

Savings Bank Trusts--Loss of Interest by Beneficiary by Predeceasing Depositor (Matter of Vaughan, 145 Misc. 332 (Surr. Ct. 1931))

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when service is furnished by a city,⁶ town,⁷ or a village.⁸ It is not the receiver's duty to pay mortgagor's water bill.⁹ The courts of this state have not heretofore determined the issue but other jurisdictions have. Change of possession denies the company the right to refuse water supply.¹⁰ The receiver's possession is that of the mortgagee. Until redemption the mortgagee in possession has all the rights which actual possession confers.¹¹

P. A. L.

SAVINGS BANK TRUSTS—LOSS OF INTEREST BY BENEFICIARY BY PREDECEASING DEPOSITOR.—In the instant case the depositor was an aged woman. She lived alone in a rooming house. She was unemployed and depended for her existence upon some property which she possessed. Part of this property had come to her upon the death of a brother by way of a savings bank trust. She had two other brothers, Leonard and Herbert. Her relations with the former were not of the best due to some unprofitable investments which he had made for her. She opened a savings account in her own name in trust for Herbert. She retained the pass book until her death. On several occasions she had stated to her physician that she had opened the account to make sure that Herbert would get it. She made similar statements to the woman in whose house she was a tenant that she desired he get all the money she had left. On one occasion she drew money from the account for her own purposes. Herbert predeceased her. *Held*, the fact that the beneficiary predeceased the depositor terminated his interest in the tentative trust. *Matter of Vaughan*, 145 Misc. 332, 260 N. Y. Supp. 197 (Surr. Ct. 1931).

Prior to *Matter of Totten*¹ the law regarding savings bank trusts was in doubt and very uncertain. This case laid down a rule

⁶ Greater N. Y. Charter (Laws of 1901, c. 466, and Laws of 1916, c. 602, §2) §473.

⁷ N. Y. TOWN LAW (1909) §293 (Amended Laws of 1929, c. 592).

⁸ N. Y. VILLAGE LAW (1909) §229 (Amended Laws of 1930, c. 300).

⁹ (A consumer is not bound to pay former's bill.) *Ranney v. Peysers*, 83 N. Y. 1 (1880); *Herring v. N. Y., Lake Erie & W. R. R. Co.*, 105 N. Y. 340, 12 N. E. 763 (1887); *Silkman v. Board of Water Commission*, 152 N. Y. 327, 46 N. E. 612 (1897). (Expenses and charges on premises only are added to mortgage debt. N. Y. Civil Practice Act §1087.)

¹⁰ *Turner v. Revere Water Co.*, 171 Mass. 329, 50 N. E. 634 (1898) (water is sale on credit; person not party to contract should not be compelled to pay); *Coe, et al. v. N. J. Midland Ry. Co.*, 30 N. J. Eq. 440 (1879); *Millville Improv. Co. v. Millville Water Co.*, *supra* note 2, at 484, 113 Atl. at 518 ("But the water is a commodity * * * it is to be furnished at a price to such person as is entitled to receive it and desires to purchase it"); *Vanderbilt v. Hackensack Water Co., et al.*, 110 N. J. Eq. 636, 638, 160 Atl. 825, 826 (1932) ("I see no more reason why complainants should be compelled to discharge defendants' unpaid bill, than that they should be required to pay for coal, janitor's services or any other commodity furnished to and consumed by the mortgagor while he was in possession").

¹¹ *Barson v. Mulligan*, 191 N. Y. 306, 84 N. E. 59 (1908).

¹ *Matter of Totten*, 179 N. Y. 112, 71 N. E. 748 (1904).

which attempted to reconcile the previous apparently contradictory decisions upon the subject. This rule has been followed ever since. It contains the following propositions of law: 1. "A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor."² 2. "It is a tentative trust merely, revocable at will until the depositor dies," unless some additional act or event transforms it into an absolute one.³ 3. "In case the depositor dies before the beneficiary the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor."⁴ 4. By "revocation or some decisive act or declaration of disaffirmance" the tentative rights of the presumptive beneficiary may be destroyed by the depositor during his life.⁵ 5. These tentative rights of the beneficiary become vested during the life of the depositor if the latter "completes the gift in his lifetime by some unequivocal act or declaration."

Under the first proposition the character of the transaction in the instant case, as creating an irrevocable trust, is not conclusively established by the mere fact of the deposit. Under the second proposition a tentative trust was established, revocable at will until the depositor dies. No additional act or event transformed it into an absolute trust. Proposition three does not enter into the situation here because the beneficiary died before the depositor. We are not concerned with the fourth proposition as there was no revocation or disaffirmance. Upon the contrary the evidence is conclusive that the depositor had no intention to give Herbert a present right in the fund. Evidence of the contemporaneous facts and circumstances to show the real intent of the depositor is admissible.⁶ His interest was to be *in futuro* on her death.⁷ A tentative trust is a proposed or suggested trust, not completed or consummated. Until the depositor's death the funds "are impressed with no trust in the sense that any title, actual or beneficial, vests in the proposed beneficiary."⁸ Upon well-settled authority the fact that Herbert predeceased the depositor terminated his interest in the tentative trust and his estate possessed no interest therein.⁹

H. B. S.

² *Mabie v. Bailey*, 95 N. Y. 206, 210 (1884); *Beaver v. Beaver*, 117 N. Y. 421, 428, 430, 22 N. E. 940, 941 (1889).

³ *Supra* note 1.

⁴ *Cunningham v. Davenport*, 147 N. Y. 43, 47, 41 N. E. 412, 413 (1895).

⁵ *Supra* note 1, at 126, 71 N. E. at 752.

⁶ *Mabie v. Bailey*, *supra* note 2.

⁷ *Sullivan v. Sullivan*, 161 N. Y. 554, 558, 56 N. E. 116, 117 (1900).

⁸ *Matter of U. S. Trust Co.*, 117 App. Div. 178, 180, 102 N. Y. Supp. 271, 272 (1st Dept. 1907).

⁹ *Ibid.*; *Matter of Bulwinkle*, 107 App. Div. 331, 333, 95 N. Y. Supp. 176, 178 (2d Dept. 1905); *Garvey v. Clifford*, 114 App. Div. 193, 196, 99 N. Y. Supp. 555, 557 (1st Dept. 1906); *Matter of Duffy*, 127 App. Div. 74, 75, 111 N. Y. Supp. 77, 79 (2d Dept. 1908).