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Article 7

United States Savings Bonds: Federal Regulations versus State Law

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RECENT DECISIONS

United States Savings Bonds: Federal Regulations versus State Law—During the years 1941 through 1945 when plaintiff and his wife were domiciled in Texas, a community property state, plaintiff purchased several United States savings bonds with community property funds. The bonds were issued in co-ownership form, i.e., to plaintiff "or" his wife. After the wife's death in 1958, a controversy arose between the plaintiff and the wife's son by a previous marriage concerning ownership of the bonds. The plaintiff claimed exclusive ownership of the bonds under the Treasury Regulations which recognize the surviving co-owner as the "sole and absolute owner."[1] The son, who was principal beneficiary under his mother's will, claimed an interest in the bonds by virtue of the state's community property laws.[2] In reviewing the case, the Supreme Court of Texas reversed the decision of the Court of Civil Appeals[3] and reinstated the holding of the trial court, which awarded full title to the bonds to the husband but awarded reimbursement to the son of half the value of the bonds by virtue of the state's community property laws.[4] The United States Supreme Court granted certiorari.[5] *Held:* Since state law must yield to valid Treasury Regulations under the Supremacy Clause of the United States Constitution, the husband was unconditionally entitled to the bonds as the surviving co-owner. *Free v. Bland,* 369 U.S. 663 (1962).

Prior to *Free v. Bland,* the majority of courts had given effect to the Federal Regulations and had recognized the surviving co-owner as the

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[1] "If either co-owner dies without the bond having been presented and surrendered for payment or authorized reissue, the survivor will be recognized as the sole and absolute owner. Thereafter, payment or reissue will be made as though the bond were registered in the name of the survivor alone. . . ." 31 C.F.R. §315.61 (1959).

[2] Under Texas law, all property acquired by either spouse during marriage belongs to the community, except property acquired by gift, or descent, or community property partitioned in a statutory manner. Also, while each spouse owns an undivided one-half interest in the community property, the husband is sole manager; therefore, his purchase with community funds is not, per se, improper on the grounds that he is sole manager, or, possibly, it could be assumed that the wife assented to the purchase. Tex. Civ. Stat. art. 4613-4627 (Vernon Supp. 1960).

[3] Free v. Bland, 337 S.W. 2d 805 (Tex. Civ. App. 1960), awarded full title to the husband without reimbursement relying on Ricks v. Smith, 159 Tex. 280, 318 S.W. 2d 439 (1958), which gave unconditional effect to the Federal regulations governing savings bonds and recognized the survivor as sole and absolute owner. However, while the son's writ of error was pending in the Supreme Court of Texas, that court overruled the Ricks case, *supra,* in Hilley v. Hilley, 161 Tex. 569, 342 S.W. 2d 565 (1959), holding that married couples in Texas would not be permitted to agree to any survivorship provision with regard to community property. See also note, *Community Property—Government Savings Bonds Purchased With Community Funds Held Wife's Separate Property Upon Death of Husband,* 37 TEX. L REV. 770 (1959).

[4] Bland v. Free, 162 Tex. 72, 344 S.W. 2d 435 (1961).

[5] Free v. Bland, 368 U.S. 811 (1961).

sole and absolute owner of the bonds.[6] Some of these courts reasoned that the bonds represented a contract between the purchaser and the Federal Government with the Treasury Regulations incorporated into the contract.[7] Under this theory the co-owner who had not contributed to the purchase of the bonds was a donee beneficiary, and if the bonds were not cashed, then he, as survivor, took by virtue of the contract. Still other courts had arrived at similar results by merely considering the supremacy of Federal Law under the Constitution.[8] Finally, applying a property law theory that the bond was owned in joint tenancy, the survivor had been entitled to the bonds as the surviving joint tenant.[9]

On the other hand, a minority of jurisdictions had held that the sole purpose of the regulations was to provide a convenient method of payment for the government in discharging its debt.[10] This resulted in a meaningless payment of the bond to the survivor after which state law was imposed to take away all or part of the proceeds.[11] This "convenience of the government" theory was overruled in *Free v. Bland* where the court said that the interest of the government goes beyond mere convenience of payment. It reasoned that under the Constitution, the Federal Government has power to borrow money on the credit of the United States, and in exercising this power the Congress authorized the Secretary of the Treasury to issue savings bonds in such form and under such conditions as he may prescribe, subject to the limitations imposed by Congress.[12] One of the inducements selected by the Treasury to make the bonds attractive to savers and investors was the survivorship provision, which was a convenient method of avoiding com-

[6] E.g., Wachovia Bank and Trust Company, 255 N.C. 114, 120 S.E. 2d 404 (1961); In re Cochran's Estate, 398 Pa. 506, 159 A. 2d 514 (1960); In re Estate of Chase, 83 Idaho 1, 348 P. 2d 473 (1960). See generally Annot., 37 A.L.R. 2d 1221 (1954).

[7] E.g., Knight v. Wingate, 205 Ga. 133, 52 S.E. 2d 604 (1949); Chambless v. Black, 250 Ala. 604, 35 So. 2d 348 (1948); Lemon v. Foulston, 169 Kan. 372, 219 P. 2d 388 (1950); Horstman Estate, 398 Pa. 506, 159 A. 2d 514 (1960).

[8] E.g., Conrad v. Conrad, 66 Cal. App. 2d 280, 152 P. 2d 221 (1944); Lee v. Anderson, 70 Ariz. 208, 218 P. 732 (1950); In re Stanley, 102 Colo. 422, 80 P. 2d 332 (1938); United States v. Dauphin Deposit Trust Co., 50 F. Supp. 73 (M.D. Pa. 1943).

[9] E.g. Awtry's Estate v. Commissioner of Internal Revenue, 221 F. 2d 749 (8th Cir. 1955); Barrett v. Barrett, 91 F. Supp. 680 (N.D. Ohio 1950); Stephens v. First Nat. Bank, 65 Nev. 352, 196 P. 2d 756 (1948).

[10] See generally Annot., 37 A.L.R. 2d 1221 (1954).

[11] In Slater v. Culpepper, 222 La. 962, 64 So. 2d 234 (1953), 37 A.L.R. 2d 1216, the court said that the Federal Regulations are designated solely to effectuate a simple method of payment not subject to the inconvenience and delays attendant upon the settlement of conflicting or disputed claims, and held that upon the death of the wife, her heirs are entitled to half the value of the savings bonds purchased with community funds in the name of herself and her husband as co-owners. See also Succession of Geagan, 212 La. 574, 33 So. 2d 118 (1947); Winsberg v. Winsberg, 220 La. 398, 56 So. 2d 730 (1952); Gladieux v. Parney, 93 Ohio App. 117, 106 N.E. 2d 317 (1951); Krueger, *Problems in Dealing With United States Savings Bonds,* 7 KAN. L. REV. 512 (1959).

[12] Second Liberty Bond Act. §22, 40 Stat. 288 (1917), as amended, 31 U.S.C.A. §757c (Supp. 1961).

plicated probate proceedings. If the state could award full title to the survivor and then require him to account for half the value of the bonds to the deceased co-owner's estate, as the Supreme Court of Texas did in *Bland v. Free*,[13] this award of full title would be a meaningless fiction; and not only would the attraction of the survivorship feature be reduced, but this action by the court would ultimately be a direct interference with legitimate exercise of the Federal Government's power to borrow money. Therefore, since the success of the management of the national debt depends significantly upon the success of the sale of savings bonds, the attractiveness of the bonds must be preserved by giving the right-of-survivorship provision supremacy.

The Supreme Court's approach negatives application of a gift theory[14] to sustain the rights of the survivor because now, even though the one co-owner purchases the bonds with his own money and at all times retains possession, his dying without surrendering the bonds for payment entitles the other co-owner to have the bonds as the survivor. However, application of a contract theory with the regulations forming part of the contract, or a joint tenancy theory would be consistent with the survivorship rights provided in the Treasury Regulations.[15]

The Supreme Court indicated, however, that the regulations cannot be used to perpetrate or shield for fraud.[16] But this fraud exception mentioned in *Free v. Bland* creates uncertainty as to the types of fact situations wherein the state courts could safely refuse to follow the regulations. For example, *Estate of Massouras*[17] involved co-ownership bonds which were issued to a husband and wife. Pursuant to a divorce settlement, the parties agreed to and did physically divide the bonds, and the divorce decree determined and approved the division but did not purport to vest title to any particular bonds in either party. Upon the husband's death, an uncashed portion of his half of the bonds, in their original co-ownership form, were found in his safety deposit box together with a copy of the divorce judgment. In the probate proceed-

[13] Note 4 *supra*.

[14] Conrad v. Conrad, *supra* note 8. No finding of a completed inter vivos gift is required to sustain a coowner's right of survivorship.

[15] This is basically what the majority of courts have done; therefore, Free v. Bland does not have any adverse effect on the majority view in this respect.

[16] "While affording purchasers of the bonds an opportunity to choose a survivorship provision which must be recognized by the states, the regulations neither insulate the purchasers from all claims regarding ownership nor immunize the bonds from execution in satisfaction of a judgment. . . . The regulations are not intended to be a shield for fraud and relief would be available in a case where the circumstances manifest fraud or a breach of trust tantamount thereto on the part of a husband while acting in his capacity as manager of the general community property." Free v. Bland, 369 U.S. 663, 670 (1962). For the majority's position on the fraud issue prior to Free v. Bland, see generally Annot., 51 A.L.R. 2d 163 (1957); Henderson's Adm'r v. Bewley, 264 S.W. 2d 680 (1957), (Ky. 1953), *cert. denied*, 348 U.S. 962 (1955), 51 A.L.R. 2d 159, 163-200; In re Estate of Hendrickson, 156 Neb. 463, 56 N.W. 2d 711, *cert. denied*, Kelly v. Rohn, 346 U.S. 854 (1953).

[17] 16 Wis. 2d 304, 114 N.W.2d 449 (1962).

ing, the wife petitioned the court to have the bonds delivered to her on the grounds that she is the sole and absolute owner by virtue of the Treasury Regulations, which form a part of the contract between the Federal Government and the named co-owners. The Supreme Court of Wisconsin imposed a constructive trust on decedent's divorced wife and directed her to hold the bonds or proceeds for decedent's estate.[18] The court said:

> The regulations do not extend to the use of the proceeds of the bonds but stop with payment. The regulations are to protect the government from attack in performance of the contract and to avoid implicating the government in disputes concerning ownership thereof.[19]

As can be noted from these words, the "convenience of the government" theory was used as a vehicle to rationalize the imposition of a constructive trust on the bonds or proceeds. Notwithstanding the fact that this particular theory was overruled in *Free v. Bland,* the result is consistent if the *Massouras* case can be brought within the fraud exception.

First consider strict application of the Treasury Regulations to the *Massouras* case. Under the regulations,[20] a decree ratifying a property settlement is not regarded as giving effect to an attempted voluntary transfer prohibited under sec. 315.20.[21] Then it could be reasoned that under the regulations the husband was given an opportunity to cash the bonds[22] or have them reissued[23] and that his failure to act results in

[18] Compare Hott v. Warner, 268 Wis. 264, 67 N.W. 2d 370 (1954), where pursuant to a divorce settlement the wife was given certain specific property, and she signed a release as to any further claim that she might have against the husband in connection with any or all other property that he may own. (Included in the other property were United States savings bonds issued to the husband and wife as coowners.) Upon the husband's death, the wife sued his administrator for the bonds, and the release was held to have extinguished all right in the husband's property but in no way affected the wife's property. Therefore, pursuant to the Treasury Regulations the bonds were awarded to the wife.

[19] *Id.* at 311, 114 N.W. 2d at 452.

[20] "A decree of divorce ratifying or confirming a property settlement or otherwise settling the respective interests of the parties in a bond will not be regarded as a proceeding giving effect to an attempted voluntary transfer under the provisions of §315.20. Consequently, reissue of savings bonds may be made to eliminate the name of one spouse for that of the other as owner, coowner or beneficiary pursuant to such a decree. . . ." 31 C.F.R. §315.22(a) (1959).

[21] "No judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary, and all other provisions of this subpart are subject to this restriction. Otherwise, a claim against an owner or coowner of a savings bond and conflicting claims as to ownership of, or interest in such bond as between coowners or between the registered owner and beneficiary will be recognized when established by valid judicial proceedings, upon presentation and surrender of the bond, but only as specifically provided in this subpart." 31 C.F.R. §315.20(a) (1959).

[22] "The bond will be paid to either (coowner) upon his separate request, and upon payment to him the other shall cease to have any interest in the bond. . . ." 31 C.F.R. §315.60(a) (1959).

[23] *Supra* note 20.

decedent's ex-wife obtaining sole and absolute ownership of the bonds.[24] If the bonds are given to decedent's estate a conflict with the Treasury Regulations would arise, and under *Free v. Bland* the Federal Law will prevail unless brought within the fraud exception.

The *Massouras* case presents no issue of fraud (either actual or constructive), duress, undue influence, or any other oppressive wrongful act but at most a mistake or an inadvertent failure to act,[25] which under the regulations would result in penalizing decedent's estate and giving his ex-wife a windfall of personal property, which in equity and good conscience she ought not have. Since under the regulations she had legal title to the bonds which, as she concedes, belonged to decedent pursuant to a divorce settlement, could a constructive trust[26] be imposed on the ex-wife (as was done in the *Massouras* case) in favor of decedent's estate based on unjust enrichment? If such a result is still permissible, it would represent an extension of the *Free v. Bland* exception beyond its present wording.

The next question for analysis is the effect of *Free v. Bland* on the inter vivos rights of co-owners of United States savings bonds. Some of the courts in the minority view have simply ignored the regulations[27] in allowing an inter vivos transfer of the bonds to a third party contrary to the rights of a co-owner.[28] Such a result appears to be inconsistent with *Free v. Bland* even though the latter only involved survivorship rights. It would seem that the inter vivos rights under the regulations should be given supremacy for the same reasons set out in *Free v. Bland,* namely that they represent one of the inducements selected by the Secretary of Treasury to make the bonds attractive to savers and investors. Therefore, allowing a transfer of the bonds to a third party in violation of the Treasury Regulations interferes with the government's power to borrow money, and under *Free v. Bland* this is prohibited unless the case can be brought within the fraud exception.

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[24] *Supra* note 1.

[25] It could have been a mistake of law in that the decedent may have thought the divorce decree protected him, or it could have been a mistake of fact in that he thought he would live long enough to use all the bonds; or he may have inadventently forgotten about them.

[26] "A constructive trust . . . is a trust by operation of law which arises contrary to intention and in *invitum* against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy." 54 Am. Jur., *Trusts* §218, p. 167.

[27] "Savings bonds are not transferable and are payable only to the owners named thereon. . . ." 31 C.F.R. §315.15 (1959).

[28] Marshall v. Felkar, 156 Fla. 476, 23 So. 2d 555 (1942); In re Neglia's Estate, 403 Pa. 464, 170 A. 2d 357 (1961); Note, *Inter Vivos Gift of U.S. Savings Bonds Gives Donee an Equitable Right to Proceeds Despite Federal Regulations on Nontransferability and Survivorship,* 110 U. PA. L. REV. 440 (1962).

To facilitate further analysis of the effect of *Free v. Bland* on a co-owner's inter vivos rights, consider the hypothetical situation of a person buying co-ownership bonds with his own funds and retaining possession of the bond certificates. Now suppose that before maturity the purchaser cashes the bonds, and the non-paying co-owner brings an action[29] in a state court claiming that he is entitled to one half the proceeds of the bonds pursuant to the Treasury Regulations. The regulations have no express provisions concerning the inter vivos property interest that each co-owner of the bonds possess, so the states can apply various theories to determine these rights within the limitation that such theories must not be inconsistent with the regulations.

Applying the third party beneficiary contract theory to the hypothetical fact situation above, the non-paying co-owner is a donee beneficiary under a contract between the purchaser and the Federal Government with the Treasury Regulations incorporated into the contract;[30] therefore, he acquires a vested contract right to cash the bonds subject to defeasance upon the other co-owner's cashing of them before he does.[31] But implicit in the right to cash the bonds is possession of them, and since the purchaser has at all times retained possession, this further limits the co-owner's interest to a defeasible contract right to cash the bonds if the purchaser gives him possession. In other words, the purchaser would necesarily have to make a gift of the bonds to the non-paying co-owner by delivering them all[32] or by placing them in a joint safety deposit box accessible to both persons.[33] Therefore, in the hypothetical problem the court could not sustain the donee's claim of one half interest in the bonds without violating the Treasury Regulations which have the force and effect of Federal Law under *Free v. Bland.*

The counter-argument to the contract theory is that co-ownership bonds do not confer in the non-paying co-owner a mere contract right but rather a vested property right[34] with the mere application of the contract theory, in itself, contravening the Treasury Regulations. Then the inter vivos rights of the co-owners must be examined under gift law or joint tenancy law which confer the necessary property rights. Under

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[29] *Supra* note 21.

[30] Note that the third party beneficiary contract has been successfully applied (*supra* note 7) to the survivorship rights of a coowner.

[31] *Supra* note 22; Cohen v. Cohen, 141 N.Y.S.2d 97 (1958).

[32] Littlejohn v. County Judge, Pembing County, 79 N.D. 550, 58 N.W.2d 278 (1953).

[33] Stephens v. First Nat. Bank, *supra* note 9. Compare American Trust Company v. Fitzmaurice, 131 Cal. App. 2d 382, 280 P. 2d 545 (1955).

[34] It could be argued that since the regulations recognize conflicting claims between coowners as to ownership or interest in the bond, then by implication the regulations recognize a present interest or ownership in each coowner. §315.20(a), *supra* note 21. But this may conflict with §315.60(a), *supra* note 22, which says when the bonds are cashed the other coowner's interest ceases, unless §315.60 merely protects the government from a myriad of law suits and puts the burden of adjudication on the state courts in light of §315.20(a).

the gift theory, the argument could be that the purchaser used his own funds and retained complete dominion and control over the bond certificates; therefore, the gift fails for want of delivery or lack of donative intent.[35] So under the hypothetical problem, the non-paying co-owner did not have a vested property right and could make no claim to the proceeds of the bonds after they were cashed. The gift theory presents a number of problems which may thwart its application to the inter vivos rights of a co-owner. First, the gift theory was not applicable to the right of survivorship interest of a co-owner; hence, this would present a rather anomalous situation of having to apply gift law in one instance and not in another to determine rights stemming from the same instrument. Second, if the purchaser had desired to keep the inter vivos property right in himself, he could have purchased beneficiary type bonds[36] which specifically accomplish this result.[37] Third, there is a possibility that a situation could arise under the gift theory in which its application could contravene the Treasury Regulations.[38] Fourth, if the Treasury Regulations, per se, confer a property right[39] in each co-owner, then application of the gift theory violates the regulations, since this result is not achieved in all cases. For these reasons the gift theory is deemed not feasible.

Pursuing the joint tenancy theory, it can be said that a person who buys bonds with his own funds and registers them in his name and that of another's[40] creates a joint tenancy in each bond with its inherent right of survivorship. Therefore, if the purchaser cashed the bonds, he would sever the joint tenancy and create a tenancy in common, giving the non-paying co-owner a right to half the proceeds.[41] The problem

[35] In re Meyer's Estate, 359 Pa. 577, 60 A. 2d 50 (1948). In re Guardianship of Sachs, 173 Ohio St. 270, 181 N.E. 2d 464 (1962).

[36] The Treasury Regulations provide for three types of bonds: (1) single ownership bonds (2) coownership bonds (3) beneficiary (P.O.D.) bonds. 31 C.F.R. §315.7(a) (1959).

[37] Contrary to this, the purchaser may have intended to make a gift of the bonds to the non-paying coowner at a future time; coownership bonds would facilitate such intention without the necessity of reissue or other troublesome procedures.

[38] Suppose under the hypothetical problem that the purchaser delivered the bonds to the other coowner to hold for safekeeping, and there was no express or implied agreement between the coowners not to cash the bonds. The non-paying coowner cashes the bonds and the original purchaser brings an action to recover the proceeds claiming that there was no completed gift. If the court were to uphold the contention of the purchaser and award him the proceeds, it would contravene the regulations which gives either coowner the right to cash the bond and extinguishes the right of the other coowner. The coowner committed no fraud or wrongful act so as to invoke the Free v. Bland exception. See Thibeault v. Thibeault, 147 Me. 213, 85 A. 2d 177 (1952).

[39] See note 34 *supra.*

[40] Under the regulations the bonds are actually registered in the "or" form. See 31 C.F.R. §315.60 (1959).

[41] In Thibeault v. Thibeault note 38 *supra,* the husband had purchased coownership bonds, using his own funds, with his wife as coowner. The wife redeemed the bonds, and the husband sued to recover such part of the proceeds as in equity and good conscience belonged to him. The court found that the husband

that arises in applying this theory is satisfying the four unities[42] necessary to the creation of a joint tenancy. If the purchaser retains possession of the bonds,[43] does this satisfy the unity of possession requirement?[44] This problem can be surmounted by drawing an analogy to joint bank accounts. For example, in *Barbour v. First Citizens Bank of Watertown*[45] the court said that the controlling consideration is the intention of the original depositor; it is not essential to the creation of a joint bank account with the right of survivorship that the beneficiary depositor have knowledge of the account, that he have possession of the passbook, that he sign the signature card or make withdrawals therefrom. However, these are important factors and competent evidence bearing on the question of intention. For the purposes of co-ownership bonds, it could be said that the purchaser was cognizant of the Treasury Regulations when he bought the bonds, and his choice of co-ownership bonds over beneficiary type bonds is evidence of an intention to create a joint tenancy. Therefore, the purchaser, having retained possession of the bonds, held them not exclusively for his own benefit but as "trustee" for himself and the other co-owner, and when the purchaser cashed the bonds, as in the hypothetical example, the other co-owner had a right to half the proceeds.

In *Will of Barnes*,[46] co-ownership bonds were cashed by the guardian during the ward's lifetime, and the proceeds were deposited in the guardianship account. Upon the ward's death, the surviving co-owner wanted to recover the proceeds of the bonds pursuant to the Treasury Regulations which recognized him as the sole and absolute owner. However, the ward's sole heir contended that the joint tenancy was destroyed during the decedent's lifetime when his guardian liquidated the bonds; hence, the proceeds were an asset of the estate and not subject to the rights of survivorship. The Supreme Court of Wisconsin held

and the wife each had a half interest in the bonds and ordered the wife to pay to the husband one half of the proceeds. See also Byer v. Byer, 180 Kan. 258, 303 P. 2d 137 (1957); Baskett v. Crook, 86 Cal. App. 2d 355, 195 P. 2d 39 (1948); Barrett v. Barrett, 91 F. Supp. 680 (N.D. Ohio 1950); In re Meyer's Estate *supra* note 35; *Contra*: American Trust Company v. Fitzmaurice, 131 Cal. App. 2d 382, 280 P. 2d 545 (1955), which held that placing of a second name on a government bond does not establish the intention of the former sole owner to restrict his or her power to dispose of the bond during lifetime or to give such person, whose name is placed second, a present equal interest.

[42] Namely, the unities of time, title, interest, and possession.

[43] This problem is not present where the bonds are kept in a joint safety deposit box accessible to both coowners.

[44] Neither joint tenant is entitled to exclusive possession; but rather, both have the right to possession. Therefore, the Treasury Regulations, by allowing either coowner to cash the bonds, impliedly recognize the fact that each co-owner has a right to possession.

[45] 77 S.D. 106, 86 N.W. 2d 526 (1957).

[46] 4 Wis. 2d 22, 89 N.W. 2d 807 (1958). See also In re Johnson's Estate 351 Ill. App. 111, 113 N.E. 2d 590 (1953); Morris v. Morris, 195 Tenn. 133, 258 S.W. 2d 732 (1953); In re Church's Estate, 141 F. Supp. 703 (D.C. 1956); In re Barletta's Estate, 2 Misc. 2d 135, 150 NYS 2d 479 (1956).

that the unauthorized cashing of the bonds by the guardian did not terminate the joint tenancy because the power to cash the bonds was a right personal to the co-owners and not to be exercised by the guardian except in cases of necessity or court order. The court found that a court order had never been granted and that the receipts from the ward's other assets were sufficient for his maintenance and support. In the process of arriving at its decision, the court used the following language:

> After the bonds are paid the United States has no interest in the proceeds and state law controls the rights to those.[47]

Since this theory was discarded in *Free v. Bland,* the case must be examined in light of that decision's exception.

Under the regulations, the proceeds of savings bonds will be paid to either co-owner upon the request of such co-owner[48] or his guardian,[49] and the other person then ceases to have any interest in the bonds. Under these circumstances, the result in *Barnes* would be in direct contravention to the regulations and would be fatal to the outcome of the case in view of the Supremacy Clause. But, as previously noted, the regulations do not insulate the purchasers from all claims regarding ownership, nor do they shield fraud. To bring the case within the exception, it can be argued that the guardian's cashing of the bonds without necessity or court order was a wrongful act that worked constructive fraud on the survivor, and in equity and good conscience such an act ought not be allowed to defeat the other co-owner's right of survivorship. This case is illustrative of a wrongful act occurring during the lives of theco-owners, and upon the death of one co-owner the survivorship right of the other co-owner could be enforced by applying the *Free v. Bland* exception.

Regardless of whether or not the regulations confer a property interest in the non-paying co-owner, the *Free v. Bland* exception should still be applicable to inter vivos rights. Therefore, if the bonds are purchased with stolen funds, or with the joint funds of another person who is not named a co-owner, or if any other wrongful act is involved, a constructive trust should be imposed in favor of the person who was wronged by such acts.

In summation, the rule now appears to be that the survivor of co-ownership savings bonds will be recognized as the sole and absolute owner except in cases that fall within the *Free v. Bland* exception, and

[47] *Id.* at 25, 89 N.W. 2d at 809.

[48] *Supra* note 22.

[49] ". . . . Unless the form of registration gives the name of the representative requesting payment, a certificate or certified copy of the letters of appointment from the court making the appointment, under the seal of the court, or other proof of qualification if not appointed by a court should be submitted. . . . However, if such representative presents for payment a bond registered in the name of his ward accompanied by proof of his qualification, payment will be made to such representative." 31 C.F.R. §315.50 (1959).

that application of the third party beneficiary contract theory or joint tenancy theory is allowable under the Treasury Regulations to determine such rights; the gift theory being inapplicable. As to the inter vivos rights of the co-owners of savings bonds, if the regulations are construed as not conferring a property right on the co-owners but merely a contract right, the third party beneficiary contract theory is applicable. If they are construed as conferring property rights, then the joint tenancy theory is applicable in sustaining these rights, and application of either the gift theory or contract theory would appear to be contrary to the Treasury Regulations.

EDWIN R. ROSSINI

Domestic Relations: Full Faith and Credit Permits Collateral Attack of Foreign Divorce—A wife sought a divorce a mensa et thoro in Maryland and her husband filed a motion to dismiss offering an Alabama decree of divorce as a defense. In acknowledging the defense as valid the trial court stated, ". . . the Plaintiff is estopped to now question the jurisdiction and cannot collaterally attack the jurisdiction issue because she appeared through local counsel in Alabama and filed her answer and waiver. . . ."[1] The court of appeals[2] reversed for the following reasons: (1) neither the attorney before whom she executed the waiver of notice and answer nor the attorney who appeared for her in Alabama was chosen by her; (2) the waiver of notice and answer was executed before the proceedings were filed in Alabama; and (3) the wife did not appear in person before the court or actively participate in the proceedings.

The facts showed that the husband was absent from Maryland for only two days and had no intention of becoming a domiciliary of Alabama. Therefore, the Alabama divorce was not entitled to full faith and credit because the court lacked jurisdiction:

> A decree of divorce is a conclusive adjudication of everything except the jurisdictional facts upon which it is founded, and domicile is a jurisdictional fact. The State of domiciliary origin is not bound by an unfounded recital in the record of a court of another State. . . .[3]

A brief summary of the interpretation of the full faith and credit clause[4] by the United States Supreme Court relative to divorce is essen-

[1] Brief of Appellant, Record Extract p. E4-E5, Pelle v. Pelle, 229 Md. 160, 182 A.2d 37 (1962).
[2] Pelle v. Pelle, *supra* note 1.
[3] Pelle v. Pelle, *supra* note 1 ,182 A.2d at 40, quoting Slansky v. State, 192 Md. 94, 108, 63 A.2d 599, 605 (1949).
[4] U.S. Const. art IV, §1:
Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.