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Banks and Banking--Joint Accounts--Presumption of Gift (Moskowitz v. Marrow, 251 N.Y. 380 (1929))

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RECENT DECISIONS

Editor—ROSE LADER

BANKS AND BANKING—JOINT ACCOUNTS—PRESUMPTION OF GIFT.—Decedent transferred funds in her individual accounts with four savings banks to four joint accounts in the names of the decedent and the defendant payable to "either or the survivor of them," and delivered the pass-books covering the joint accounts to the defendant. Several months later decedent gave written notice to the banks, notifying each that the "privilege" previously given to the defendant to withdraw any such moneys was thereby revoked. The funds in two of the accounts were withdrawn by the decedent but later redeposited in the joint accounts. Subsequent to the death of the decedent the defendant withdrew the money on deposit at three of the banks. In an action brought by the executors of decedent's estate to recover these withdrawals from defendant, *held*, for the defendant. Under Section 249, Subdivision 3 of the Banking Law [1] at the time of deposit a rebuttable presumption arose that a true joint tenancy existed—that a gift of half of the funds deposited was intended, and, at the time of the death of the depositor, a conclusive presumption arose that the balance in the account was intended as a gift. Moskowitz v. Marrow, 251 N. Y. 380, 167 N. E. 506 (1929).

Under the common law deposits made in a joint account would have been insufficient to establish a gift of an interest in the funds deposited, to take effect either presently or in the future.[2] Section 144 of the Banking Law, enacted in 1909,[3] provided, in part, that a deposit made by a person in the names of that person and another and payable to either or the survivor, became the property of both persons at the time of making the deposit, as a joint tenancy, payable to either during their lives and to the survivor, and that a receipt from the person to whom the deposit was paid was a valid release and discharge to the bank, if the funds were paid out prior to receipt by the bank of any notice in writing not to pay such deposit in accordance with its terms. The purpose and effect of this enactment was to change the common law rule and to make a deposit in the statutory form presumptive evidence of an intent to make a present gift of half of the funds deposited.[4]

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[1] Laws of 1914, ch. 369.

[2] Beaver v. Beaver, 117 N. Y. 421, 22 N. E. 940, 6 L. R. A. 403, 15 Am. St. Rep. 531 (1889); Matter of Bolin, 136 N. Y. 177, 32 N. E. 626 (1892); Kelly v. Beers, 194 N. Y. 49, 86 N. E. 980, 128 Am. St. Rep. 543 (1909).

[3] Laws of 1909, ch. 10.

[4] Clary v. Fitzgerald, 155 App. Div. 659, 140 N. Y. S. 536 (1913), *aff'd* 213 N. Y. 696, 107 N. E. 1075 (1915).

When the present Banking Law was enacted in 1914,[5] the provisions of Section 144 were carried over into Section 249, being restricted to savings banks deposits, however. An added sentence in Section 249 provides: "The making of the deposits 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." The effect of the added provision is to establish a conclusive presumption after the death of the depositor of an intent to make a gift of the funds remaining in the account to the survivor.[6] It does not affect the rebuttable presumption, which exists prior to the death of the depositor, that a gift of half of the funds deposited was intended.

The laws relating to tentative trusts [7] have no application in this case. Here the depositor never declared herself to be a trustee. No trust was ever created.[8]

The effect of the statute as presently construed with respect to funds deposited by an individual in a joint account is: during the life of the depositor (a) as between the parties a rebuttable presumption exists that a gift of half of the funds was intended, (b) the bank is not liable in paying the funds to either person named in the account, in the absence of notice not to pay in accordance with the terms of the deposit; after the death of the depositor (a) a conclusive presumption exists that a gift of the entire amount in the account at the time of death was intended; (b) and the bank incurs no liability in paying the funds to the survivor. It is important to note that the amount to which the survivor is presumptively entitled, at the time of deposit, may exceed the amount in the account at the time a gift is conclusively established.

J. F. K.

CONSTITUTIONAL LAW—SEPARATION OF POWERS—EXECUTIVE BUDGET.—In accordance with Article IV-A of the New York Constitution, Section 2, the Governor submitted to the Legislature the executive budget which contained provisions for lump sum appropriations to the various administrative departments of the State Government. The proposed budget bill contained a provision giving the Governor exclusive power over the segregation within each department of the lump sums thus appropriated. The Legislature struck out

[5] *Supra* Note 1.

[6] Moskowitz v. Marrow, 251 N. Y. 380, 167 N. E. 506 (1929).

[7] Matter of Totten, 179 N. Y. 112, 71 N. E. 748 (1904).

[8] Young v. Young, 80 N. Y. 422, 36 Am. Rep. 634 (1880).