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TRUSTS-TENTATIVE TRUSTS-EFFECT OF DELIVERY OF PASSBOOK

Alan P. Goldstein
University of Michigan Law School

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TRUSTS—TENTATIVE TRUSTS—EFFECT OF DELIVERY OF PASSBOOK—Anna Farrell, a confined incompetent at the time of this suit, had a savings bank deposit in her own name, "in trust for my daughter Lucy Farrell." Just prior to Anna's admission to the hospital, while still of sound mind, she handed a sealed envelope to Lucy and told Lucy to hold it for her. The envelope contained, among other papers, the pass book to the bank deposit. Thereafter, Lucy claimed the money in the account on the ground that she had, over the years, delivered the money in the account to her mother for safekeeping.[1] Anna's guardian petitioned for an order allowing him to pay Lucy's claim against the estate. The trial court found that Anna had merely turned the book over to Lucy for safekeeping, intending a mere bailment; on this ground the petition was denied. *Held,* order modified, three judges dissenting. ". . . [D]elivery of that passbook transformed the tentative trust created by the deposit into an irrevocable trust . . . terminating upon the death of Anna Farrell." *In re Farrell,* 298 N.Y. 129, 81 N.E. (2d) 51 (1948).

A savings bank trust (commonly called a *Totten* trust) is a bank deposit, in the depositor's own name, in trust for a named beneficiary. When savings trust accounts first appeared in New York, the courts held that an irrevocable, self-declared trust arose immediately, the mere opening of the account being a sufficient declaration of the trust intent.[2] However, as this device became more prevalent, it became clear that most depositors did not intend the legal consequences attending creation of a trust. This was recognized in *Beaver v. Beaver,*[3] in which the court held that a trust deposit was insufficient to establish a trust unless accom-

[1] This claim was not used as a basis for the court's decision.
[2] Martin v. Funk, 75 N.Y. 134, 31 Am. Rep. 446 (1878).
[3] 117 N.Y. 421 at 431, 22 N.E. 940 (1889).

panied by some other manifestation of the trust intent.[4] All subsequent New York decisions have recognized this principle, and it is out of this uncertainty as to intent that the doctrine of tentative trusts has grown.[5] While the New York court in *Matter of Totten*[6] changed the legal effect of the original deposit by calling it a tentative trust rather than no trust at all, it did not change the requirement that there be some unequivocal manifestation of the trust intent before an irrevocable trust was created. The court there said, "A deposit . . . by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust merely, revocable at will, unless the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the passbook, or notice to the beneficiary."[7] It will be noted that the court spoke of the trust as a gift, and stated that a delivery is necessary to complete the gift. The important element in a gift, however, is the intent to transfer legal title, the delivery merely being an objective manifestation of this intent.[8] Later cases clarified the language in the *Totten* case by holding that a mere handing over of the passbook for safekeeping was not sufficient to create an irrevocable trust, as the intent necessary for a gift was not present.[9] The majority in the principal case bases its decision primarily upon the *Totten* case. In order to fit this decision within the scope of the *Totten* doctrine, however, it must be concluded that a mere handing over for bailment purposes will be deemed a sufficient delivery to complete a gift.[10] Such a conclusion is difficult to justify under the well established New York rules concerning the *Totten* trust,[11] and it would seem that the decision is an anomaly which will be of little importance as a precedent.

Alan P. Goldstein

[4] Id. at 428.
[5] I SCOTT, TRUSTS, §58.2 (1939).
[6] 179 N.Y. 112, 71 N.E. 748 (1904).
[7] Id. at 125.
[8] BROWN, PERSONAL PROPERTY, §48 (1936).
[9] Mathews v. Brooklyn Savings Bank, 208 N.Y. 508, 102 N.E. 520 (1913); Matter of Halligan's Estate, 82 Misc. 30, 143 N.Y.S. 676 (1914).
[10] The dissent accepts the trial court's finding that the handing over of the envelope was a bailment and that there was no intent to complete the gift, and concludes that an irrevocable trust was not created.
[11] I SCOTT, TRUSTS, §§ 55-58.6 (1939); I BOGERT, TRUSTS AND TRUSTEES, §47 (1935).