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common after divorce, thus enabling the wife to share in the proceeds. This might mean then that the wife could have recovered half the proceeds prior to divorce absolute.

It may be noted in the instant case that the policy was issued in the name of the husband. The question arises whether the result would have been the same had the policy specifically excluded the wife. Apparently this is the only further action which the husband here could have been taken to manifest an intention that payment should be made to him alone.[49]

CONCLUSION

It is the opinion of the writer that by this decision the supreme court has placed a restriction on the tenancy by the entirety which has not before been judicially recognized. Just as neither spouse alone can have the estate partitioned and neither alone can alienate his interest, so likewise in North Carolina neither spouse can insure the property to the exclusion of the other. Thus it appears that it becomes another incident of the tenancy by the entirety which the parties accept when they choose to hold such an estate.

WILLIAM H. KIRKMAN, JR.

Joint Tort-Feasors—Contribution—Effects of Statute on Covenant Not to Sue

A recent New Jersey case, *Smootz v. Ienni*,[1] involved a problem which has not been decided in North Carolina. The plaintiff was a passenger in the defendant's cab and was injured in an accident between the cab and a vehicle operated by a third party. In the plaintiff's action, the defendant cab company filed a third party complaint against the other driver for relief under the New Jersey Joint Tortfeasors Contribution Law.[2] The other driver had obtained a covenant not to sue[3] from the

[49] The equities of the instant case seem to be heavily in the husband's favor since: (1) he had paid all the premiums from his own funds; (2) he had the policy issued in his name alone; (3) the husband and wife were living separate and apart when the policy was issued; (4) the insurance covered the homestead in which the husband was residing.

[1] 237 N. J. Super. 529, 117 A. 2d 675 (1955).

[2] N. J. STAT. ANN. §§ 2A:53A-1 to -3 (1952): "For the purpose of this act the term 'joint tortfeasors' means two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them. . . . The right of contribution exists among joint tortfeasors. . . . [Where a joint tortfeasor pays all or part of a judgment] he shall be entitled to recover contribution from the other . . . joint tortfeasors for the excess so paid over his pro rata share; but no person shall be entitled to recover contribution under this act from any person entitled to be indemnified by him in respect to the liability for which the contribution is sought. . . ."

[3] Where there are joint tort-feasors there can be but one recovery and a settlement with one is a release of the others. Howard v. Plumbing Co., 154 N. C.

plaintiff and because of this moved for a summary judgment.[4] This motion was granted, but the court also entered an order to the clerk to reduce any judgment of the plaintiff against the original defendant by one half of the verdict.

The court rested its decision on a deliberate dictum written the previous year by Justice Brennan for the Supreme Court of New Jersey.[5] The justice had said that the basis of the statute allowing actions among the joint tort-feasors was to assure that none paid in excess of his pro rata share,[6] thus achieving the result dictated by equity and justice. He stated two alternative ways of gaining equality between the tort-feasors in this type of case: (1) letting the plaintiff get a judgment for his total damage less the amount he received for his covenant, giving the tort-feasors who pay more than their pro rata share the right to contribution against the one who settled; or (2) reducing the plaintiff's verdict by a credit in the amount of the settler's full pro rata share of the verdict instead of the mere amount paid to the plaintiff for the covenant not to sue. Justice Brennan expressed a fear that the first alternative would encourage collusive settlements; and, this was said to be a mischief incident to the common law denial of the right of con-

224, 70 S. E. 285 (1911); Sircy v. Reese, 155 N. C. 297, 71 S. E. 310 (1911). But there is an exception where there is not a release but a covenant not to sue given to one tort-feasor, in which case the money paid is simply a credit to be entered on the total recovery. Holland v. Utilities Co., 208 N. C. 289, 170 S. E. 592 (1935); Braswell v. Morris, 195 N. C. 127, 131, 141 S. E. 489, 491 (1928); Slade v. Sherrod, 175 N. C. 346, 95 S. E. 557 (1918); Mason v. Stephens, 168 N. C. 370, 84 S. E. 527 (1915). For an example of a statute changing the above common-law distinction between the release and the covenant not to sue: "A release by the injured person of one joint tortfeasor . . . does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount paid for the release, or in any amount or proportion by which the release provides that the claim shall be reduced, if greater than the consideration paid." UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT [1939] § 4, 9 U. L. A. 161 (1951).

[4] The original defendant opposed the motion for judgment on the ground that he was entitled to get an adjudication of joint tort-feasorship between himself and the third party defendant as a basis for his statutory claim for contribution. He argued that private accord between the plaintiff and the third party defendant could neither defeat his right to the adjudication nor serve as a substitute in the light of the express statutory definition. The New Jersey statute requires joint liability rather than any joint judgment as a condition precedent to contribution. In deciding against the contention of the original defendant, the court merely admitted that the argument had a certain "logical appeal" and never squarely met it. It would seem that in case the plaintiff recovers a verdict against the original defendant the joint liability required by statute might be furnished here by some kind of estoppel of the plaintiff for selling the covenant not to sue.

[5] Judson v. Peoples Bank & Trust Co., 17 N. J. 67, 92-93, 110 A. 2d 24, 36-37 (1954) (dictum).

[6] Ordinarily a sued tort-feasor will have an action only for the amount he has paid in excess of his proportionate share; if there are two tort-feasors and one of them is forced to pay the entire liability, he may recover only one half of the amount paid. 13 AM. JUR., *Contribution* § 57 (1938). Pro rata means according to a measure which fixes proportions. It has no meaning unless referable to some rule or standard. Hendrie v. Lowmaster, 152 F. 2d 83, 85 (1945) (dictum).

tribution which was one of the reasons for the statutory change. Moreover, the settler's adjustment with the injured party would not end the matter between them because the settler could still be sued by his co-wrongdoers for contribution. Thus the settlement would lack finality, and the basic policy of encouraging compromise would be stifled.

If the second alternative were taken, according to Justice Brennan, collusive settlements would be made wholly ineffective since a credit of the settler's pro rata share would be the required result of any settlement. This would be fair to the other tort-feasors, requiring them to pay only their portion of the liability; it would also be fair to the injured party because the reduction would be a direct result of his own act of deliberately accepting less than he might possibly have gotten from this particular tort-feasor had he not compromised. Since compromises are almost always made on the basis of the plaintiff's own appraisal of the risks of recovery, the court felt it unlikely that he would be especially deterred here because of the uncertainty of what might be lost by the compromise. Unlike the first alternative, this solution assures the settling tort-feasor of the finality of his settlement.[7]

Unlike New Jersey, North Carolina not only gives the right of contribtuion between joint tort-feasors but also expressly provides in its contribution statute for a defendant's bringing in a joint tort-feasor as a third party defendant.[8] This statute created a new right, no right of action existing at common law between joint tort-feasors who stood in pari delicto.[9] Joint tort-feasors, within the contemplation of the statute, are those who act together in committing a wrong, or whose acts, though independent of each other, unite in causing a common injury.[10]

Where two or more tort-feasors are jointly liable to the plaintiff, the plaintiff has the option of suing any or all of them.[11] If the action is brought against only one, then so far as the plaintiff is concerned the others are not necessary parties and he may not be compelled to bring

[7] Neither alternative necessarily affected the question of need for adjudication of joint tort-feasorship under the statute. This problem did not arise in the *Judson* case, according to Justice Brennan, because the plaintiff had originally served all of the alleged joint tort-feasors with process. The contribution issue emerged when the plaintiff settled and took a nonsuit as to two of them.

[8] N. C. GEN. STAT. § 1-240 (1953).

[9] Potter v. Frosty Morn Meats, 242 N. C. 67, 86 S. E. 2d 780 (1955). The right of contribution is purely statutory and must be enforced in accord with the provisions of the statute. Hunsucker v. High Point Bending & Chair Co., 237 N. C. 559, 75 S. E. 2d 768 (1953); Tarkington v. Rock Hill Printing Co., 230 N. C. 354, 53 S. E. 2d 269 (1949); Godfrey v. Tidewater Power Co., 223 N. C. 647, 27 S. E. 2d 736 (1943).

[10] White v. Keller, 242 N. C. 97, 86 S. E. 2d 795 (1955).

[11] Glazener v. Safety Transit Lines, 196 N. C. 504, 146 S. E. 134 (1929); Ballinger v. Thomas, 195 N. C. 517, 142 S. E. 761 (1928).

them in.[12] They may, however, be brought in by the original defendant on a cross-claim for contribution in case the plaintiff recovers judgment against him.[13] To maintain this cross-claim the original defendant must allege facts sufficient to show that if he is liable to the plaintiff both he and the additional defendant are liable as joint tort-feasors.[14] The original defendant cannot rely upon the liability of the third party to the plaintiff, but must recover, if at all, upon the liability of such party to him.[15] If the original defendant files a cross-claim asking that a tort-feasor be brought in, the plaintiff may not take a voluntary nonsuit as to the joint tort-feasor since the original defendant requested affirmative relief against the tort-feasor and is enitled to hold him as a party under the statute.[16]

North Carolina has not passed on the question of whether a covenant not to sue exempts a defendant from his duty to contribute, but there are three cases, discussed below, which present a close analogy.[17] In *Hunsucker v. High Point Bending & Chair Co.*,[18] an employee covered by the North Carolina Workmen's Compensation Act[19] was injured by the concurring negligence of the employer and two other joint tort-feasors. The employer paid the employee workmen's compensation on account of his injury. The employee then brought action against the other tort-feasors alleging that his injury was caused by their combined actionable negligence. The tort-feasor filed a cross-complaint against the employer, asking that he be brought into the case for the purpose

[12] Jones v. Otis Elevator Co., 231 N. C. 285, 56 S. E. 2d 684 (1949); Watts v. Lefler, 194 N. C. 671, 140 S. E. 435 (1927).

[13] Hayes v. Wilmington, 239 N. C. 238, 79 S. E. 2d 792 (1954); Wilson v. Massagee, 224 N. C. 705, 26 S. E. 2d 911 (1943); Lackey v. Southern Railway Co., 219 N. C. 195, 13 S. E. 2d 234 (1941); Freeman v. Thompson, 216 N. C. 484, 5 S. E. 2d 434 (1939); Mangum v. Southern Railway Co., 210 N. C. 134, 185 S. E. 644 (1936).

[14] Freeman v. Thompson, *supra* note 13. The defendant's cross-claim in Godfrey v. Tidewater Power Co., 223 N. C. 647, 27 S. E. 2d 736 (1943) read: "That if this defendant was guilty of any negligence, . . . said [third party] was liable therefor as a joint tort-feasor." Transcript of Record, p. 20, Godfrey v. Tidewater Power Co., *supra*. *But see* Potter v. Frosty Morn Meats, 242 N. C. 67, 86 S. E. 2d 780 (1955); Hayes v. Wilmington, 239 N. C. 238, 79 S. E. 2d 792 (1954).

[15] Charnock v. Taylor, 223 N. C. 360, 363, 26 S. E. 2d 911, 914 (1943).

[16] Smith v. Kappas, 218 N. C. 758, 12 S. E. 2d 693 (1940).

[17] Larson, *A Problem in Contribution: The Tortfeasor with an Individual Defense Against the Injured Party*, 1940 WIS. L. REV. 467, noted that the problem could arise as to five principal individual defenses: (1) non-liability because of personal relationship between the injured party and the tortfeasor to be joined; (2) non-liability because the injured party is the employee of one tort-feasor and thus his suit is barred by the terms of the Workmen's Compensation Act; (3) non-liability because, as to the tortfeasor sought to be joined, the injured party had assumed the risk; (4) non-liability because the injured party has given a covenant not to sue to the tortfeasor sought to be joined; and (5) non-liability of one tortfeasor because, as to him, the statute of limitations has run on the injured party's claim.

[18] 237 N. C. 559, 75 S. E. 2d 768 (1953).

[19] N. C. GEN. STAT. §§ 97-1 through -122 (1950 and Supp. 1955).

of contribution. The court held that, under the North Carolina Workmen's Compensation Act, the liability of the employer is to be limited to the amount he has to pay under the statute,[20] and to force the employer to pay more indirectly through the hands of a third person is to "lose the substance of the law by grasping at its shadow."[21] The Workmen's Compensation Act removes the employer from the position of joint tort-feasor and instead makes him absolutely liable regardless of negligence.[22] Thus there can be no parity of status to furnish a basis for contribution between one liable only for negligence and another liable whether negligent or not. The same idea was controlling in a recent wrongful death case.[22a] The father sued as administrator for the death of his small child caused when the child was struck by the defendant's automobile. The defendant moved to have the mother joined as a defendant for contribution or for indemnity because of her negligence in permitting the child to go on the highway unattended. The court rejected this motion apparently on the simple basis that the mother was not liable at all[22b] and therefore could not be a joint tort-feasor, which status is seemingly a pre-requisite for either contribution or for indemnity under the theory of primary or secondary liability.

Although the preceding cases might seem to indicate that North Carolina would not enforce contribution where one joint tort-feasor has an individual defense, *Godfrey v. Tidewater Power Co.*[23] holds the other way. Here the plaintiff sued one joint tort-feasor shortly before the statute of limitations expired. After the statute had run, the original defendant made a motion to join the other joint tort-feasors. This motion was denied by the trial court; the supreme court reversed, saying that common liability to suit must have existed as a condition precedent to contribution, but that it was not essential that it continue to exist as to all of the joint tort-feasors. All joint tort-feasors to be made parties defendant may be brought in at any time before judgment so that

[20] "The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this article . . . shall exclude all other rights and remedies of such employee . . . as against his employer. . . ." N. C. GEN. STAT. § 97-10 (1950).

[21] Hunsucker v. High Point Bending & Chair Co., 237 N. C. 559, 571, 75 S. E. 2d 768, 777 (1953).

[22] Lovette v. Lloyd, 236 N. C. 663, 73 S. E. 2d 886 (1952); Brown v. Southern Railway Co., 202 N. C. 256, 162 S. E. 613 (1932); see Note, 42 VA. L. REV. 959 (1956).

[22a] Lewis v. Farm Bureau Mut. Automobile Ins. Co., 243 N. C. 55, 89 S. E. 2d 788 (1955).

[22b] N. C. GEN. STAT. § 28-173 (Supp. 1955) gives a cause of action for wrongful death against those whom the injured party could have sued had he lived; thus, technically, there was not merely an individual defense here, but no liability at all on the part of the mother. There is, then, a possible distinction between this case and one brought by the next friend of a child injured rather than killed.

[23] 223 N. C. 647, 27 S. E. 2d 736 (1943).

the whole controversy may be settled in a single suit.[24] The distinction to be made between this and the prior two cases is that no joint tort-feasorship was found in the first two situations. Yet once this relationship is clearly present, contribution seems to be regarded here as a substantive right of the defendant, apart from the rights of the plaintiff.[25] On this reasoning, it would appear arguable that North Carolina might allow joinder of and contribution from a joint tort-feasor given a covenant not to sue.

The problem has also arisen in New York. In the case of *Blauvelt v. Nyack*,[26] joinder was allowed and judgment was rendered against the defendant who had purchased the covenant not to sue, but he was credited on his pro rata share of the judgment with the amount he had paid for the covenant. However, in *Fox v. Western New York Motor Lines*,[27] the court held that the sued tort-feasor cannot compel the joinder of the other, since the New York statute permits joinder only of one who is liable to the sued tort-feasor by contract or status, and the other is not liable over to the sued tort-feasor until the right to contribution has been established by a joint judgment[28] against both tort-feasors.[29] But North Carolina does not require a joint judgment against the joint tort-feasor as a prerequisite to contribution,[30] so, if the North Carolina courts choose to follow the line of reasoning set down by the *Blauvelt* case, joinder would be allowed with the settling tort-feasor having to pay the remainder of his pro rata share.

The Uniform Contribution Among Tortfeasors Act of 1939 differed from the usual contribution statute in several notable respects. Under the act it was necessary for the covenant not to sue to contain an express provision for a reduction—to the extent of the pro rata share of the

[24] Freeman v. Thompson, 216 N. C. 484, 5 S. E. 2d. 434 (1939).

[25] See Hayes v. Wilmington, 239 N. C. 238, 79 S. E. 2d 792 (1954); Davis v. Radford, 233 N. C. 283, 63 S. E. 2d 822 (1951); Powell v. Ingram, 231 N. C. 427, 57 S. E. 2d 315 (1950); see also Bass v. Ingold, 232 N. C. 295, 60 S. E. 2d 114 (1950) (when an additional defendant is brought in by the original defendant for the purpose of contribution under the statute, the propriety of such joinder will be determined by the pleadings of the original defendant, unaffected by any pleadings filed by the plaintiff); cases cited note 11 *supra*.

[26] 141 Misc. 730, 252 N. Y. S. 746 (Sup. Ct. 1931).

[27] 232 App. Div. 308, 249 N. Y. S. 623 (4th Dep't 1931).

[28] See N. Y. Civ. Practice Act § 211-a (Clenenger's 1956): "Where a money judgment has been recovered jointly against two or more defendants in an action for a personal injury or for property damage, and such judgment has been paid in part or in full by one or more of such defendants, each defendant who has paid more than his own pro rata share shall be entitled to contribution from the other defendants with respect to the excess so paid over and above the pro rata share of the defendant or defendants making such payment . . . ."

[29] A joint judgment cannot be obtained upon the initiative of the original defendant because joinder of the second tort-feasor cannot be compelled by him. This ends, for all practical purposes, the value of the New York contribution statute to a joint tort-feasor in such a situation. Accordingly, joinder is always at the plaintiff's discretion.

[30] N. C. Gen. Stat. § 1-240 (1953).

released tort-feasor—of the injured person's damages recoverable against all the other tort-feasors.[31] This would seem to be the same rule as that said effective by operation of law in New Jersey. However, under the Uniform Act, the relative degrees of fault of the several tort-feasors were to be taken into consideration by the jury when it apportioned damages; there was no longer any requiring every tort-feasor, regardless of his degree of fault, to pay an equal share.[32] Thus, the introduction of a variable factor into the concept of pro rata share would tend to minimize similarities betwen the working of the two rules.

If, on the other hand, the covenant not to sue failed to contain a specific provision releasing the tort-feasor to the extent of his pro rata share, the tort-feasor would be liable for contribution and would only receive credit for the amount actually paid. In this, the act adopted the solution of the *Blauvelt* case. The act provided for such a reduction, according to the commissioners who drafted it, for the purpose of preventing the injured person from acting in collusion with one of the tort-feasors. Without such a provision, it would be possible for the plaintiff to place almost the entire burden of payment upon one tort-feasor by selling the other tort-feasor a covenant not to sue for a small price.

This provision was not effective. Not only was nothing done to prevent collusion, but this section of the act made it almost impossible for one tort-feasor alone to take a covenant not to sue and close the file on the case. Plaintiff's attorneys were refusing to give any covenant which contained a provision reducing the damages "to the extent of the pro rata share of the released tort-feasor" because they had no way of knowing what they were giving up. Under the section providing for the apportioning of liability according to relative degrees of fault, the plaintiff would not know whether he was giving up ten per cent of his claim or ninety per cent of it until the jury had established the comparative pro rata shares of the tort-feasors. Yet a defendant would not settle for a fixed amount without such a provision in the covenant because he would then remain open to contribution in an uncertain amount, determined on the basis of a judgment against another in a suit to which he would not be a party. Because of this, the 1939 Uniform Act has been said to make settlements with one joint tort-feasor impossible.[33]

The commissioners decided it was more important not to discourage settlements than to make a futile effort to prevent discrimination by plaintiffs, so a new version of the act was promulgated in 1955. Under

[31] UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT [1939] § 5, 9 U. L. A. 163 (1951).

[32] *Id.* § 2(4).

[33] NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK 224 (1955).

the new act, a "release" again[34] does not release any of the other tort-feasors from liability, but it does reduce the claim against them by the amount stipulated by the covenant or by the amount paid for it, whichever is the greater.[35] By a new provision, a covenant or release will automatically discharge the tort-feasor to whom it is given from all liability for contribtuion to any other tort-feasor.[36] A change was also made in the method of determining the pro rata share of the tort-feasors, and the comparative liability doctrine was abolished. The revised act expressly says that the "principles of equity applicable to contribution generally"[37] are to be applied. The Comment of the commissioners recognized a "lack of need for a comparative negligence or degree of fault rule,"[38] and indicated that the exclusion of intentional, wilful, and wanton actors from the right to contribution substantially eliminates the need for such a rule.[39]

In my opinion North Carolina should follow the reasoning of Justice Brennan and credit any amount which the plaintiff receives in judgment with the settler's pro rata share of the verdict. The 1939 Uniform Contribution Among Tortfeasors Act was not effective because of the provision calling for apportionment of damages by the jury. The lack of acceptance of this particular provision is shown by the fact that it was adopted by only three states and Hawaii,[40] and was left out of the amended act in 1955. Without this provision the plaintiff would be able to figure on equal shares and would know as much about what he was giving up as the settler in any case. Also, the settling tort-feasor would be able to close his file on the case for good with the nonsettling tort-

[34] See note 3 *supra.*

[35] UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT [1955] § 4(a), NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK 223.

[36] *Id.* § 4(b).

[37] *Id.* § 2(c), at 220.

[38] NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK 220 (1955).

[39] Changes in the 1939 act by the 1955 act, other than those already mentioned, include: (1) The definition of joint tort-feasor and the term itself have been eliminated. This was done because the different definitions used in different states were not all consistent with the one in the act. (2) Wrongful death has been added as giving rise to the right of contribution. (3) Right of contribution in favor of a tort-feasor who has intentionally caused or contributed to the injury or wrongful death is now expressly denied, whereas the former act was silent. (4) A liability insurer who has discharged in full or in part the liability of a tort-feasor and thus discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the liability. (5) The rule of equity which requires class liability, such as that arising from vicarious relationships, to be treated as a single share is invoked. (6) A separate action to enforce contribution must be commenced within one year after the judgment has become final. (7) The judgment of the court in determining the liability of several defendants to the claimant for injury or wrongful death shall be binding as among such defendants in determining their right of contribution.

[40] 9 U. L. A. 160. The Uniform Act itself was adopted in: Arkansas, Delaware, Hawaii, Maryland, New Mexico, Rhode Island, and South Dakota. *Id.* at 153.

feasors being given the actual benefits of contribution. The commissioners were right in changing the act to encourage settlement, but in doing so they went too far and gave the plaintiff too big an advantage. The amended act allows the plaintiff to settle with one tort-feasor with no chance of suffering detriment by doing so. If it turns out that he settled with the tort-feasor for less than the tort-feasor's pro rata share, the nonsettling tort-feasor would have to pay the difference.[41] It is true that this solution would encourage settlement, but it would also impose too great a burden on a tort-feasor who decided to take his chance in court.[42]

WILBUR RITCHIE SMITH, JR.

Legislation—Control of Firearms

Commensurate with the greater regulation in all fields, firearms are becoming a subject of increasing legislative control as regards their purchase, sale, and posession. With very few exceptions,[1] the possession, sale and purchase of rifles and shotguns are not restricted by state legislation. The majority of restrictions are directed toward machine guns, presumably because of their capacity for rapid firing, and pistols,[2] because of their concealability and the ease with which they may be carried. The purpose of this note is to summarize the law of firearms in North Carolina as it pertains to machine guns and pistols, against the background of policies followed by other states.

A conviction of possessing a machine gun without permission was

[41] If the settling tort-feasor were joined under our statute, he could still be credited with his pro rata share. Would the court give effect to an indemnity clause in the covenant and allow a settlor, forced to contribute, to collect indemnity from the plaintiff? Or would the court make a tort-feasor with such a "credit" with the plaintiff contribute at all? Is there any likelihood that such a clause might be construed by the court as changing a covenant not to sue into a general release?

[42] The settler, it is thought, should not even be made a party to the action. By buying a covenant not to sue, he bought his peace and plaintiff, by giving the covenant, perhaps should be estopped from denying that the settler is a joint tort-feasor. See note 4 *supra*. North Carolina has actually reached the *result* of the rule applied in New Jersey. Although the employer covered by workmen's compensation and the beneficiary of the wrongful death proceeds are held not to be joint tort-feasors so that they may not be brought into the suit or be sued for contribution, the plaintiff's verdict in both cases may be reduced pro rata upon a contributory negligence theory. See Note, 42 VA. L. REV. 959, 967-69 (1956). The amount payable under workmen's compensation law is substracted from the employee's verdict against a third person when the employer contributed to the injury. Lovette v. Lloyd, 236 N. C. 663, 73 S. E. 2d 886 (1953). And where a parent immune from suit negligently contributes to the child's injury, the parent's share of the wrongful death proceeds is credited against the verdict. Pearson v. National Manufacture and Stores Corp., 219 N. C. 717, 14 S. E. 2d 811 (1941).

[1] FLA. STAT. ANN. § 790.05 (1943); W. VA. CODE § 6050 (1955).

[2] Due to common usage, the term "pistol" will be used in this note to apply to all types of firearms designed to be held in one hand when fired.