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James M. Sanderson

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**TRUSTS AND TRUSTEES. CONSTRUCTIVE TRUST—PATIENT'S USE OF UNPAID PHYSICIAN'S BILL IN SETTLEMENT WITH NEGLIGENT PARTY.**—In a recent District of Columbia case, *Woodruff v Coleman*,<sup>1</sup> the court held that a constructive trust will not be impressed in favor of a physician on the proceeds of a settlement between his patient and the negligent party where the physician's unpaid bill formed the basis of the settlement. In 1950, appellant, Woodruff, was injured in an accident with a bus owned by the Capital Transit Company. Suit was filed against the company, but a settlement was negotiated between the appellant's then attorney and the supervisor of the transit company's adjustments. Before settlement, appellee, a physician, had treated appellant over a period of several months, and had presented a bill for \$1645 for his services. This bill was used in negotiating the settlement. Subsequent to the settlement, appellant refused to pay the bill, claiming that it was grossly excessive. Appellee then filed suit to have appellant declared constructive trustee for the full amount of the bill. Appellee's motion for summary judgment, supported by affidavits of the transit company's adjustments supervisor to the effect that the bill had been represented to be a valid obligation of the appellant and as such had been included in the settlement, was granted by the lower court. This judgment was reversed on appeal.

In reversing the lower court, the Municipal Court of Appeals cited the case of *Traywick v Wannamaker*,<sup>2</sup> a case with similar facts. The defendant in the *Traywick* case had previously recovered a judgment against petitioner for injuries caused by negligent acts of the petitioner. In this action petitioner sought to have the defendant declared constructive trustee of so much of that judgment as would be necessary to pay the defendant's physician. Petitioner contended that suit was about to be commenced against her by the physician and that the amount of his bill had been recovered by the defendant against her. The court in that case found that in view of the very small amount of the judgment it was highly unlikely that defendant had recovered the amount of the bill. The concurring opinion also stated that only the most compelling reasons should force the court to sustain the petitioner's suit in view of the very small amount of money the defendant would receive if that were done. What the court in the *Traywick* case would have done had it found that the defendant had received the amount of the physician's bill in his judgment against the petitioner cannot be known, of course.

But even had the *Traywick* case been decided differently, would the appellee in the *Woodruff* case be entitled to equitable relief? The constructive trust is a remedial device in the courts of equity.<sup>3</sup> It does not depend on intent of the parties but is usually imposed contrary to their intention.<sup>4</sup> Professor Pomeroy said of such a trust:

"Constructive trusts include all those instances in which a trust is raised by the doctrine of equity for the purpose of working out justice in the most efficient manner, where there is no intention of the parties to create such a relation, and in most cases contrary to the intention of the one holding the legal title, and where there is no express or implied, written or verbal, declaration of the trust."<sup>5</sup>

The courts have never fixed the limit of conduct which will give rise to a constructive trust. Their declarations have ranged all the way from requiring fraud,<sup>6</sup> to

<sup>1</sup>98 A.2d 22 (D.C. 1953)

<sup>2</sup>153 S.C. 146, 150 S.E. 655 (1929)

<sup>3</sup>3 BOGERT, TRUSTS AND TRUSTEES § 471 (1st ed. 1935), RESTATEMENT, RESTITUTION § 160 (1936)

<sup>4</sup>RESTATEMENT, RESTITUTION § 160, Comment b (1936)

<sup>5</sup>4 POMEROY, EQUITY JURISPRUDENCE § 1044 (5th ed. 1941)

<sup>6</sup>Lowenberg v. Booth, 330 Ill. 548, 162 N.E. 191 (1928)