St. John's Law Review

Volume 31, May 1957, Number 2 Article 12

# Banks and Banking--Joint Savings Accounts--Effect of Section 239(3) in Survivorship Action (Matter of Creekmore, 1 N.Y.2d 284 (1956))

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# RECENT DECISIONS

BANKS AND BANKING—JOINT SAVINGS ACCOUNTS—EFFECT OF SECTION 239(3) IN SURVIVORSHIP ACTION.—Decedent, during a fatal illness, directed that respondent-daughter be given powers of attorney over several savings bank accounts in order to facilitate the payment of bills. After a private consultation with her attorney, decedent and her daughter signed statutory joint account forms for two of these accounts and powers of attorney for one. Upon decedent's death, respondent, as executrix of decedent's estate, refused to charge herself with the proceeds of two joint accounts, claiming title thereto under Section 239(3) of the New York Banking Law. The Court reversed the appellate division and reinstated the Surrogate's finding that the joint accounts were not knowingly and consciously created, *holding* that since there was a question of the competency of the depositor and the genuineness of her act, the use of the statutory form in creating the joint deposits was not conclusive of her intention to vest title in respondent. *Matter of Creekmore,* 1 N.Y.2d 284, 135 N.E.2d 193 (1956).

At common law, a deposit by one in the name of himself and another or survivor was unavailing, in and of itself, to give to the other any interest whatsoever.[1] The depositor's intention was the determining factor and a deposit in two names was presumptively for convenience only,[2] except in the case of husband and wife.[3] In 1909, the Savings Bank Act was amended to provide that when an account was opened in any savings bank in the name of the depositor and another, and in form to be paid to either or the survivor, the account should become the property of such persons as joint tenants.[4] Following the adoption of this legislation, the Court of Appeals, in *Clary v. Fitzgerald,*[5] recognized that the Legislature had created a statutory joint tenancy and that providing for the right of survivorship by a depositor was a presumptive acceptance of such tenancy by him. However, it was indicated that the estate of the depositor could show

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[1] DePuy v. Stevens, 37 App. Div. 289, 55 N.Y. Supp. 810 (4th Dep't 1899); Kelly v. Beers, 194 N.Y. 49, 59, 86 N.E. 980, 984 (1909) (dictum).

[2] See Kelly v. Beers, *supra* note 1; Matter of Bolin, 136 N.Y. 177, 32 N.E. 626 (1892). See also Note, 11 CORNELL L.Q. 525, 526 (1926).

[3] West v. McCullough, 123 App. Div. 846, 108 N.Y. Supp. 493 (2d Dep't 1908), *aff'd without opinion,* 194 N.Y. 518, 87 N.E. 1130 (1909); see McElroy v. Albany Sav. Bank, 8 App. Div. 46, 40 N.Y. Supp. 422 (3d Dep't 1896).

[4] Laws of N.Y. 1909, c. 10, § 144.

[5] 155 App. Div. 659, 140 N.Y. Supp. 536 (4th Dep't 1913), *aff'd without opinion,* 213 N.Y. 696, 107 N.E. 1075 (1915).

that the account was opened only for the convenience of the depositor and that it was not the latter's intention to transfer the property interest to the co-depositor, notwithstanding the statute and the fact that the depositor had intentionally opened the account in this manner.[6]

In 1914, therefore, the Legislature amended the Banking Law to its present wording, making an account in the joint and survivorship form, in the absence of fraud or undue influence, conclusive evidence of joint tenancy in any action involving either the bank or the survivor.[7] The form employed in the creation of the account now became controlling.[8] If an account is opened in conformity with the statute a rebuttable presumption at once arises that the interests of the depositors are those of joint tenants. Upon the death of one, the presumption becomes conclusive in favor of the survivor in respect to any monies left in the account.[9] The actual intention of the depositor is immaterial,[10] for, in such a case, the presumption that title passes to the survivor is irrefutable by proof, and, therefore, a rule of substantive law.[11]

The conclusive effect of the statutory form was questioned in *Matter of Fenelon*[12] and again in *Matter of Yauch*[13] when it was held that the form of the account was not controlling where the decedent did not knowingly or consciously change or establish the account to vest title in the survivor. The actual effect of these holdings, however, is limited, on the facts, to instances where an agent of the decedent, or the bank, added the statutory language without decedent's knowledge or consent.

In the instant case, all that the statute requires in regard to form had been complied with, and there was no evidence of either fraud or undue influence. It was, in the opinion of the minority, clearly a

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[6] In the words of the court: "It may be true that the depositors, or their representatives, as between themselves may be permitted to show by other competent evidence that title as joint owners was not intended to be established nor in fact conferred." Clary v. Fitzgerald, 155 App. Div. 659, 664, 140 N.Y. Supp. 536, 540 (4th Dep't 1913), *aff'd without opinion*, 213 N.Y. 696, 107 N.E. 1075 (1915).

[7] Laws of N.Y. 1914, c. 369, § 249(3), now N.Y. BANKING LAW § 239(3).

[8] Inda v. Inda, 288 N.Y. 315, 43 N.E.2d 59 (1942); Matter of Juedel, 280 N.Y. 37, 41, 19 N.E.2d 671, 672 (1939) (dictum); see Matter of Fenelon, 262 N.Y. 308, 186 N.E. 794 (1933).

[9] "The plain implication is that as between the depositors themselves, the form of the deposit gives rise to a presumption and nothing more, but that after the death of either leaving a deposit then subsisting, the presumption becomes conclusive as to the title of the survivor." Moskowitz v. Marrow, 251 N.Y. 380, 397, 167 N.E. 506, 512 (1929).

[10] Inda v. Inda, *supra* note 8.

[11] Matter of Porianda, 256 N.Y. 423, 425, 176 N.E. 826, 827 (1931) (dictum).

[12] 262 N.Y. 57, 186 N.E. 201, *rev'd on other grounds*, 262 N.Y. 308, 186 N.E. 794 (1933).

[13] 270 App. Div. 348, 59 N.Y.S.2d 643 (3d Dep't), *aff'd mem.*, 296 N.Y. 585, 68 N.E.2d 875 (1946).

case, where by operation of the statute, the survivor was entitled to the money in the accounts.[14] The majority, however, held the form of the account was not controlling and resorted to the *Clary v. Fitzgerald* formula of weighing extrinsic evidence to determine whether the decedent had, in effect, intended to create a joint tenancy. The reasoning of the Court in support of this conclusion is none too clear. It appears that the fact that the decedent was suffering from a fatal illness, coupled with the fact that her actual intention was to convey powers of attorney, permitted, in the mind of the majority, the inference that the decedent was incompetent; and, therefore, the instrument was not knowingly and consciously drawn. Under the circumstances, incompetency could have two possible implications: (1) that there was a lack of rational capacity, of which there was no evidence, or (2) that there was a lack of knowledge of the full legal implications of the instrument signed. Here the law charges a person with the legal consequences of the instrument signed, regardless of the lack of such knowledge.[15]

Such a conclusion as was reached in the present case has destroyed the conclusive effect of the statutory presumption and can only lead to an uncertainty in the law which the Legislature had attempted to erase with this conclusive provision.[16] It would seem that the Court could have given effect to the intention of the decedent by the imposition of a trust on the accounts, and thus avoided doing violence to the act of the Legislature.

BANKS AND BANKING—NOTES DISCOUNTED BY NON-BANKING CORPORATION IN VIOLATION OF BANKING LAW SECTION 131 AND GENERAL CORPORATION LAW SECTION 18 HELD VOID.—Plaintiff, an accommodation indorser of five promissory notes made to secure a loan by defendant Discount Factors to the maker, sues to recover on three notes alleging that they are invalid and that he made payment under a mistake of law. The notes had no legal inception prior to

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[14] ". . . [T]he simple fact is that we are here concerned . . . with a document creating a joint bank account. This, the legislature has said in the plainest of language, conclusively effects a right in the survivor, absent evidence of incapacity, fraud or undue influence, to the balance in the account upon the other's death." Matter of Creekmore, 1 N.Y.2d 284, 299-300, 135 N.E.2d 193, 201 (1956).

[15] Knight v. Kitchin, 237 App. Div. 506, 511, 261 N.Y. Supp. 809, 815 (4th Dep't 1933) (dictum).

[16] In 1950, upon recommendation of the Law Revision Commission, a bill excising the presumptive evidence clause from section 239(3) was submitted to Judiciary Committee of the Legislature, but was never reported out of committee. See REPORT, N.Y. LAW REVISION COMMISSION 515, 567 (1950).