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PAROL TRUSTS IN NORTH CAROLINA

B. THORN LORD* AND M. T. VAN HECKE**

There is no statute in North Carolina specifically requiring the creation or proof of trusts in land to be in writing.¹ One might think, therefore, as Chief Justice Pearson believed,² that parol trusts to the extent that they prevailed at common law are valid in this jurisdiction. Actually, however, the scope of enforceable parol trusts in land has been greatly narrowed by judicial borrowings from other safeguards.

THE DEED CASES

Four main types of cases have arisen in North Carolina involving parol trusts in connection with deeds *inter vivos*: (1) *A* to *B* on oral trust for *C*, the agreement preceding or coinciding with the conveyance. (2) Same transaction, except that the agreement is made subsequent to the conveyance. (3) *A* declares himself orally to be trustee for *C*. (4) *A* to *B* on oral trust for *A*.

(1) The North Carolina courts have always given effect to an oral trust created prior to or contemporaneously with a conveyance by *A* to *B* for *C*.³ Chiefly, reliance has been placed upon the absence

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¹ See 29 CAR. II, c. 3, s. 7 (1676). The seventh section of the English Statute of Frauds has been substantially adopted in many states. It provides that declarations or creations of uses or trusts in lands must be manifested and proved by a memorandum signed by the party declaring the trust.

The following states and territory have no such statutory provision: Arizona, Connecticut, Delaware, Hawaii, Kentucky, Louisiana, New Mexico, North Carolina, Ohio, Oklahoma, Tennessee, Texas, Virginia, Washington, West Virginia, and Wyoming.

In several of these states parol trusts in land are not allowed. In other states the cases vary widely in result, and the methods by which the result is reached. See BOGERT ON TRUSTS (1921) §20, n. 77. See also, SCOTT, CASES ON TRUSTS (1919) 193, n. 1; AMES, CASES ON TRUSTS (2nd ed. 1893) 176, n. 1; 1 PERRY ON TRUSTS (6th ed. 1911) §§ 75, 78, n. 1; 3 POMEROY, EQUITY JURISPRUDENCE (4th ed. 1918) §1006, n. a.

For general discussions of trusts of land based on oral promises see Scott, *Conveyances Upon Trusts Not Properly Declared* (1924) 37 HARV. L. REV. 653; Costigan, *Constructive Trusts Based on Promises Made to Secure Bequests, Devises, or Intestate Succession*, (1915) 28 *ibid.* 237, 251, 266; Benson, *Parol Trusts in Real Estate* (1915) 1 VA. L. REG. 81.

² *Shelton v. Shelton*, 58 N. C. 292, 294 (1859). Scott, *Conveyances Upon Trusts Not Properly Declared*, *supra* note 1, at 657, n. 19.

³ *Foy v. Foy*, 3 N. C. 131 (1801); *Shelton v. Shelton*, *supra* note 2; *Mulholland v. York*, 82 N. C. 510 (1880); *Leggett v. Leggett*, 88 N. C. 103 (1883); *Smiley v. Pearce*, 98 N. C. 185, 3 S. E. 631 (1887); *Holden v. Strickland*, 116

of a statute requiring a writing in trust cases.⁴ Later cases, however, have bolstered up this doctrine by a resort to the theory of constructive trusts, suggesting that it would be unconscionable for *B* to keep the land in breach of his contract.⁵ A distinction has been made, sometimes, as to the amount of evidence required. Clearer evidence has been thought necessary in the case where the alleged trust agreement was entered into before the execution of the deed, than in the case where the trust arises at the time of the conveyance.⁶

(2) When the parol trust agreement is entered into by *B* with *A* for the benefit of *C*, after the conveyance from *A* to *B*, no enforceable trust arises.⁷ The reasons given are usually two: the equitable interest must either be itself conveyed or be an incident of the con-

N. C. 185, 21 S. E. 684 (1895); *Cobb v. Edwards*, 117 N. C. 245, 23 S. E. 241 (1895); *Kelly v. McNeill*, 118 N. C. 349, 24 S. E. 738 (1896); *Hughes v. Pritchard*, 122 N. C. 59, 29 S. E. 93 (1898); *Norton v. McDevitt*, 122 N. C. 755, 30 S. E. 24 (1898); *Owens v. Williams*, 130 N. C. 165, 41 S. E. 93 (1902); *Sylses v. Boone*, 132 N. C. 199, 43 S. E. 645, 95 Am. St. Rep. 619 (1903); *Avery v. Stewart* 136 N. C. 426, 48 S. E. 775, 68 L. R. A. 776 (1904); *Taylor v. Wahab*, 154 N. C. 219, 70 S. E. 173 (1911) *Anderson v. Harrington*, 163 N. C. 140, 79 S. E. 436 (1913); *Jones v. Jones* 164 N. C. 320, 80 S. E. 430 (1913); *Lutz v. Hoyle*, 167 N. C. 632, 83 S. E. 749 (1914); *Grimes v. Andrews* 170 N. C. 515, 87 S. E. 341 (1915), *Ballard v. Boyette* 171 N. C. 24, 86 S. E. 175 (1915); *Boone v. Lee* 175 N. C. 383, 95 S. E. 659 (1918); *Williams v. Honeycutt*, 176 N. C. 102, 96 S. E. 730 (1918); *Rush v. McPherson*, 176 N. C. 562, 97 S. E. 613 (1918); *Lefkowitz v. Silver*, 182 N. C. 339, 109 S. E. 56 (1921); *Greensboro Bank v. Scott*, 184 N. C. 312, 114 S. E. 475 (1922); *Cunningham v. Long*, 186 N. C. 526; 120 S. E. 116 (1923). See *Frey v. Ramsour*, 66 N. C. 466 (1872), where the Court said, that when *A* conveyed to *B* by deed absolute, and at the same time it is agreed that *B* or any third person may under a power of appointment afterwards make an oral declaration of trust, that will be enforced.

⁴*Shelton v. Shelton*; *Smiley v. Pearce*; *Cobb v. Edwards*; *Hughes v. Pritchard*; *Owens v. Williams*; *Taylor v. Wahab*; *Lutz v. Hoyle*; *Ballard v. Boyette*, all *supra* note 3. See (1923) 32 YALE L. J. 509.

⁵Such language as found in *Avery v. Stewart*, *supra* note 3, ("it is not necessary to decide if an express trust is created here—*B* has abused the confidence placed in him, he is converted into a trustee ex maleficio") is evident in a long line of cases. See *Rush v. McPherson*; *Lefkowitz v. Silver*, both *supra* note 3. For example, in *Rush v. McPherson*, *ibid.*, the court holds there is an enforceable express trust, but the fact of the confidential relationship of principal and agent was most strongly stressed.

Holden v. Strickland (Held, there is an express trust as well as one arising by operation of law); *Boone v. Lee*; *Greensboro Banks v. Scott*, all *supra* note 3. On the facts, *Greensboro Bank v. Scott*, *ibid.*, seems to be a misapplication of the doctrine of trusts. This case is noted in (1923) 32 YALE L. J. 509; (1923) 9 VA. L. REV. 312.

Norton v. McDevitt; *Mulholland v. York*, both *supra* note 3.

⁶*Smiley v. Pearce*, *supra* note 3.

⁷*Pittman v. Pittman*, 107 N. C. 159, 12 S. E. 61 (1890). *Dover v. Rhea*, 108 N. C. 88, 13 S. E. 164 (1891); *Hamilton v. Buchanan*, 112 N. C. 463, 17 S. E. 159 (1893); *Wilson v. Jones*, 176 N. C. 205, 97 S. E. 613 (1918).

The Court says in *Wilson v. Jones*, *ibid.*, that *B*'s promise gave *C* merely an option which *B* failed to live up to.

veyance of the legal estate.⁸ And the transaction violates the Statute of Frauds relating to land contracts (hereinafter referred to as section 988).⁹ No constructive trust can be spelled out, because *B*, by keeping the land, does not violate any promise given as a consideration for the conveyance. Unless *B* receives fresh consideration for his promise there would seem to be no contract,¹⁰ the previous conveyance being insufficient consideration because past. If, however, he does receive a new consideration for his promise, we may have a contract, but §988 requires a writing as a prerequisite to enforceability.¹¹ Practically, however, is this not a case of *B* in either event orally declaring himself trustee of land he already owns for *C*?

(3) Even so, the result is the same. For in the cases where *A* has orally declared himself trustee of his land for *C*, the North Carolina courts have refused to recognize the trust.¹² The usual explanation is substantially the same as that given in the preceding paragraph. The question of the form of the promise in these cases, however, is inevitably intertwined with the problem of consideration. Following *Ex parte Pye*,¹³ no objection has been voiced against the enforcement of oral trusts without consideration, where the subject matter is personal property.¹⁴ Where it is land, however, and the

⁸ See *Pittman v. Pittman*, *supra* note 7.

⁹ N. C. CODE (1927), §988. This covers only a part of the situations dealt with by §4 of the English Statute of Frauds.

¹⁰ The North Carolina Court states the common-law rule to be that "no use or trust can be raised in lands without a consideration, except in the single instance of a conveyance operating by transmutation of possession, the character of the conveyance alone being sufficient to raise the use and to dispense with the necessity of consideration." *Pittman v. Pittman*, *supra* note 7.

A gratuitous declaration of trust of land is upheld in other jurisdictions. *Neal v. Bryant*, 291 Mo. 81, 235 S. W. 1075 (1921). SCOTT, CASES ON TRUSTS (1919) 146, n. 1; AMES, LECTURES ON LEGAL HISTORY 425, also printed in (1907) 20 HARV. L. REV. 549.

¹¹ While the court made no reference to *Pittman v. Pittman* in regard to consideration, *supra* note 7, later cases indicate, perhaps unconscious of the problem that is involved, that a trust arises but the Statute of Frauds prevents it being enforced. N. C. Code (1927) §988; *Dover v. Rhea and Hamilton v. Buchanan*, both *supra* note 7.

In this light, *B*'s promise simple amounts to a parol agreement to convey land. If *B*'s answer in a suit by *C* against *B* admits the oral declaration, §988 is satisfied. *Hollar v. Richards*, 102 N. C. 545; 9 S. E. 460 (1889). *Fortescue v. Crawford*, 105 N. C. 29, 10 S. E. 910 (1890).

¹² *Frey v. Ramsour*, *supra* note 3. But see note (1913) 61 UNIV. PA. L. REV. 687. The question here is the same as where after transfer of title *B* orally declares himself trustee. See *supra* note 7.

¹³ 18 Ves. Jr. 140, 34 Eng. Repr. 271 (1811).

¹⁴ *Witherington v. Herring*, 140 N. C. 495, 53 S. E. 303 (1906); *Rosseau v. McCall*, 169 N. C. 173, 85 S. E. 414 (1915).

alleged consideration is love and affection for a close relative, the history of the covenant to stand seized¹⁵ requires a sealed writing. Where the consideration is valuable, even though the interest in land involved is a freehold, the old English Statute of Enrollment¹⁶ has not been a factor in the North Carolina cases¹⁷ for the reason that we are confronted with a common-law contract concerning an interest in land¹⁸ and §988 requires a writing.

(4) Where *A* has conveyed to *B* on an oral trust for *A* himself, the North Carolina courts permit *B* to keep the land and refuse to find any trust whatsoever.¹⁹ This, because of the Parol Evidence rule²⁰ and §988 relating to land contracts. Neither of these two safeguards, however, would seem to be properly applicable to the situation in hand.²¹ The creation of a trust of land by parol does not vary the terms of the deed, insofar as the legal title is concerned, but sets up an independent contract consistent with the deed.²² Statutes prohibiting oral trusts in land would have been unnecessary if the Parol Evidence rule had had a legitimate function in this connection.²³ The device in question, *A* to *B* for *A*, characterized most of the common-law uses out of which the law of trusts arose.²⁴ And, as for the Statute of Frauds, the transaction in *A* to *B* for *C* (dis-

¹⁵ MORDECAI LAW LECTURES (1916) 701, 1004-1009; TIFFANY, REAL PROPERTY (2d ed. 1920) §§100, 428.

¹⁶ See TIFFANY, *op. cit. supra* n. 15, at §428.

¹⁷ *Ibid.*

¹⁸ See Pittman v. Pittman, *supra* note 7, Kelly v. McNeil, *supra* note 3.

¹⁹ Streater v. Jones, 5 N. C. 449 (1910); Ferguson v. Haas, 64 N. C. 772 (1870); Gaylord v. Gaylord, 150 N. C. 222, (1909); Campbell v. Sigmon, 170 N. C. 348, 87 S. E. 116 (1915); Walters v. Walters, 172 N. C. 328 (1916); Chilton v. Smith 180 N. C. 472, 105 S. E. 1 (1920); Blue v. City of Wilmington 119 S. E. 812, 186 N. C. 321 (1923); Waddell v. Aycok 195 N. C. 268, 142 S. E. 10 (1928).

²⁰ For a complete discussion of the so-called Parol Evidence rule see WIGMORE ON EVIDENCE (2nd ed. 1923) §2400 *et seq.*

²¹ SCOTT, CASES ON TRUST (1919) 193, n. 1; Scott: *Conveyances upon Trusts Not Properly Declared*, *supra* n. 1; 1 PERRY ON TRUSTS (6th ed. 1911) §76 n. (a).

Gaylord v. Gaylord, *supra* Note 19, is cited as the leading case but see Mr. Justice Connor's opinion dissenting and further declaring the majority opinion *obiter dicta*. It is submitted that Mr. Justice Connor's assertions represent the correct view.

It is interesting, too, to note that the court indiscriminately applies either of these safeguards—making no distinction as to their use.

Mr. Wigmore seems to believe there is no objection so far as the Parol Evidence rule is concerned to an extrinsic agreement to hold in trust. WIGMORE ON EVIDENCE (2nd ed. 1923) §2437.

²² See Shelton v. Shelton, *supra* note 3.

²³ See the materials referred to in note 21, *supra*.

²⁴ Scott *The Trust as an Instrument of Law Reform* (1922) 31 Yale L. J. 457; 4 HOLDSWORTH, HISTORY OF ENGLISH LAW, 407-480 (1924).

cussed in paragraph 1) would seem just as deserving of the statute's protection.²⁵ Yet that case, far from failing because of any supposed bar of the Statute of Frauds, has always been characterized in this state by an enforcement directly in the teeth of the policy of §988.²⁶ Probably, however, the reason for the court's borrowing from the Parol Evidence rule and the contract Statute of Frauds in order to prevent a trust in the *A* to *B* for *A* situation is a conviction like that of the Alabama court that "practically, it is difficult to conceive of any good motive a grantor can have in the execution of an absolute conveyance, intending that the grantee shall be the mere repository of a naked legal title, while he reserves the exclusive beneficial interest."²⁷ The deal smacks of a fraud on creditors, and is tainted with an evil smudge dating from the fifteenth and sixteenth centuries when similar uses were widely created to escape burdensome responsibilities. But why not say so?²⁸

Perhaps the same reasons are responsible for the lack of any realization in our cases of the possibility of a constructive trust. *B* is being unjustly enriched by violating his contract. England and a minority of the American states therefore compel him to restore the status quo.²⁹ The majority feel that it would be a violation of the Statute of Frauds³⁰ relating to trusts to enter such an order. Whatever may be the merits of that view,³¹ we have no such statute to contend with in North Carolina. Unless influenced by some unclean hands notion where proof of a bad motive was sufficient,³² the North Carolina courts might well give the property back to *A*, not as an enforcement of the oral contract, but to prevent *B*'s unjust enrichment, using the contract only as proof of circumstances under which he obtained the land.

THE WILL CASES

Three principal situations have arisen in the North Carolina cases involving parol trusts in connection with wills: (1) *A* to *B* by will absolute, with a prior or contemporaneous oral agreement upon the part of *B* with *A* to hold on trust for *C*. (2) Same situation, except

²⁵ See dissenting opinion in *Gaylord v. Gaylord*, *supra* note 19.

²⁶ See cases, *supra* note 3.

²⁷ *Patton v. Beecher*, 62 Ala. 579, 593 (1878).

²⁸ See the material referred to in note 24, *supra*.

²⁹ Scott, *Conveyances upon Trusts Not Properly Declared* (1924) 37 HARV. L. REV. 653, 657.

³⁰ *Ibid*, at page 658.

³¹ That is, why not make the refusal of relief dependant upon an actual showing, rather than a presumption, of bad faith?

that the agreement is entered into after the execution of the will. (3) *A* to *B* by a will which on its face carries evidence of an intention to create a trust, the object of which or the identity of whose beneficiary, however, is undisclosed.

(1) In the first case listed, the North Carolina Court has in one case enforced the oral trust for *C* as an express trust, saying that in consequence of *B*'s promise, *A* has refrained from executing his intended purpose and that it would be a fraud on *C* for *B* to avail himself of the omission.³³ In that case of *Cook v. Redman*,³⁴ the promise was apparently honestly made both to *A* and to *C*. It seems not to have occurred to the Court in that case that to enforce the oral trust might violate the policy of §988, possibly because the agreement related only to the cash proceeds from the sale of both realty and personalty. Nor does the Court appear to have remembered the strong language of an earlier opinion that "with regard to attested wills, it is well known to the profession how strictly, we may say sternly, the courts have demanded a compliance with these provisions of the law."³⁵ That is to say, the transaction as a whole amounted to a testamentary disposition to *C*, only the first step of which fulfilled the requirement of the Statute of Wills. It would, of course, be wrong to permit *B* to keep the property, but would it not in view of the arbitrary policy of the Wills Act have been the better solution to declare *B* a constructive trustee for *A*'s heirs and next of kin?³⁶

(2) Where, however, the oral agreement between *B* and *A* is entered into subsequently to the execution of the will, the North Carolina courts permit *B* to keep the land.³⁷ Most courts outside of this state regard it as immaterial when the agreement was made,³⁸ just so it was made before *A*'s death. The distinction in North Carolina is based upon the provisions of a statute: "No conveyance or other act made or done subsequently to the execution of a will of or relat-

³³ *Cook v. Redman*, 37 N. C. 623 (1843) (residue of property to be turned into personalty and divided); *Thompson v. Newlin*, 38 N. C. 338 (1844) (*dicta*).

³⁴ *Supra*, note 33.

³⁵ *Little v. Lockman*, 49 N. C. 495, 496 (1857). And see N. C. CODE (1927) §4131.

³⁶ See Costigan, *Constructive Trusts Based on Promises Made to Secure Bequests, Devises, or Intestate Succession*, *supra* note 1; Scott, *Conveyances Upon Trusts not Properly Declared*, *supra* note 1. But Dean Ames believed the Statute of Frauds and not the Statute of Wills would be violated if the property was given to *C*. See AMES, LECTURES ON LEGAL HISTORY, 430.

³⁷ *Wood v. Cherry*, 73 N. C. 110 (1875); *Chappell v. White*, 146 N. C. 571, 60 S. E. 635 (1908).

³⁸ Scott, *Conveyances Upon Trusts Not Properly Declared*, *supra* note 1.

ing to any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will. . . ."³⁹ This enactment dates from 1844. In *Chapell v. White*,⁴⁰ decided in 1908, the court asserted that "this statute was evidently enacted in view of the decision of this court, in 1843, in *Cook v. Redman*,⁴¹ in which a trust of this kind was upheld." But that case dealt with an oral agreement made *before* the execution of the will, and the statute relates only to acts done *thereafter*. Nevertheless, the court went on to say⁴² "that the doctrine of implied and secret trusts, as applicable to devises prior to the act of 1844, should be recognized and followed by this court . . . and then repudiated in *Wood v. Cherry*⁴³ as contrary to our statute, is conclusive to our minds that the court intended to give effect to what it regarded as the manifest will of the General Assembly, and to prohibit entirely the attaching to devises of secret trusts by means of parol evidence." The case in which that statement was made, however, and the case of *Wood v. Cherry*, presented merely a situation of an oral trust attempted after the execution of a will. The language is broad enough, on the other hand, to cover the situation discussed in (1) above, namely, an oral trust attempted prior to the execution of a will. Perhaps, too, it is more than a coincidence that since 1844 no case of the later type has required a square decision on the point. Dicta, however, in December⁴⁴ of that year and again in 1882,⁴⁵ adhere to the doctrine of *Cook v. Redman*.

It is submitted that the Supreme Court of North Carolina has lost sight of the original significance of this statute. It was not enacted as a reaction to *Cook v. Redman* and had in fact nothing to do with parol trusts in connection with wills. Instead, it was a part of a widespread legislative movement in this country⁴⁶ to change the common-law rule that a will operated from the time of its execution, like a deed, and not from the time of death. Witness the remarks of Pearson, J., in 1853:⁴⁷

³⁹ N. C. CODE (1927) §4136; P. L. 1844, c. 88, §2.

⁴⁰ *Supra* note 37, at p. 573.

⁴¹ *Supra* note 33.

⁴² *Chappell v. White*, *supra* note 37, at p. 576.

⁴³ *Supra* note 37.

⁴⁴ *Thompson v. Newlin*, *supra* note 33, at page 342.

⁴⁵ *Robinson v. McDiarmid*, 87 N. C. 455, 462 (1882).

⁴⁶ MORDECAI, LAW LECTURES (1916) 1164-1169; PAGE, WILLS (2d ed. 1926) §467.

⁴⁷ *Ex parte Champion*, 45 N. C. 246, at p. 248 (1853). And see MORDECAI, *op. cit. supra*, note 46.

"The first section of the Act of 1844, changes a well settled rule of law, and allows lands, and all interest in real estate to pass by devise although acquired subsequently to the execution thereof. The second section changes another well-settled rule, and provides that no conveyances, after the execution of a devise shall prevent whatever interest the devisor may have at the time of his death, from passing. The third section changes another, and provides that devises shall be construed to speak and take effect as if executed, not at the time of execution, but as if executed immediately upon the death of the devisor, unless a contrary intention shall appear by the will. The fourth section provides that a lapse or void devise shall be included in the residuary clause; and the fifth section provides that a devise of real estate shall include any real estate which the devisor has power to dispose of.

"It is evident from the whole of this statute, that its object was to give to devises the most ample operation, and to change certain rules of construction which had been adopted by the courts, but were considered by the Legislature as too technical and stringent, and calculated to defeat rather than carry out the intention of the devisors."

Yet the same judge who thus outlined the purpose of the Act of 1844, later, in *Wood v. Cherry*,⁴⁸ decided in 1875, seized upon the second section of that statute and extended its field of operations so as to block an oral trust attempted subsequently to the execution of a will and thus laid a basis for the further extension of its significance in *Chapell v. White*.

The present status of parol trusts created prior to or contemporaneously with the execution of a will, in North Carolina, therefore rests today upon a conflict between the decision in *Cook v. Redman* and the two later dicta, on the one hand, and the technically unjustified but earnest view of *Chapell v. White*, on the other, that the Act of 1844 has abolished the device in its entirety. It is believed that the *result* reached by the latter case is sound and that parol trusts in connection with wills should not be upheld, unless a clear case of actual fraud by *B* upon *C* should make it necessary for the court to raise a constructive trust for *C's* benefit. It would be unfortunate, however, if the court's view means only that *B* may keep the land given to him solely because he has promised to hold it for another.

⁴⁸ The late Dean Mordecai had this to say about this case: "A very peculiar application of this section, to say the least of it, is to be found in [*Wood v. Cherry*]. If the utterance there to be found means what it says, we have a very 'precipitate and injurious decision,' but I do not regard what is there said of sufficient importance to discuss it further." MORDECAI, *op. cit. supra*, note 46, at p. 1166, his note 54.

Common decency should require, if the policy of the Wills Act forbids relief to *C*, that the status quo, as far as possible, should be restored, and the property returned to the heirs and next of kin of the settlor.

(3) Apparently only one case⁴⁹ of the third type has come before the North Carolina Supreme Court. There, *A* devised property to *B* "to be disposed of as I have directed." There was evidence that this language referred to some oral directions given previously to the execution of the will, but the nature of these directions could not now be ascertained. It was held that *B* should be declared to hold upon a resulting trust for *A*'s heirs, the express trust having failed for lack of evidence to establish either its object or the identity of the beneficiaries. In a dictum,⁵⁰ however, the court indicated that had it been able to discover the terms of the oral trust, it would have protected *C*. The present significance of such a notion has been discussed in the preceding paragraph.

CONCLUSION

Therefore, only in one situation will a parol trust be upheld in this jurisdiction, notwithstanding the absence of a Statute of Frauds directly applicable to trusts. That is where *A* conveys to *B* by deed *inter vivos* with a prior or contemporaneous oral agreement that *B* is to hold for *C*. Most states having a trust Statute of Frauds, however, permit *B* in that situation to keep the land, because to do otherwise would do violence to the statute. To prevent parol trusts in situations other than the one just mentioned, the North Carolina Supreme Court has gone to the Parol Evidence rule, to the local contract Statute of Frauds, and to an originally irrelevant modification of the Wills Act.

⁴⁹ *Robinson v. McDiarmid*, *supra*, note 45.

⁵⁰ *Ibid.*, at p. 462.