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BANKS AND BANKING - GIFTS -- CO-TENANCY -- JOINT ACCOUNTS -- STATUTES

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RECENT DECISIONS

BANKS AND BANKING — GIFTS — CO-TENANCY — JOINT ACCOUNTS — STATUTES — Testator ordered his bank to transfer his account to a new account in the name of himself and his daughter "for either or survivor." After testator's death, suit was brought by his executor to compel discovery of $5,000 which had been withdrawn from the joint account by the daughter prior to the death of her father. The executor introduced evidence which tended to show that neither the testator nor his daughter contemplated that the daughter was to enjoy any interest in the account until her father's death. *Held*, that the daughter must pay to the executor the amount which she had withdrawn prior to testator's death, but the amount remaining in the account when the testator died became the property of the daughter. *In re Juedel*, 280 N. Y. 37, 19 N. E. (2d) 671 (1939).

The problem of dealing with money deposited in a joint bank account has long vexed the courts. Cases have held that the depositor's designation of the title for an account (e.g., to depositor and another, and to the survivor) does not reveal the requisite donative intent.[1] These courts required additional evidence showing both the donative intention and delivery in order to establish the donee's claim to the deposit.[2] Yet when the deposit was made in trust for another, and the depositor died before the beneficiary without revocation, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor.[3] This obtains in spite of the fact that the depositor

[1] In Matter of Bolin, 136 N. Y. 177 at 179, 32 N. E. 626 (1892): "That the moneys were deposited to the account of 'Julia Cody, or daughter, Bridget Bolin,' is not a fact from which any inference of a transfer, or of a gift, arises." In Kelly v. Beers, 194 N. Y. 49, 86 N. E. 980 (1909), there was a dictum that where *A* deposited money in the name of herself and daughter *B*, the mere form of the account was not sufficient to indicate that *B* had ownership of the deposit. Actually there was enough evidence to show that a gift had been made and on this the decision rested. See generally, 32 ILL. L. REV. 57 (1937); 28 MICH. L. REV. 426 (1929).

[2] Bradford v. Eastman, 229 Mass. 499, 118 N. E. 879 (1918). *A* caused deposits to be recorded in the name of herself and *B*, and delivered deposit books to *B*; on a showing that *A* had no intention to make a gift to *B*, it was held that the ownership remained in *A*.

Beaver v. Beaver, 117 N. Y. 421, 22 N. E. 940 (1880). Here *A* deposited money in the name of *B* alone, unaccompanied by any declaration of intention; the account was held not sufficient to indicate that *B* had ownership of the deposit. But see Bonnette v. Molloy, 153 App. Div. 73, 138 N. Y. S. 67 (1912). In Burns v. Nolette, 83 N. H. 489, 144 A. 848 (1929), where *A* transferred a savings deposit by indorsing *B's* name on the deposit book with an order to the bank reciting that the purpose was to make the money payable to the survivor of them as joint tenants, the court found that the requisite of delivery was satisfied by the form of the deposit.

[3] Matter of Totten, 179 N. Y. 112, 71 N. E. 748 (1904); Tierney v. Fitzpatrick, 195 N. Y. 433, 88 N. E. 750 (1909), where *A* made a deposit of his own money in trust for *B*, held, on the death of *A* the trust became irrevocable and *A's* declarations that he never intended to create a trust were inadmissible because the statements were made after the deposit. These cases indicate that the courts were more

could withdraw the money at will and could exercise complete dominion over the account.[4] The law on such tentative trusts remains the same today, but early New York legislation reversed the common-law rule as to joint bank accounts and (as construed by the courts) made a deposit in the statutory form presumptive evidence of a gift to which all the incidents of joint tenancy attached.[5] A later amendment provided that the making of a deposit in such form should be conclusive evidence of a joint tenancy in the event of the decease of one of the parties and that the entire interest in the account should vest in the survivor.[6] In interpreting this statute, the courts have held that the presumption with reference to the account during the lives of the parties is not conclusive

willing to allow ownership of a bank deposit to pass to a donee when the form of the deposit was "*A* in trust for *B*;" than they were when the form was "*A* and *B*, to either or the survivor of them." Yet under the trust theory the donee receives no interest until the death of the donor, who retains complete control over the deposit and may terminate the trust by the simple process of withdrawing all of the money. The New Hampshire court recognized that the element of delivery was satisfied in the case of joint tenancy accounts, Burns v. Nolette, 83 N. H. 489, 144 A. 848 (1929), but held that no present interest passed in the tentative trusts and refused to sustain them in violation of the statute of wills. Bartlett v. Remington, 59 N. H. 364 (1879). The distinction between joint tenancy accounts and tentative trusts is also recognized by the court in Moskowitz v. Marrow, 251 N. Y. 380 at 391, 167 N. E. 506 (1929).

[4] Note 3 supra.

[5] N. Y. Laws (1909), c. 10, Consol. Laws, c. 2, § 144: "When a deposit shall be made by any person in the names of such depositor and another person and in form to be paid to either or the survivor of them, such deposit thereupon and any additions thereto made by either of such persons upon the making thereof shall become the property of such persons as joint tenants, and the same together with all interest thereon shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both or to the survivor after the death of one of them. . . ." Although this statute is capable of being so interpreted as to give the survivor an absolute right to the fund and such may have been the legislative intent, the court chose to interpret this section as merely raising a presumption of ownership in the survivor which could be rebutted. Clary v. Fitzgerald, 155 App. Div. 659 at 664, 140 N. Y. S. 536 (1913), affd. 213 N. Y. 696, 107 N. E. 1075 (1915). Here the court said "the necessary effect of this provision of the statute is that the single fact, unexplained by other competent evidence, that a deposit in a savings bank in the form in which this deposit was made fixes the respective rights of the depositors named as joint owners of the property. . . ." Most states have provided similar legislation. 3 Mich. Comp. Laws (1929), § 12063; Mo. Rev. Stats. (1929), § 5400.

[6] N. Y. Laws (1914), c. 369, § 249(3); N. Y. Consol. Laws, c. 2, "Banking Law," § 249(c): "The making of the deposit in such form shall, in the absence of fraud or undue influence, be conclusive evidence, in any action or proceeding to which either such savings bank or the surviving depositor is a party, of the intention of both depositors to vest title to such deposit and the additions thereto in such survivor." When the deposit is made in accordance with the intentions of the depositor in the statutory form the statute is construed not as a rule of evidence but either as a rule of law or as a limitation of a remedy and is not offensive to the due process clause of the constitution. Heiner v. Greenwich Savings Bank, 118 Misc. 326, 193 N. Y. S. 291 (1922).

and the actual intent of the depositor may be shown by appropriate evidence.[7] If a gift was intended at the time the deposit was made to the joint account, the donor may not by a subsequent withdrawal or change of mind end the relationship of joint tenants in the account.[8] Also if a withdrawal is made before the death of the depositor by the other member in the joint account, the donor or his representative may by showing that no gift was intended rebut the presumption of joint tenancy and recover the money withdrawn from the account.[9] However, as to money remaining in the account on the death of the depositor, the presumption is conclusive that there existed a joint tenancy and the entire interest in the fund goes to the survivor.[10] Such was the result in the instant case. Here the respondent withdrew the money from the account when she heard that her father was going to die. Had she not anticipated the death of the testator, but waited until he was actually dead, she would have taken the entire account by force of the statute.[11] Thus the case arrived at a paradoxical result, for respondent in one instance takes a part of the account because of her standing as a joint tenant, and in another instance she must pay over the balance of the

[7] Olshan v. East New York Sav. Bank, (D. C. N. Y. 1939) 28 F. Supp. 727; Scanlan v. Meehan, 216 App. Div. 591, 216 N. Y. S. 71 (1926); In re Rehfeld's Estate, 198 Mich. 249, 164 N. W. 372 (1917), where the claimant failed to rebut the presumption, the survivor took under a statute similar to that of New York.

[8] Marrow v. Moskowitz, 230 App. Div. 1, 242 N. Y. S. 523 (1930), affd. 255 N. Y. 219, 174 N. E. 460 (1931), where depositor withdrew all of the money held in the joint account and redeposited it in her own name. Held, the joint tenancy relationship was not destroyed. In Moscowitz v. Marrow, 251 N. Y. 380, 167 N. E. 506 (1929), the depositor ordered the bank not to pay the joint accountant. Held, the joint tenancy was not revoked.

[9] In re Porianda's Estate, 256 N. Y. 423, 176 N. E. 826 (1931) (where the surviving member had withdrawn money from the account during the lifetime of both parties, administrator of deceased was permitted to show that no joint tenancy in fact existed).

[10] Marrow v. Moskowitz, 230 App. Div. 1, 242 N. Y. S. 523 (1930), affd. 255 N. Y. 219, 174 N. E. 460 (1931). The Appellate Division held that on the death of one of the parties no evidence could be introduced showing an agreement between the parties and the presumption as to money withdrawn prior to the decease was conclusive. 44 HARV. L. REV. 301 (1930). In affirming the result arrived at in the lower court, the New York Court of Appeals placed its decision on the fact that insufficient evidence was introduced to rebut the presumption of joint tenancy and it expressly stated that on the death of one of the depositors the presumption of joint tenancy may be rebutted as to money previously withdrawn.

See also Moskowitz v. Marrow, 251 N. Y. 380, 167 N. E. 506 (1929); In re Porianda's Estate, 256 N. Y. 423, 176 N. E. 826 (1931). But even as to money remaining in the account, the presumption is not conclusive unless the depositor was cognizant of and sanctioned the statutory form of the deposit. Matter of Fenelon's Estate, 262 N. Y. 57, 186 N. E. 201 (1933). Later reversed on reargument because of evidence which showed that the depositor had sanctioned the statutory form of the deposit. 262 N. Y. 308, 186 N. E. 794 (1933). This approaches the tentative trust theory because now the gift becomes unimpeachable on the death of the donor just as it does in the tentative trust.

[11] Note 10 supra. Heiner v. Greenwich Savings Bank, 118 Misc. 326, 193 N. Y. S. 291 (1922).

same fund because she does not have the rights of a joint tenant. The paradox arises out of a change in the universe of discourse, for "joint tenant" is used indiscriminately to describe (a) the relation of the parties to the bank and (b) the relation of the "tenants" inter sese. Courts will find that a joint tenancy exists by reason of the account title only where the bank has relied on this statement and has disbursed to the non-depositing "joint tenant." But courts will not allow the "tenant" to *keep* the money if the then living depositor had failed to make a previous gift.[12]

[12] Olshan v. East New York Sav. Bank, (D. C. N. Y. 1939) 28 F. Supp. 727; In re Porianda's Estate, 256 N. Y. 423, 176 N. E. 826 (1931); 44 HARV. L. REV. 301 (1930).