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Rex Eames

University of Michigan Law School

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JOINT TENANCY—CREATION OF JOINT TENANCY IN STOCK CERTIFICATES AND THE SHARES REPRESENTED THEREBY—A, registered owner of certain stock certificates, endorsed them and turned them over to an agent with instructions to forward them to the respective corporations for transfer of the shares to A and B as joint tenants. Thereafter, the corporations issued certificates to A and B "as joint tenants with the right of survivorship and not as tenants in common." The plaintiff, A's administrator, brought a bill in equity against B to recover a one-half undivided interest in the shares of stock. *Held*, bill dismissed. No joint tenancy was created as there was an absence of the unities of time and title. However, a tenancy in common arose and since B had paid a valuable consideration, the equity court decreed that the plaintiff holds the legal title to his one-half undivided interest in the shares impressed with a constructive trust in favor of B. *Strout v. Burgess*, (Me. 1949) 68 A. (2d) 241.

It is now beyond question that a joint tenancy may be created in personalty. In determining the creation and consequences of such title in personalty, the courts have looked to the origin and evolution of the joint tenancy as an estate in land.¹ Thus, the requirement of the unities of time, title, interest, and possession has confronted the courts.² In cases like the principal case, another well-settled rule of the common law has complicated the simple effectuation of the grantor's intent, namely, a grantor cannot convey to himself but continues to hold under his original title.³ Many courts have applied the fourfold unity

¹"... a joint tenancy in personal property must be created in the same manner as a joint tenancy in real estate." *In re Wilson's Estate*, 336 Ill. App. 18 at 33, 82 N.E. (2d) 684 (1948).

²2 BLACKST. COMM., Wendell ed., 180 (1854).

³*Cameron v. Steves*, 9 N.B.R. 141 (1858).

rule strictly and have denied the creation of a joint tenancy under the facts of the principal case.⁴ This result has been an unfortunate frustration of the grantor's intent with no compensatory achievement. A second group of courts, unable to discover the wisdom or utility of this anachronism of the feudal law, have denied its application, thus relying entirely upon the intent of the parties.⁵ In many states, a wise legislature has provided the necessary change by allowing a person to convey to himself and another in joint tenancy.⁶ In the absence of pertinent legislation, the entire court in the principal case held that the common law rule prevailed. Since in a conveyance to himself a grantor holds under his original title, the majority of the court held that the unities of time and title were absent; thus, no joint tenancy was created. Two concurring judges, however, held that all four unities were present because of the unique character of stock certificates and their mode of transfer. It is well established that circumvention of the four unities rule may be accomplished by the owner, X, conveying to a third party, who, in turn, reconveys "to X and Y as joint tenants." The concurring judges evidently considered the endorsement of the stock certificates and delivery of them to the corporation as analogous to the "conveyance to a third party" device.⁷ Such a theory is dependent upon two considerations: (1) the relation of the certificate to the shares represented, and (2) the quality and effect of the "delivery." The earlier and still widely accepted view is that the certificate is merely evidence of the right to participate in the corporation's earnings.⁸ Under this theory, it is manifest that the concurring judges' theory must fail, for transfer

⁴ *Wright v. Knapp*, 183 Mich. 656, 150 N.W. 315 (1915); *Deslauriers v. Senesac*, 331 Ill. 437, 163 N.E. 327 (1928); *Hass v. Hass*, 248 Wis. 212, 21 N.W. (2d) 398 (1946); noted in 44 MICH. L. REV. 1144 (1946); *Stuehm v. Mikulski*, 139 Neb. 374, 297 N.W. 595 (1941); See also, 62 A.L.R. 514 for annotation.

⁵ *Matter of Dalsimer*, 167 App. Div. 365, 148 N.Y.S. 914 (1915), a case involving stock certificates; *Matter of Horler*, 180 App. Div. 608, 161 N.Y.S. 957 (1917); *Therrien v. Therrien*, 94 N.H. 66, 46 A. (2d) 538 (1946); *Switzer v. Pratt*, 237 Iowa 788, 23 N.W. (2d) 837 (1946); noted in 45 MICH. L. REV. 638 (1947); *Irvine v. Helvering*, (C.C.A. 8th, 1938) 99 F. (2d) 265; *Manning v. U.S. Nat. Bank of Portland*, 174 Ore. 118, 148 P. (2d) 255 (1944).

⁶ Pa. Act of May 13, 1927, P.L. 984, 21 Pa. Stat. Ann. (Purdon, 1930) §§551-556, construed in *In re Vandergrift's Estate*, 105 Pa. Super. 293, 161 A. 898 (1932); Mass. Gen. Laws, c. 184, §8, construed in *Ames v. Chandler*, 265 Mass. 428, 164 N.E. 616 (1929); Wis. Laws (1947) c. 140, construed in *dicta* in *Moe v. Krupke*, 255 Wis. 33, 37 N.W. (2d) 865 (1949), thus changing the law as interpreted in *Hass v. Hass*, supra, note 4; Neb. Rev. Stat. of 1943, 76-118, construed in *dicta* in *Anson v. Murphy*, 149 Neb. 716, 32 N.W. (2d) 271 (1948), thus changing the law as interpreted in *Stuehm v. Mikulski*, supra, note 4; Cal. Civ. Code, §683.

⁷ Such a theory was advanced in 24 MINN. L. REV. 876 (1940) as the possible ratio decidendi for the case of *Eisenhardt v. Lowell*, 105 Colo. 417, 98 P. (2d) 1001 (1940), involving facts similar to the principal case. However, this analysis seems doubtful as the court stated, at 424, "the joint tenancy in the case at bar had for its basis a valid gift *inter vivos* as well as the contract evidenced by the new certificates . . . and the survivorship did not rest upon conveyance or transfer." Also, this case has been cited in later cases involving bank deposits where the courts held that the obligation owed by the bank to A and B as joint tenants was contractual in nature. See *Rhorbacker v. Citizens Bldg. Assn. Co.*, 138 Ohio St. 273, 34 N.E. (2d) 751 (1941); or *Beach v. Holland*, 172 Ore. 396, 142 P. (2d) 990 (1943).

⁸ See CHRISTY, TRANSFER OF STOCK §12 (1940). Also, 10 FLETCHER, C.Y.C. CORP.. perm. ed., §4760 (1931); 14 C.J., Corporations §§698, 703-705.

of the certificate to the corporation does not carry with it the essential share interest. However, the Uniform Stock Transfer Act, adopted by Maine in 1944,⁹ sought to make the certificate so far as possible the sole representative of the share interest and, in effect, to embody the share.¹⁰ By establishing this identity of the certificate and the share, the concurring judges then asserted, "The title of the intended joint tenants in such a case to the stock and to the certificate representing it accrued at the same time and is represented by the same instrument."¹¹ However, it is submitted that the concurring judges are artificially implying intent and consequences never contemplated by the parties. Logically, to sustain the third party conveyance analogy, it must be alleged that for some fleeting moment the title to the shares rested with the corporation. Such a conclusion would indeed surprise both A, the shareholder, and the corporation. The purpose of the shareholder's surrender of the certificate is to effectuate a transfer on the register of the corporation so that it may know who has the right to vote and draw dividends.¹² While the Maine statute defines "delivery" as the "voluntary transfer of possession from one person to another,"¹³ it is manifest that delivery, at least as between the original parties, necessitates an intent that title should pass.¹⁴ The Maine Legislature expressed no intention to eliminate this fundamental requirement of the passage of title. Thus, the conclusion seems inescapable that no title to the shares vested in the corporation as a result of their possession of the endorsed certificate. Only an undesirable distortion of the parties' actions and purposes could yield this result. Therefore, the opinion of the majority of the court, holding that the rule of unities was not satisfied, was sound, even though one may well question the wisdom or practicality of the rule itself.

Rex Eames

⁹ Me. Rev. Stat. (1944) c. 49, §§49-63.

¹⁰ *Haughey v. Haughey*, 305 Mich. 356, 9 N.W. (2d) 575 (1943); *Direction Der Disconto-Gesellschaft v. U.S. Steel Corp.*, (D.C. N.Y. 1924) 300 F. 741, *affd.* 267 U.S. 22, 45 S.Ct. 207 (1925). For a discussion of the various treatments of stock certificates by American courts, see 9 MINN. L. REV. 661 (1925).

¹¹ Principal case at 259.

¹² CHRISTY, TRANSFER OF STOCK §31 (1940).

¹³ Me. Rev. Stat. (1944) c. 49, §69.

¹⁴ CHRISTY, TRANSFER OF STOCK §54 (1940).