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TRUSTS-REVOCATION-TENTATIVE TRUSTS

Wendell B. Will S.Ed.

University of Michigan Law School

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TRUSTS—REVOCATION—TENTATIVE TRUSTS—Deceased deposited money in a saving account entitled, "Deceased in trust for Plaintiff," and made several deposits and withdrawals. Shortly after the initial deposit she informed the plaintiff of the existence of the account. By a subsequent will deceased left her entire estate to the defendant under circumstances evidencing an intention that the funds in the account not go to the plaintiff.¹ On appeal, *held*, reversed for defendant. A deposit in such form creates a tentative trust which is not made irrevocable by notice to the beneficiary and which may be revoked by a subsequent will. *Brucks v. Home Federal Sav. & Loan Assn.*, (Cal. 1951) 228 P. (2d) 545.

¹ Among the effects of the deceased was found an unmailed letter addressed to the plaintiff. The letter directed that, upon the death of the deceased, the plaintiff was to withdraw the funds, pay expenses and give the residue to a son of the deceased. This letter would have been effective as a holographic will but for the subsequent will which expressly excluded the son. The court held that the two instruments showed an intention to revoke the tentative trust.

When a savings account is opened in the name of the depositor "in trust" for another party, it is difficult to ascertain the intention of the depositor. This equivocal act is capable of three reasonable constructions. The intention may be to create (1) a revocable trust, (2) an irrevocable trust, or (3) no trust at all. The majority of jurisdictions hold that, in the absence of other facts, the intention is to create a revocable trust.² If the settlor dies without manifesting an intention to revoke, the beneficiary is entitled to the funds remaining in the account.³ These trusts have been referred to variously as "tentative trusts," "Totten trusts" and "savings account trusts." The first question raised by the principal case is whether the trust is made irrevocable when the settlor informs the beneficiary of the existence of the account.⁴ It is clear that the determination of the question depends upon the intention of the settlor. It is submitted that the mere act of informing a beneficiary of the existence of an account is more likely intended merely to inform him of the existence of a revocable trust than to change the status of the settlor in relation to the account so as to make the trust irrevocable.⁵ If the settlor intends to make the trust irrevocable, it would be more likely that he would deliver the passbook⁶ or withdraw the money and deliver it to the beneficiary. The second question raised by the case is whether a tentative trust may be revoked by a will. Statements may be found in decisions to the effect that a tentative trust becomes "irrevocable" upon the death of the settlor. It may be argued that, in the light of such statements, a tentative trust cannot be revoked by will. Otherwise, since a will does not become effective until death, the trust would become both irrevocable and revoked at the same instant. However it is clear that the full implication of such statements is not intended by the courts.⁷ The authority is to the effect that, in determining the question of revocation, inquiry should be directed to the settlor's intention and that the intention may be expressed by will as well as by *inter vivos* action.⁸

Wendell B. Will, S.Ed.

² 1 SCOTT, TRUSTS §58.1 (1939); 28 CALIF. L. REV. 202 (1940).

³ Matter of Totten, 179 N.Y. 112, 71 N.E. 748 (1904).

⁴ The deceased told the plaintiff that she had "put some money in the bank for you."

⁵ Of course other circumstances of notice may evidence an intention to make the trust irrevocable. On this point see TRUSTS RESTATEMENT §58, comment *a* (1935). Many cases reiterate the dictum of Matter of Totten, *supra* note 3, that the trust is made irrevocable by some unequivocal act "such as delivery of the passbook or notice to the beneficiary." However there is a paucity of decisions on whether mere notice alone shows an intention to make the trust irrevocable. Holding that notification alone does not make the trust irrevocable see *Matthews v. Brooklyn Savings Bank*, 208 N.Y. 508, 102 N.E. 520 (1913); *In re Richardson's Estate*, 134 Misc. 174, 235 N.Y.S. 747 (1929). But cf. *In re Reed's Estate*, 89 Misc. 632, 154 N.Y.S. 247 (1915); *In re Brennan*, 92 Misc. 423, 157 N.Y.S. 141 (1915).

⁶ But cf. *Bearinger's Estate*, 336 Pa. 253, 9 A. (2d) 342 (1939).

⁷ E.g., see *In re Greniewich's Will*, 243 App. Div. 811, 278 N.Y.S. 279 (1935).

⁸ *Walsh v. Emigrant Industrial Sav. Bank*, 106 Misc. 628, 176 N.Y.S. 418 (1919), *affd.* 192 App. Div. 908, 182 N.Y.S. 956 (1920); *Scanlon's Estate*, 313 Pa. 424, 169 A. 106 (1933); TRUSTS RESTATEMENT §58, comment *b* (1935). *Contra*, *Bradford v. Eutaw Savings Bank*, 186 Md. 127, 46 A. (2d) 284 (1946). See also 42 YALE L.J. 141 (1932).