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Joint Bank Accounts in Savings Banks

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NOTES AND COMMENT

JOINT BANK ACCOUNTS IN SAVINGS BANKS

Joint bank accounts are of fairly recent origin, but are becoming increasingly important with the tendency toward acquisition of personal property becoming more pronounced. This peculiar new type of holding property in common, however, has many of the characteristics devolved from real property concepts. Because it is of recent origin, the problems it presents are many and the law is by no means settled.

Where real property is the subject of a joint tenancy, two or more persons hold the property jointly with unity of interest, title, time and possession.[1] The chief incident of an estate of joint tenancy is the right of survivorship.[2] The most important point of analogy between a joint tenancy in personalty and a joint tenancy in realty is found in this latter characteristic, *i.e.*, survivorship. Where money is deposited in a savings bank[3] to the joint credit of the depositor and another person and payable to either of them or to survivor, a joint tenancy arises immediately and presently in the absence of contrary intent.[4] The possession is given upon the creation of the joint estate, the rights are absolutely and conclusively fixed and the only question which is contingent is which of the two or more joint tenants shall eventually own the entire estate. But each is in full possession and has equal ownership as against the world, with the exception of the equal rights of the others and the transfer which becomes fully determined at the death of one of the two joint tenants or owners relates back to the creation of the estate. It is then that the rights vest and death only determines which shall be the gainer.[5] It will be observed that the conclusive presumption of survivorship as provided for by the New York Banking Law § 239(3) has been applied in favor of the surviving depositor as well as the bank, although it seems probable that its primary intent was just to protect the bank from actions against it by the estate of the deceased depositor. A surviving joint tenant as to at least one-half of the joint property of the joint bank account is its owner from the date of the creation of the tenancy.[6] It is interesting to note that this characteristic may be traced back to a tenancy in common in realty, rather than a joint tenancy.

At common law a deposit by one in the name of himself and

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[1] Hernandez v. Becker, 54 F. (2d) 542 (C. C. A. 10th, 1931); Moore Lumber Co. v. Behrman, 144 Misc. 291, 259 N. Y. Supp. 248 (1932).

[2] Hernandez v. Becker, 54 F. (2d) 542 (C. C. A. 10th, 1931); Patridge v. Berlinger, 325 Ill. 253, 156 N. E. 352 (1927).

[3] This article refers to savings bank accounts only.

[4] Marrow v. Moskowitz, 251 N. Y. 380, 167 N. E. 506 (1929); Compton v. Hendricks, 154 Ga. 808, 115 S. E. 654 (1923).

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

[6] *In re* McKelway, 221 N. Y. 15, 116 N. E. 348 (1917).

another or survivor was unavailing in and of itself to give to the other any interest whatsoever, either conclusive or presumptive.[7] But today "when a deposit shall be made by any person in the names 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 of such persons after the making thereof shall become the property of such persons as joint tenants and together with all dividends credited thereon, shall be held for the exclusive use of such persons and may be paid to either during the lifetime of both or to the survivor after the death of one of them, and such payment and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to the savings bank for all payments made on account of such deposit prior to the receipt by the savings bank of notice in writing not to pay such deposit in accordance with the terms thereof. The making of the deposit in such form shall, in the absence of fraud or undue influence, be conclusive evidence in any action or proceeding to which either the 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." [8] If a bank account is opened in conformity with § 239 of the New York Banking Law a rebuttable presumption at once arises that the interest of the depositors are those of joint tenants. Upon the death of one the presumption becomes conclusive in favor of the survivor in respect of any monies left in the joint bank account. It continues to be a mere presumption in respect of any monies previously withdrawn.[9] Banks may pay to either of joint depositors where the deposit is in the conjunctive.[10] However, where the intention to create the right of survivorship appears, "or" between the depositors' names may be read "and" and a joint tenancy will be created.[11]

However, joint bank deposits not in the form provided by the statute [12] are still presumed to be made for convenience only, and in the absence of proof rebutting that presumption no title or ownership vests in the survivor.[13]

The most important element of a joint tenancy, in personalty at least, is the intent of the creators of the tenancy that right of survivorship shall exist.[14] The mere deposit of funds in the name of two or more persons is not enough to constitute them joint owners thereof

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[7] Kelley v. Beers, 194 N. Y. 49, 86 N. E. 980 (1909).

[8] N. Y. BANKING LAW § 239.

[9] Marrow v. Moskowitz, 255 N. Y. 219, 174 N. E. 460 (1931). Dicta in this case making such presumption conclusive upon death is closely followed in the lower courts.

[10] Brooks v. Erie Central Savings Bank, 224 N. Y. 639, 121 N. E. 857 (1919).

[11] Mabie v. Bailey, 95 N. Y. 206 (1884).

[12] N. Y. BANKING LAW § 239.

[13] *Matter of* Fenelon, 262 N. Y. 57, 186 N. E. 201 (1933).

[14] Irvine v. Helvering, 99 F. (2d) 265 (C. C. A. 8th, 1938).

as a matter of law.[15] For instance, where personal property was assigned to two persons jointly, with right of survivorship, one of them owned one-half of the property, with right to dispose of it and she gained nothing, in regard to such one-half, by the death of the other joint owner, except as his interest was thereby eliminated.[16] So it was held that bank deposits in the names of J. R. C. or wife, J. M., and of J. M. C. or husband, J. R., do not necessarily imply a joint tenancy with survivorship but it is open to proof as to whether that was the intention.[17] As a further illustration, a deposit in a bank in the name of "Julia Cody or daughter Bridget Bolin" and possession of the bank book by the daughter and the fact that the mother was infirm and dependent on the daughter, without some evidence of the mother's intent to give the fund and of delivery thereof, did not show a gift of the fund in the bank to the daughter.[18]

By the New York Banking Law § 239, however, the intention to create a right of survivorship is conclusively presumed upon the death of one of the depositors. Until that event, the intention is only rebuttably presumed. Under this statute two persons opening an account with a savings bank, payable to either and to the survivor, are joint owners of the deposit, and the survivor is entitled thereto, even though the money deposited belonged to the other.[19] Under subdivision 3 of the statute [20] the widow of decedent leaving joint savings bank accounts in names of himself or his son and daughter-in-law, respectively, "pay either or survivor", was not entitled to any of the monies therein under Decedent Estate Law §§ 18 or 83 though husband never divested himself or intended to divest himself of complete ownership thereof, and joint accounts were illusory and without reality.[21] Possession of the pass book becomes of little importance because it has been held that where a savings bank deposit is in joint names and the intent appears to create a joint tenancy the survivor takes title to the entire fund, irrespective of whether he ever had any possession of the pass book.[22]

Subdivision 5 of Section 220 of the New York Tax Law relating to transfers reads in part, "whenever property is held in the joint names of two or more persons . . . as deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons, the right of the surviving joint tenant . . . to the immediate ownership or possession and enjoyment of such property, shall be

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[15] Kennedy v. Kennedy, 169 Cal. 287, 146 Pac. 647 (1915).
[16] Kissam v. McElligott, 280 Fed. 212 (S. D. N. Y. 1920).
[17] Corcoran v. Hotaling, 164 App. Div. 75, 148 N. Y. Supp. 302 (1st Dep't 1914).
[18] *In re* Bolin, 136 N. Y. 177, 32 N. E. 626 (1892).
[19] 7 C. J. § 902.
[20] N. Y. BANKING LAW § 239.
[21] Inda v. Inda, 263 App. Div. 925, 32 N. Y. S. (2d) 1008 (4th Dep't 1942).
[22] Farrelly v. Emigrant Industrial Sav. Bank, 179 N. Y. 594, 72 N. E. 1141 (1904).

deemed a transfer taxable under the provisions of this article in the same manner . . . as though a fractional part of the property, to be determined by dividing the value of the entire property by the number of . . . joint depositors . . . , belonged absolutely to the deceased joint depositor . . . and had been bequeathed to the surviving joint tenant . . . , by such deceased joint depositor by will; provided, however, where personal property belonging to a husband has been placed in the joint names of such husband and his wife with intent to create right of survivorship in the wife as to the whole thereof, and such property passes to the wife by virtue of her right of survivorship, the whole of such property shall be taxable as a transfer to the wife, but, if the wife die before the husband, no part of such property shall be taxed as a transfer from the wife." Before passage of this subdivision a joint tenancy was held not to be made in contemplation of death or intended to take effect in possession or enjoyment at or after such death within the meaning of Section 220 of the Tax Law.[23] Now where a joint bank account in the name of husband and wife, payable to the survivor, is created subsequent to passage of the above subdivision of the Tax Law the privilege of acquiring the entire property by right of succession may be subjected to the tax prescribed by such subdivision.[24] The tax is only applicable where it appears that the deceased spouse has made all the deposits. But to what extent would this tax be imposed where the survivor contributed an indeterminate share of the money? Where the monies were deposited by an aged and infirm man who always held the bank book and all deposits and withdrawals had been made by him and his deceased co-tenant had contributed nothing, the account was held not subject to the transfer tax.[25] Contrast this with a situation where a joint deposit in the names of mother and daughter was taxable on its full amount under subdivision 5 of Section 220 of the Tax Law at the death of the mother, although the daughter deposed that it was made by her from her own funds to provide for her mother in case of accident affecting the life or health of deponent.[26]

It is the writer's opinion that intention is the all-important element to be considered. At common law the intent to create a joint tenancy with right of survivorship had to be affirmatively proved by the one asserting such tenancy. However, the statute has alleviated that burden by providing for a rebuttable presumption of joint tenancy during life and a conclusive presumption upon death.

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[23] *Matter of* Tilley, 215 N. Y. 702, 109 N. E. 1094 (1915).
[24] *Matter of* Dolbeer, 226 N. Y. 623, 123 N. E. 381 (1919).
[25] *Matter of* Van Vranken, 110 Misc. 84, 179 N. Y. Supp. 752 (1920); *accord, Matter of* Weissbach, 111 Misc. 501, 183 N. Y. Supp. 771 (1920).
[26] *Matter of* Bigelow, 108 Misc. 601, 177 N. Y. Supp. 847 (1919).