 (1935).