JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 79/2001

BEFORE: **THE HON. MR. JUSTICE FORTE, P**
THE HON. MR. JUSTICE LANGRIN, J.A.
THE HON. MR. JUSTICE SMITH, J.A. (Ag)

BETWEEN	**CHRISTINE SHAW**	**APPELLANT**
A N D	**NATIONAL COMMERCIAL BANK JAMAICA LTD.**	**1st RESPONDENT**
A N D	**THE ADMINISTRATOR GENERAL OF JAMAICA**	**2nd RESPONDENT**

Clyde Williams instructed by **Haughton & Associates** for Appellant
Antonica Coore instructed by **Vascianna & Wittingham** for 1st Respondent
Dave Garcia instructed by **Myers Fletcher & Gordon** for the 2nd Respondent

26th, 27th November, 2001 and 22nd March, 2002

FORTE, P:

Having read in draft the judgment of Langrin, J.A. I entirely agree and have nothing further to add.

LANGRIN, J.A.:

This is an appeal from the judgment of Mrs. Hazel Harris, J, dismissing a matter which had been brought by Originating Summons seeking the following declarations:

1. A determination of the interest of the appellant in funds standing to the credit of Certificate of Deposit number 006580 Account number 61 371 413 6 maintained at the Manor Centre branch of the respondent bank in the names of Ivina Henry and/or Christine Shaw

2. A Declaration that the Appellant is the sole legal and beneficial owner entitled to the funds standing to the credit of the above-mentioned Certificate of Deposit/Account.

The learned Judge concluded that the appellant had not established that Miss Henry had intended that she should have acquired the beneficial interest in the proceeds of the Certificate of Deposit. She had never acquired a right to these funds, as Miss Henry did not have the intention to confer a gift on her. Instead, the funds in the account should enure to the benefit of Miss Henry's estate.

At the conclusion of the arguments we dismissed the appeal with costs to the respondent to be agreed or taxed and promised to put our reasons in writing. This we now do.

The issue before us is concerned with whether the appellant has any legal or beneficial interest in the Certificate of Deposit.

Before examining the merits of the arguments raised it is necessary to make reference to the factual background of the claim by the appellant.

Ivina Henry was the aunt of the appellant. She died intestate on May 13, 1997. At the date of her death she was a divorcee and the mother of one child born on June 15, 1987. She was an informal

commercial importer. A Certificate of Deposit in the amount of US$171,000 was issued by the first respondent on May 6, 1997 in the names of Ivina Henry and Christine Shaw. Miss Henry died seven days after the deposit was made.

Prior to May 6, 1997, the funds were in Miss Henry's name only. It is not disputed that the deposit was made by the deceased and the funds belonged to her exclusively. There is also no dispute that the appellant never completed and submitted to the Bank any mandate or any other documents regarding the establishment of the deposit account which is the subject of this matter.

When a bank receives funds from a customer the bank becomes a debtor to the person from whom the funds are received and as a general rule the bank is under a duty to pay only that person from whom the funds were received. There were no instructions from Miss Henry as to the disposition of the deposit since she had failed to complete and sign the mandate. The appellant did not herself sign any mandate. That being so there was no contractual obligations between herself and the bank in respect of the deposit.

Mr. Williams, who has said everything that could be said for the appellant, argued that where a person deposits money with a bank in her name and that of another, she thereby purports to have made them parties to a contract. This submission would be correct if written

instructions existed as to how the parties should hold the funds or to whom it should be payable in the event of one party surviving the other. In the absence of a written mandate, the learned judge acted correctly in holding that the appellant had no legal interest in the deposit.

Let me now examine whether the appellant has any beneficial interest in the deposit.

J. Gareth Miller, ***The Machinery of Succession*** [1977] at pp. 286-7 considers the situation where a person opens an account in the joint names of himself/herself and another:

> "Another situation which often arises is one where only one person pays into an account which he or she opens in the joint names of himself or herself and another. Where a husband opens an account in the joint names of himself and his wife, or a father opens an account in the joint names of himself and a child, the presumption of advancement will apply and the surviving wife or child, as the case may be, will be entitled to the balance in the account on the death of the person opening the account. In other cases the presumption of resulting trust will apply, and if the person opening the account dies first, the survivor will hold on trust for the deceased's estate. The presumption of advancement may be rebutted by evidence that the account was opened for some specific and limited purpose and that no beneficial interest was intended to be passed." (emphasis added).

In the present case, the deceased did not open an account in the joint names of herself and the appellant, therefore neither the

presumption of advancement nor the question of a resulting trust would arise.

The appellant contends that the deceased stood in loco parentis to the appellant. The case of ***Re Paradise Motor Co. Ltd*** [1978] 2 All AER 625 illustrates that to raise the presumption in cases other than those involving the relationship of husband and wife or parent and child, compelling evidence of the relationship must be presented. In that case, the evidence was that the person who sought to rely on the presumption was a step-son and a minor who had been living with his step-father in the manner of a son. In the instant case the evidence presented on behalf of the appellant was that the deceased was her aunt and that they were close. The learned judge correctly rejected that evidence as giving rise to a presumption of advancement between aunt and niece.

Even if the presumption of advancement arises there is ample evidence which properly rebuts it. The case of ***Warren v Gurney*** [1944] 2 All E.R. 472 held that contemporaneous disclamations may rebut the presumption of advancement in cases where it arises. Marcia Wilson, Customer Service Representatives of NCB, in her affidavit showed that the deceased would have wished to add the name of her daughter who was too young, lived overseas, and was the only person she trusted. The clear inference from the evidence is that if the deceased intended anyone to have the funds deposited, it was her daughter and that the

appellant's name was added without any intention to make a gift to the appellant.

Where there is no presumption of advancement and assets are placed in the name of a person who has made no contribution a presumption of resulting trust arises: See ***Gissing v Gissing*** [1970] 2 All E.R. 780. In the present case the appellant's name was added at the instance of the Bank in case of an emergency. Furthermore, where the owner of property transfers it to another primarily for convenience, a resulting trust arises.

There was sufficient evidence for a determination by the learned trial judge that there was no intention on the part of the deceased to make a gift of the deposit to the appellant.

For the foregoing reasons, the appeal was dismissed.

SMITH, J.A. (Ag.)

I agree.