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Property--Joint Tenancy in Join Bank Accounts

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Certainly the exemption statute is no more inequitable to the federal government than any other statute the state might pass changing the enforcement procedures for creditors' claims.

In *United States v. Bosman,* 363 U.S. 237 (1960) the Supreme Court gave recognition to the fact that Congress has not provided a system to supplement or replace the state procedure governing claim enforcement, and that until they do the system provided by the state is the most desirable to follow. This has always been the general rule. Therefore, if you look to the state system of collection you will be under the same rules that apply to the rest of the state creditors in this regard.

As long as the federal government is looking to the state law to determine priorities and rights of creditors, once their claim has attached, the holding of the principal case must follow. West Virginia, having created an equity by providing for the beneficiary an exemption of certain insurance proceeds, must be considered one of the states that comes within the law stated by the Supreme Court in the principal case.

Boyd Lee Warner, II

Property—Joint Tenancy in Joint Bank Accounts

P, the committee for *W,* an incompetent, sought to recover money representing the proceeds of two bank accounts alleged to be wrongfully withheld by *D. W's* husband, *H,* had opened an account in the name of *H* and *W* "payable to either or the survivor." *H* subsequently closed this account and opened a new one in the name of *H* and *D, H's* son. *H* died shortly thereafter. The lower court dismissed the proceeding and *P* appealed. Held, reversed, new trial granted. The withdrawal was held not to have destroyed the joint tenancy. The court held that evidence would have to be introduced to determine whether or not the presumption created by the statute that a joint tenancy was intended was rebutted. If not, *W* would be entitled to her moiety of the account (one half) or to all of the account if the proof established that the closing of the account was not voluntarily and understandingly made by *H,* i.e., that fraud, undue influence, or lack of mental capacity resulted in *H's* closing the account. *Bricker v. Krimer,* 13 N.Y.2d 22, 241 N.Y.S. 2d 413, 191 N.E.2d 795 (1963).

The New York court, in the case under comment, sets out what appears to be a rather appealing rule: That, as to money left in the account at the death of the depositor, there is a conclusive presumption that a joint tenancy was intended; but as to funds withdrawn prior to the death of the depositor, the presumption is rebuttable. Such a withdrawal does not destroy the tenancy, rather only allows or "opens the door to" competent testimony that would show that no joint tenancy was intended to be created.

Special problems arise when the joint tenancy concerns money as distinguished from some other kind of property less fluid in nature, such as land or a valuable painting. As a practical matter, it would doubtless prove quite difficult in many cases to show the flow of deposits and withdrawals concerning each tenant and to ascertain the interest each tenant has in the amount on deposit at any given time. *State Bd. of Equalization v. Cole,* 122 Mont. 9, 195 P.2d 989 (1948); 10 AM. JUR. 2d BANKS § 374 (1963). It is the realization of these practical difficulties that prompts one to speculate as to whether the West Virginia court would accept the New York rule that a cotenant who withdraws more than his moiety is liable to the other. Perhaps because money is so susceptible of division by the parties themselves, the courts should deem it unnecessary to divide the money for them, as it does, for example, in the case of land, by means of partition.

The concept of the creation of property interests by deposit of funds in a joint bank account has rested on several theories, mainly trust, gift, contract, and joint tenancy. Annot., 135 A.L.R. 993 (1941). For purposes of this comment, discussion will be limited primarily to the joint tenancy theory in considering what effects such a deposit have.

Many states have statutes providing that the deposit of funds in the name of a depositor and another payable to either or the survivor has the effect of creating a joint tenancy as to the amounts so deposited. Annot., 149 A.L.R. 879, 893 (1944). Such a statute may create a conclusive presumption of the depositor's intent to vest title in the co-depositor, *Maurice v. Coleman,* 56 Cal. App. 2d 340, 132 P.2d 511 (1942), or a presumption rebuttable by competent evidence to the contrary, *Jacques v. Jacques,* 352 Mich. 127, 89 N.W.2d 451 (1958).

In *Lett v. Twentieth St. Bank,* 138 W. Va. 759, 77 S.E.2d 813 (1953), decedent husband deposited a substantial amount in *D* bank

in a savings account in the names of the decedent and his wife. Decedent made a subsequent deposit and later added the name of his sister, *P,* as a depositor. *P* was the survivor of the three depositors and relied on W. VA. CODE ch. 31, art. 8, § 23 (Michie 1961), as entitling her to the whole amount in the savings account:

> "When a deposit is made by any person in the name of such depositor and another person and in form to be paid to either, or the survivor of them, such deposit, and any additions thereto made, by either such persons, upon the making thereof, shall become the property of such persons as joint tenants . . . ."

It was presumed that all the money deposited in the account had been owned by the husband, and it was not shown that he had intended to create survivorship for the benefit of his sister. The court held for *P,* stating that, although the statute was enacted to protect bank institutions, it also created property rights in the depositors. It found that the statute restored the element of survivorship as to joint bank accounts and that *P* was entitled to the full amount remaining in the account plus interest accrued thereon "by the plain, unambiguous provisions of Code 31-8-23." The court also indicated, apparently by way of dictum, that after decedent's death, either the wife or sister could have withdrawn the entire amount of the account. This indication could take on special signifiance in the light of the discussion below.

The question as to rights of survivorship in West Virginia in the money deposited in a joint bank account appears to be clearly answered by the court's interpretation of the statute in the *Lett* case. Interesting questions still linger, however, and these relate principally to the property rights created in the joint tenants inter vivos, that is, apart from the question of survivorship. Has the depositor not made an inter vivos gift to his cotenant of an interest in the money he deposits in the joint account? Is it a gift, subject to the right of the donor to draw out all the substance of the gift? Are moiety interests created, as in the New York case? These questions do not appear to have been answered by the West Virginia court. The fact that such questions remain unanswered was recognized in Stacy, *Tax Consequences of Joint Ownership of Property,* 61 W. VA. L. REV. 167 (1958). There, the author pointed out that the deposit of funds by one to a joint account offered no objective test of the ownership of the funds, and indicated the uncertainties in this area as to whether a

joint tenancy with all its implications is created, or as to whether the second depositor would have rights against the first.

The fact that the New York statute upon which the decision in the principal case turns is practically identical with the West Virginia statute alluded to in the *Lett* case allows certain suppositions to be made. N.Y. BANKING LAW § 239. The only substantial difference is that an additional sentence is appended to the New York statute, providing that, in the absence of fraud or undue influence, a deposit to a joint account will be conclusive evidence of the depositor's intent to vest title in the other depositor. It has been held, however, as indicated above, that as to funds withdrawn prior to the death of the first depositor, there is merely a rebuttable presumption that a joint account was created. *In re Creekmore's Estate,* 1 N.Y.2d 284, 135 N.E.2d 193 (1956); *In re Porianda's Estate,* 256 N.Y. 423, 176 N.E. 826 (1931).

In *Walsh v. Keenan,* 293 N.Y. 573, 59 N.E.2d 409 (1944), *A* moved to the home of *P,* her sister, and had *A's* bank account changed to include the name of *P,* although *A* at all times retained exclusive possession of the passbook and complete dominion over the account. *A* later closed out the account and opened another account with *D.* The court held that *D* was entitled to the funds, that the presumption that a deposit in the names of a depositor and another may be, and was, overcome by proof. Especially significant was the court's discussion of the two statutory presumptions, originally set forth in *Moskowitz v. Morrow,* 251 N.Y. 380, 167 N.E. 506 (1929). The first presumption is that a deposit made as indicated above becomes the property of the parties as joint tenants, and it is not conclusive and may be overcome by proof that the depositor had no intention of creating a joint tenancy. The second presumption is that title passes to the survivor, which is not rebuttable by proof, but is limited to money still on deposit and not withdrawn by either party during life. Considering this first presumption as it might relate to the *Lett* case, perhaps the fact that the husband in that case apparently gave his sister, *P,* an interest in the money already deposited in his and his wife's names, without having the wife join in the transfer, would serve as evidence that a joint tenancy was not intended when the deposits were made.

A New York court has indicated that where an intention to create a joint tenancy is unquestioned, the statute raises a conclusive

presumption that title passes to the survivor. *In re Timko,* 150 Misc. 701, 270 N.Y.S. 323 (Surr. Ct. 1934).

It is informative to look to other jurisdictions to see how they have resolved the problems relating to the property interests created by a deposit in a joint account. As indicated above, some courts are able to rely on joint tenancy statutes designed to deal with joint bank accounts, while other jurisdictions have no such statutes and look to gift, trust, or contract theories as giving rise to joint interests.

The law in Pennsylvania with regard to the rights of joint tenants was set forth in *Glessner v. Security-Peoples Trust Co.,* 166 Pa. Super. 566, 72 A.2d 817 (1950). There, decedent opened a joint account payable either to himself or to *X* or the survivor. The court upheld the finding of the lower court that decedent had made an immediate gift to *X* by contributing the sum to a joint account. It was indicated that it was necessary to determine whether at the time the joint tenancy was created decedent intended to make an inter vivos gift.

A New Jersey court has held that if one of the depositors exercised his power to withdraw the whole fund, he becomes accountable to his fellow depositor for the latter's share. *In re Manfredini's Estate,* 13 N.J. Super. 258, 80 A.2d 445 (App. Div. 1951).

A fairly recent South Carolina case has held that the fact that one party could withdraw the entire amount without liability on the part of the bank did not sanction the destruction of a co-interest, and that such withdrawal, to the extent that it exceeded the withdrawing party's moiety, amounted to conversion. *Austin v. Summers,* 237 S.C. 613, 118 S.E.2d 684 (1961).

In *Perkins v. City Nat'l Bank,* 253 Iowa 922, 114 N.W.2d 45 (1962), the court interpreted a banking statute governing joint accounts as not establishing the ownership of funds on deposit, rather as intended solely for the protection of the bank. The statute did not include language expressly creating a joint tenancy, however, and is thus perhaps distinguishable from the West Virginia statute.

A recent Virginia decision ruled that oral evidence was admissible to show the depositor's intent in creating a joint bank account, *Quesenberry v. Funk,* 203 Va. 619, 125 S.E.2d 869 (1962). The decedent had opened a savings account in his name and *D's.* It was

shown that decedent was ill at the time and had wanted the joint account as a matter of convenience. The court discussed the essential elements of an inter vivos gift and concluded that decedent had not intended to create an immediate effective interest in *D*. It should be observed here that, while there were general statutes cited relating to joint tenancies and to the right of a bank to pay joint account funds to either party, no statute existed which could be construed as giving rise to any presumption that title vested in *D* with the deposit of funds in a joint account. The court indicated that in order for an immediate interest to be created in *D* during decedent's lifetime, some theory of contract, trust, or gift would have to be relied upon.

An opposite view was presented in *Jacques v. Jacques,* 352 Mich. 127, 89 N.W.2d 451 (1958), where the court stated that the creation of a joint bank account was a statutory means of vesting title to funds in another, and that, although it resembles an inter vivos gift, it is not a gift because the donor retains an element of control and the power of revocation. The significant aspect of this case is that it deals with a statute which, like New York's, is nearly identical with West Virginia's. The court held that the making of such a deposit was prima facie evidence of the depositor's intention to vest title in the survivor.

The more fully considered cases seem to fall in line more with *Quesenberry v. Funk, supra,* and to look for a gift or trust as a condition precedent to a joint tenancy. But where statutes worded in terms of a joint tenancy are involved, cases generally discuss the creation of the joint tenancy without delving into the gift or trust requirement. 10 AM. JUR. 2d *Banks* § 385 (1963).

To look again to West Virginia, it is to be observed that until cases arise requiring the illumination of the gray areas suggested in this comment, the nature of the property interests created by a joint bank account must remain uncertain. It could well be that the New York cases referred to suggest appropriate answers, especially in the light of the statutory similarity.

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