

# TRUSTS

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There were no unusual developments in the Trust field since last year's survey.

For convenience, the cases discussed will be divided between those dealing with express trusts and those dealing with implied trusts.

## EXPRESS TRUSTS

In *Hardage v. Hardage*<sup>1</sup> the court held that a trust to defray medical and educational expenses of indigent and needy blood relatives of the testator was not a charitable trust, and was therefore void as being in violation of the rule against perpetuities. To be charitable in nature, within the meaning of the statutory language, a trust must be for a broad general class of the public, and one family is too narrow a class of beneficiaries.

In *McClelland v. Johnson*<sup>2</sup> the executors sought construction of the language of a will establishing a marital deduction trust. Although the appeal turned on another point, the case is interesting in that it affirmed the lower court's decision holding that for purposes of determining the amount of the trust, the general language of the will referring to the testator's "estate" included not only property actually in the hands of the executors, but all property passing by reason of the testator's death (such as insurance payable directly to the wife).

In *Gray v. Trust Company of Georgia*<sup>3</sup> the supreme court held that in a bill for construction of a will, the superior court had jurisdiction (of both parties and subject matter) to approve an agreement between the widow-life tenant and the the remaindermen regarding possession and use of property in which the widow was left a life estate. The agreement was approved by the court and made a part of the final decree, and the widow could not later attack or repudiate it.

In *Simmons v. Cave Spring*<sup>4</sup> the court held that a municipality, whether considered as the owner or as the representative of its citizens

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1. 211 Ga. 80, 84 S.E.2d 54 (1954).
2. 211 Ga. 348, 86 S.E.2d 97 (1955).
3. 211 Ga. 332, 85 S.E.2d 721 (1955).
4. 211 Ga. 284, 85 S.E.2d 419 (1955).

(who were beneficiaries of the trust) had the right to maintain an action against testamentary trustees of a public park for misfeasance and non-feasance in office.

#### IMPLIED TRUSTS

Two cases involve application of the remedial doctrine of trustee *ex maleficio*. In one<sup>5</sup> the rule was applied to rescue a corporate creditor who alleged that the defendant, president and sole stockholder of an insolvent corporation, had converted the assets of the corporation to his own use. In the other,<sup>6</sup> it was invoked to aid a petitioning physician whose receptionist had allegedly collected money due the physician and mingled it with her own funds and property.

In *Dixon v. Dixon*<sup>7</sup> the court adhered to previous decisions that inceptive fraud, as distinguished from mere failure to perform an agreement, consisting of an inducing promise which the promisor at the time had no intention of keeping, can cause a resulting trust for the benefit of the promisee, and is not within the rule prohibiting engrafting a parole trust on a deed.

*Johnson v. Johnson*<sup>8</sup> adheres to previous decisions that in order for a trust to be implied from the payment of purchase money, it must result at the time of the conveyance except where there is fraud or concealment in its procurement. Here there was no showing that the plaintiff paid any purchase money at or before the time of the execution of the deed, and therefore the petition did not state a cause of action for an implied trust.

*Woodruff v. Hennessy*<sup>9</sup> applies the implied trust doctrine where a conveyance, financed by the principal, was taken in the name of the plaintiff's agent upon the agent's agreement to convey to his principal after completion of the transaction.

#### STATUTES

The only new statute affecting trusts enacted by the 1955 session of the General Assembly provides that a power of sale in any instrument shall authorize a private sale, without advertisement and without necessity of court order, unless expressly limited or otherwise restricted in the instrument creating the power; it also provides that unless expressly limited in the instrument creating the power of sale, such power may be exercised by a successor trustee or by surviving trustee.<sup>10</sup>

5. *Turner v. Tyson*, 211 Ga. 53, 84 S.E.2d 86 (1954).

6. *Adams v. McGehee*, 211 Ga. 498, 86 S.E.2d 525 (1955).

7. 211 Ga. 557, 87 S.E.2d 369 (1935).

8. 210 Ga. 795, 82 S.E.2d 831 (1954).

9. 210 Ga. 819, 82 S.E.2d 863 (1954).

10. Ga. Laws, Jan.-Feb. Sess., 1955, p. 430.