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Trusts

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TRUSTS

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The year's crop of litigation in the trusts field merely explained, extended, and applied familiar doctrines. No material departure from established principles was made. The cases will be discussed briefly.

An oral agreement between husband and wife that, upon the death of the husband, his widow should hold both his estate and her separate proerty for her life, and upon her death the combined estates should be distributed to the husband's children by a former marriage, did not create a trust. The trial court sustained a general demurrer to the petition which set out the agreement and alleged that the widow took possession of her husband's estate and held it until her death testate. The Supreme Court affirmed the judgment with the statement that the petition set out no cause of action. No reason for its conclusion was given. *Morris v. Shumate.*[1]

A conveyance by will of a designated portion of testator's estate in trust for his son for the son's life, with a discretionary power in the trustee to encroach upon the corpus for the benefit of the son, with remainder in trust to the surviving children of the son, created an executory trust both as to the life estate in the son and the remainder interest in the surviving children. The case falls within the well recognized principle that an executory trust may be created for the benefit of a person *sui juris* provided there is a valid trust in remainder which makes it necessary that the trustee hold the legal title in order that the purposes of the trust in remainder may be accomplished. *Budreau v. Mingledorff.*[2]

Where a testator left an estate to trustees for the use of his widow for her life, then to the use of his three children in equal shares for their respective lives, remainder of each child's share for the use of the child's children until they should reach twenty-one, then to such grandchildren in fee, but with a provision that if any child of the testator should die without children him surviving his share should go over, created a valid trust which became executed in a grandchild of testator who survived his parent and reached his majority. The grandchild was entitled to have one-third of the corpus delivered to him as soon as the equitable estate became absolutely vested in him. The court applied the doctrine that when the purpose of a trust has been fully accomplished the person in whom the equitable estate is then vested gets legal title by operation of law and the trust is immediately executed, leaving the beneficiary the owner of a simple legal estate of the same quantity as the equitable estate he held just before it was drowned. *Stringfellow v. Harman.*[3]

A personal representative of a decedent stands in such a relation of trust

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1. 207 Ga. 652, 63 S.E.2d 664 (1951).
2. 207 Ga. 538, 63 S.E.2d 326 (1951).
3. 207 Ga. 62, 60 S.E.2d 139 (1950).

and confidence to the heirs, including the widow, that, as to transactions between the heir and the representative, he is deemed to be a trustee. The trustee is prohibited from dealing with the corpus of the estate for his own benefit. So, where a temporary administrator procured a conveyance to himself from the widow of the decedent, a court of equity will set it aside without proof of fraud. *Edwards v. Collins.*[4]

The mere relation of brother and sister does not create such a confidential relation that a sale of property by one to the other for an inadequate price will impose a constructive trust on the property in the hands of the buyer in favor of the seller. This is particularly true where the parties have equal opportunity to inform themselves as to the real value of the property sold. Of course, if it were shown that the buyer had prevented the seller from ascertaining the true worth of the subject matter of the sale a different principle would apply. *Watkins v. Mertz.*[5]

In *Clark v. Griffon*[6] the court recognizes the ancient principle that if one makes a voluntary conveyance of realty to another, with no intention that the use pass to the grantee, a resulting trust is created and the beneficial interest remains in the grantor. This doctrine is based on the presumption of fact that the grantor does not intend to deprive himself of the beneficial enjoyment of his land. It had its origin in the system of uses which was developed in England at an early day and adopted in this country, in so far as suited to our institutions, as a part of our land law. In Georgia parol evidence that the grantee in a deed absolute on its face orally agreed to reconvey the land upon the request of the grantor is admissible to rebut any inference of a gift; or, to put it in other words, such evidence is admissible to show the intent of the grantor. This principle of evidence is particularly useful to rebut the presumption of a gift where the parties are parent and child or husband and wife. This type of trust should be distinguished from that in which the grantee procures the legal title through active fraud.

In *Trapnell v. Swainsboro Production Credit Assn.*,[7] it was held that where a landlord waived his liens on his cropper's crop in order to enable the cropper to procure supplies with which to make the crop, and where upon the maturity of the crop the landlord took possession of the crop and converted it to his own use, he became, along with his cropper, a trustee *maleficio* for the benefit of the creditor who had furnished the supplies.

Only two legislative changes were made in the law of trusts during the year.

The legislature amended the Common Trust Fund Act[8] by increasing the maximum amount of moneys of any one estate which may be invested in one or more common trust funds from $50,000 to $150,000, or such

4. 207 Ga. 204, 60 S.E.2d 337 (1950).
5. 83 Ga. App. 115, 62 S.E.2d 744 (1950).
6. 207 Ga. 255, 61 S.E.2d 128 (1950).
7. 208 Ga. 89, 65 S.E.2d 179 (1951).
8. Ga. Laws 1943, p. 442, as amended, Ga. Laws 1947, pp. 478-479, GA. CODE ANN. § 109-608 (Supp. 1947).

lesser amount as may from time to time be prescribed by the Board of Governors of the Federal Reserve System.[9]

Ga. Laws 1951, p. 756 amends Section 16-437 of the Code of Georgia (Supp. 1947) by striking the figures $5,000.00 and substituting in lieu thereof "the figures and words, $10,000.00, or such other amount as may be from time to time fixed by Federal laws or regulations as the maximum amount insurable by the Federal Savings and Loan Insurance Corporation."

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9. Ga. Laws 1951, p. 526.