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TRUSTS--CONSTRUCTIVE TRUST--TRACING FUNDS INTO THE HANDS OF AN INNOCENT PAYEE-ANTECEDENT DEBT AS VALUE

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TRUSTS—CONSTRUCTIVE TRUST—TRACING FUNDS INTO THE HANDS OF AN INNOCENT PAYEE—ANTECEDENT DEBT AS VALUE—Plaintiffs advanced $3,200 to *X* intending to make a loan to *Y* secured by *Y's* note and mortgage. *X* delivered to plaintiffs a note and mortgage to which he had forged *Y's* name, and deposited $3175 of the money in his personal bank account, which theretofore had shown a balance of $7.09. Two days later, and before any other

deposits were made,[1] *X* withdrew $1000 from his account by check, with which he purchased a draft payable to defendant. This he delivered to defendant in satisfaction of a debt he owed defendant. Eighteen months later *X* died, plaintiffs discovered the forgery, and in the present action sought to compel defendant to account as trustee for the funds received from *X*. *Held*, a constructive trust will be impressed upon funds obtained by fraud, and an innocent party, who obtained such funds in satisfaction of an antecedent debt and without change of position will be required to account therefor to the equitable owners. *Meier v. Geldis*, (Neb. 1947) 27 N.W. (2d) 215.

In many situations the satisfaction of an antecedent debt in consideration of the transfer of property is treated as "value" so that the transferee may hold the property free of the claims of the equitable owner thereof, always assuming the transferee's lack of notice of such claims.[2] Thus, the Uniform Negotiable Instruments Law treats an antecedent debt as "value," [3] and the same result is obtained under the Uniform Sales Act where the vendor has a "defeasible" title.[4] Likewise, the Uniform Fraudulent Conveyance Act [5] considers the antecedent debt as "fair consideration." [6] Apart from statute, however, considerable disagreement exists and numerous distinctions have been drawn. For example, it has been said that the antecedent debt is not value as against the claims of a beneficiary of an express trust, but that the contrary is the rule in the case of a constructive trust.[7] It has been suggested that this is because the law favors the equities of the cestui que trust more than it favors the claims of one who through his own mistake or negligence has parted with title to his property.[8] The distinction has apparently been embodied in the Uniform Sales Act.[9] Likewise, distinctions have been drawn between transfers of property and of money, favoring the transferee of the latter.[10] This has been stated in terms of a tracing

[1] The report does not indicate the order of withdrawals, beyond the statement that *X's* balance was sufficient to cover the check in question. The court did not seem to consider that any problem of commingling of assets existed. See 3 SCOTT, TRUSTS, §§ 515, 516, 517 and 521.2 (1939). Perhaps it was thought that de minimis doctrines applied because of the slight amount of *X's* fund in the account at the time of deposit.

[2] See, generally, 3 SCOTT, TRUSTS, §§ 474 and 475 (1939); 12 A.L.R. 1048 (1921).

[3] Section 25.

[4] Section 76.

[5] Section 3.

[6] This can hardly be considered to be a helpful analogy to the present case, as it seems to state, in terms of "antecedent debt," only the general common law doctrine that preferential treatment of a creditor is not subject to attack by an unsecured, individual creditor.

[7] 3 SCOTT, TRUSTS, § 475 (1939).

[8] Ibid.

[9] It will be noted that section 24 applies only to vendors whose title is "defeasible." Apparently the common law rule as to the diversion of trust property by an express trustee is still in effect.

[10] 12 A.L.R. 1048 at 1054 (1921). Benjamin v. Welda State Bank, 98 Kan. 361, 158 P. 65 (1916). And see the basic assumption of such cases as Gaffner v. American Finance Co., 120 Wash. 76, 206 P. 916 (1922) and Merchants' Ins. Co. v. Abbott, 131 Mass. 397 (1881).

problem,[11] as well as in the antecedent debt formula,[12] and in either case considerations of commercial convenience play an important part. It is interesting to observe that had plaintiffs delivered negotiable bearer paper to *X*, the fraudulent party, in the principal case, and had *X* delivered the same to the defendant in satisfaction of his antecedent debt, the defendant could have taken free of the plaintiffs' claims.[13] The decision seems to have the effect of rendering less negotiability to money converted into a negotiable instrument than to bearer paper. Even considering the defendant in the principal case as a donee, he could still have taken free of plaintiffs' claims had he established a change of position in reliance on *X's* payment.[14] This principle was recognized by the court, but some requirement of affirmative reliance was apparently thought necessary. It might well be argued that the lapse of eighteen months and the death of the debtor, presumably insolvent, amounted to sufficient change of position to sustain defendant's claim.[15] *James R. Bliss, S.Ed.*

[11] Scott v. Surman, Willes 400, 125 Eng. Rep. 1235 (1742); Miller v. Race, 1 Burr. 452, 97 Eng. Rep. 398 (1758).

[12] Stephens v. Board of Education, 79 N.Y. 183 (1879); Rawlins Co. State Bank v. Walters, 92 Kan. 391, 140 P. 864 (1914).

[13] Uniform Negotiable Instruments Law, § 25. The decision in the principal case was thought to be compelled by Allen Dudley & Co. v. First National Bank, 122 Neb. 443, 240 N.W. 522 (1932). That case seems to have decided the very different question of a bank's right to set off a collateral debt of the depositor, without the depositor's knowledge, against a draft deposited in the account of the debtor, which draft the bank had reason to suppose was intended to cover checks issued by the debtor in payment for property of the plaintiff.

[14] 3 SCOTT, TRUSTS, § 480 (1939).

[15] Compare County of Jefferson v. McGrath's Exec., 205 Ky 484, 266 S.W. 29 (1924); Richey v. Clark, 11 Utah 467, 40 P. 717 (1895); Winslow v. Anderson, 78 N.H. 478, 102 A. 310 (1917). But see the interesting agrument of Grand Lodge v. Towne, 136 Minn. 72, 161 N.W. 403 (1917).