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## BANKS AND BANKING-DEPOSITS-RESULTING TRUSTS UNDER THE CONTRACT THEORY OF JOINT BANK ACCOUNTS

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BANKS AND BANKING—DEPOSITS—RESULTING TRUSTS UNDER THE CONTRACT THEORY OF JOINT BANK ACCOUNTS—A husband carried a bank account in his own name. Subsequently, he and his wife signed a signature card at the bank upon which appeared the following: "We agree . . . that all funds now, or hereafter, deposited to this account are, and shall be, our joint property and owned by us as joint tenants with right of survivorship, and not as tenants in common; and upon the death of either of us any balance . . . shall become the absolute property of the survivor. The entire account or any part thereof may be withdrawn by . . . either of us or the survivor." No money belonging to the wife was ever deposited. After the death of the husband his residuary legatees filed a petition claiming the balance of the account by virtue of a resulting trust which they sought to show by parol evidence to have been intended by the husband. Judgment was for the wife. On appeal, *held*, affirmed. The signature card constituted a contract clearly expressing the husband's intent, and could not be varied or altered by parol evidence through the device of a resulting trust. *Hill v. Havens*, (Iowa 1951) 48 N. W. (2d) 870.

No little difficulty has been encountered by courts in devising acceptable legal theories to permit the surviving depositor of a joint bank account to retain the balance of the account as against the personal representative of the deceased depositor who owned all the funds prior to deposit. Three theories have long been used to explain how the survivor acquires any title or other legal right to the funds: the gift theory, the trust theory, and the joint tenancy theory.<sup>1</sup> The principal case employs a fourth theory, perhaps most recent in its origin, which considers the bank signature card a contract. The courts, however, have not completely agreed upon the exact nature of the contractual relationship. The survivor (donee-depositor) has been considered a joint promisee with the donor-depositor of a contract with the bank,<sup>2</sup> a sole promisee in a separate contract with the bank,<sup>3</sup> or a donee beneficiary of a contract between the donor-depositor and the bank.<sup>4</sup> But the precise question of whether a resulting trust arises has not previously been considered under any of these facets of the contract theory.<sup>5</sup> For the purpose of analyzing this question it is submitted that three distinct views of the deposit transaction may feasibly be taken: (1) A, owner of a chose in action against the bank, promises the bank to discharge the debt in consideration for the bank's promise to pay A or C or the survivor. C may be considered a promisee<sup>6</sup> of a contract with the bank, the consideration for which was furnished entirely by A. If the rules of purchase money resulting trusts are applicable, a presumption is raised that C holds his contract rights in trust for A. That a promise of performance may be held in express trust by the promisee is well settled,<sup>7</sup> but it is not certain that a contract right may be the *res* of a resulting trust.<sup>8</sup> However that may be, the facts of a joint deposit transaction are distinguishable in another respect from the typical set of facts that give rise to a resulting trust. For example, where B makes an ordinary conveyance of land to C on consideration paid by A, the property rights received by C (in which A is claiming an equitable interest) are of a different nature (rights in land) from the consideration (money) given up by A, and have a value independent of the consideration paid. On the other hand, in the joint

<sup>1</sup> For cases applying these theories see 103 A.L.R. 1123 (1936).

<sup>2</sup> Chippendale v. North Adams Savings Bank, 222 Mass. 499, 111 N.E. 371 (1916).

<sup>3</sup> Brown v. Brown, 174 Mass. 197, 54 N.E. 532 (1899). This case, admittedly to avoid statutes preventing valid contracts and gifts between husband and wife, found that the husband had contracted with the bank, and the bank with the wife, even though the wife had made the deposits. It was said that the wife in her capacity as agent for her husband had instructed the bank to contract with the wife in her individual capacity.

<sup>4</sup> Estate of Skilling, 218 Wis. 574, 260 N.W. 660 (1935).

<sup>5</sup> In some states the purchase money resulting trust is eliminated by statute. For example, see 3 Mich. Comp. Laws (1948) §§487.703, 557.151, 555.7.

<sup>6</sup> C may be considered either a sole promisee, as in note 3 *supra*, or a joint promisee, as in note 2 *supra*. The result as to a resulting trust should be the same in either case.

<sup>7</sup> Terkelsen v. Peterson, 216 Mass. 531, 104 N.E. 351 (1914); and examples in 1 SCOTT, TRUSTS 140 (1939).

<sup>8</sup> Lynch v. Herrig, 32 Mont. 267, 80 P. 240 (1905), may be said to hold that a contract right may be the *res* of a resulting trust. However, perusal of the case reveals that the promisee held a property right, rather than a mere contract right, inasmuch as a land contract traditionally furnishes the basis for a specific performance decree by a court of equity.

deposit situation the right acquired by C (a chose in action against the bank for a certain sum of money) is almost identical with the consideration (a chose in action against the bank for the same amount of money) given up by A. The presence of this distinction appears to make the joint deposit situation closely analogous to the case of a voluntary conveyance of land from A directly to C, for in this latter situation, also, the right given up by A to C is identical with the thing in which A is claiming an equitable interest. In the case of a voluntary conveyance of land it is held, contrary to earlier law, that no resulting trust arises, because the natural assumption is that, in view of modern business and social transactions, A would not give property absolutely to C, yet at the same time expect to retain the ultimate benefit of that property.<sup>9</sup> It is submitted that in a joint deposit transaction the natural supposition is the same—that A would not give up a chose in action against a bank, yet expect to receive the ultimate benefit of an essentially identical chose in action against the same bank. This is particularly true where A, as in the principal case, expressly retains the right to withdraw all or any part of the funds at any time, this being a right equal to the right received by C.<sup>10</sup> Therefore, having pursued analysis (1), we may conclude that no presumption of a resulting trust ought to arise, and in the absence of such a presumption no resulting trust can arise, despite a contrary intent of the depositor, A.<sup>11</sup> If the correct rule, however, is that a presumption does arise, evidence of intent becomes important in two different factual situations: (a) To rebut the presumption of a resulting trust by showing an intent to make a gift. Parol evidence should be admissible for this purpose because, since the contract is not a trust instrument<sup>12</sup> and is not a contract between A and C,<sup>13</sup> the parol evidence rule is inapplicable. (b) To rebut the presumption of gift arising in cases of close relationship such as the principal case.<sup>14</sup> Parol evidence should be admissible for the sole purpose of rebutting this presumption, not for establishing a resulting or express trust.<sup>15</sup> If the

<sup>9</sup> *Jackson v. Cleveland*, 15 Mich. 94 (1866); *Peters v. Meyers*, 408 Ill. 253, 96 N.E. (2d) 493 (1951); 2 TRUSTS RESTATEMENT §405 (1935); 2 BOGERT, TRUSTS AND TRUSTEES §§453, 454 (1935); and cases collected in Stone, "Resulting Trusts and the Statute of Frauds," 6 COL. L. REV. 326 at 331, note 1 (1906).

<sup>10</sup> His right, however, is not equal to C's in the event he dies prior to C's death. This raises the question, which is outside the scope of this note, as to whether the contract theory answers the argument that the joint deposit transaction is an attempted testamentary disposition which does not meet the requirements of the Statute of Wills.

<sup>11</sup> Stone, "Resulting Trusts and the Statute of Frauds," 6 COL. L. REV. 326 (1906). See also note 12 *infra*.

<sup>12</sup> *Van Buskirk v. Van Buskirk*, 148 Ill. 9, 35 N.E. 383 (1893); *Thomas v. Thomas*, 79 N.J. Eq. 461, 81 A. 748 (1911). A purchase money resulting trust arises from the fact of payment and transfer of property, apart from any contract between the parties. A contract is mere evidence to aid the presumption.

<sup>13</sup> Under analysis (1), A and C may be joint promisees as to the bank and A may be a promisor as to the bank, but neither A nor C is a promisor as to the other.

<sup>14</sup> The husband-wife relationship gives rise to a presumption of gift. *Jackson v. Jackson*, 150 Ga. 544, 104 S.E. 236 (1920).

<sup>15</sup> *Cotton v. Wood*, 25 Iowa 43 at 47 (1868); 2 BOGERT, TRUSTS AND TRUSTEES §461 (1935). For an excellent discussion of admissibility of parol evidence in bank account cases generally but without analysis of the resulting trust problem, see *Matthew v. Moncrief*, (D.C. D.C. 1943) 135 F. (2d) 645.

presumption of gift is rebutted, a resulting trust arises automatically. Under analysis (2), C may be considered a donee-beneficiary of a contract between A and the bank. If C has any rights under the contract,<sup>16</sup> it appears that the discussion under analysis (1) applies. Employing analysis (3), C may be considered a promisee of a contract with A, whereby A promises to regard C as owner of a joint interest in the chose in action he holds. No resulting trust problem arises whether or not consideration was given by C.<sup>17</sup> Where a binding contract exists, clearly parol evidence to show an express trust is inadmissible, if the contract makes any provision concerning the equitable interest of the chose in action.<sup>18</sup> In the principal case the words "absolute property" may justifiably be said to include all possible types of ownership, therefore excluding parol evidence of the husband's intent to retain an equitable interest. It is submitted that the court arrived at the proper conclusion, although its view of the contractual relationship appears to be similar to that in analysis (1), whereas its discussion of the resulting trust and admissibility of parol evidence seems to coincide more closely with that of analysis (3). It is submitted that analysis (3) is the more natural supposition by the parties as to the nature of the contract between themselves. The language of the contract hardly necessitates a contrary analysis.<sup>19</sup>

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<sup>16</sup> Existence of rights by a donee beneficiary generally depends on whether the promisee intended the beneficiary to be benefited. *Swift Lumber & Fuel Co. v. Hock*, 124 Neb. 30, 245 N.W. 3 (1932). Establishment of an intent to benefit would seem to rebut any possible resulting trust; if there is no intent to benefit, the beneficiary would have no rights that could be a trust res.

<sup>17</sup> See note 9 *supra*.

<sup>18</sup> 9 WIGMORE, EVIDENCE, 3d ed., §2430 (1940); 1 SCOTT, TRUSTS §38 (1939). However, facts giving rise to a constructive trust may be proved.

<sup>19</sup> Of course, there exists simultaneously a contract between the husband and wife on the one hand and the bank on the other, so as to protect the bank in its payments to either, or to the survivor.