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Trusts-Resulting Trusts-Construction of Statute

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TRUSTS—RESULTING TRUSTS—CONSTRUCTION OF STATUTE—The amended complaint alleges that, in the year 1902, plaintiff and one Elder (defendant's deceased husband) entered into a verbal agreement whereby they were to contribute equally to a fund which was to be held in trust by Elder for the purchase of certain real estate; that the agreement was without fraudulent intent and each agreed to contribute one-half of the fund. Plaintiff alleges that each contributed three hundred dollars in money and twelve hundred dollars in mining stock, and Elder became trustee for himself and plaintiff. Elder later purchased land with the fund and took title in his own name in trust, it is alleged, for plaintiff and himself. Title remained in Elder until he died in 1918. Plaintiff also alleges that defendant is the sole beneficiary under Elder's will and that she holds title to this land in trust for herself and plaintiff. The prayer is for partition. At the trial there was no direct evidence of any contract between plaintiff and Elder for the purchase of the land in question and no evidence as to how much, if any, money was put in Elder's hands by plaintiff for the purchase of this land, nor when such was paid. There was some evidence of Elder's obtaining a loan on the property and that it was stated in the application

for the loan that the property was owned by plaintiff and Elder in fee and that the loan was carried in the name of plaintiff and Elder. Judgment below was for defendant on the ground that no resulting trust existed between plaintiff and Elder in the latter's lifetime in respect of the property, and no trust relation has since existed between plaintiff and defendant. *Held*: Judgment affirmed. *Burns' Ann. St.* 1926, Sec. 13447, provides: "When a conveyance for a valuable consideration is made to one person and the consideration therefor is paid by another, no trust shall result in favor of the latter, but title shall vest in the former subject to the provisions of the next sections." And Sec. 13449 provides: "The provisions of 13447 shall not extend to cases where it appears, by agreement, and without fraudulent intent, the party to whom the conveyance was made or in whom the title shall vest, was to hold the land in trust for the party paying the purchase price." There was not sufficient evidence, under the statute, to show that Elder agreed to hold the land in trust for plaintiff. *Kemp v. Elder*, Appellate Court of Indiana, February 21, 1930, 170 N. E. 90.

A resulting trust must arise at or before the time of the conveyance. *Westerfield v. Kimmer*, 82 Ind. 365; *Toney v. Wendland*, 138 Ind. 228; *Hughes v. White*, 117 Ind. 470.

In order to create a resulting trust under these sections of the statutes, the purchase money must be paid at the time of or before the conveyance is made. A resulting trust can not be created by funds subsequently furnished. *Toney v. Wendland*, *supra*; *People's Bank and Trust Co. v. Mills*, 193 Ind. 131; *Rickes v. Rickes*, 81 Ind. App. 533.

In the principal case there was no evidence that plaintiff furnished any of the purchase money at or before the purchase of the land by Elder. Nor was there any evidence of what portion, if any, of the purchase price was paid by plaintiff. Elder's will and the probate thereof is a disavowal of any trust in respect of the land.

Where part payment of the purchase money is claimed the exact portion should be clearly shown. *Hulton v. Cunningham*, 28 Ind. App. 295; *Irwin v. Ivers*, 7 Ind. 308.

In view of the evidence, the case is clearly correct under the statutes.

R. C. H.