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## Constitutional Law--Separation of Powers--Executive Budget (People v. Tremaine, 252 N.Y. \_\_\_ (1929))

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When the present Banking Law was enacted in 1914,<sup>5</sup> 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.<sup>6</sup> 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<sup>7</sup> have no application in this case. Here the depositor never declared herself to be a trustee. No trust was ever created.<sup>8</sup>

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

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<sup>5</sup> *Supra* Note 1.

<sup>6</sup> *Moskowitz v. Marrow*, 251 N. Y. 380, 167 N. E. 506 (1929).

<sup>7</sup> *Matter of Totten*, 179 N. Y. 112, 71 N. E. 748 (1904).

<sup>8</sup> *Young v. Young*, 80 N. Y. 422, 36 Am. Rep. 634 (1880).

from the Governor's bill the provisions for the Governor's control over segregation and in its place permitted Section 139 of the Finance Law to take effect, which vested the control over the segregation of lump sum appropriations in two members of the Legislature and the Governor. The Governor, upon the return of the bill to him, approved the lump sum items and, insisting that Section 139 of the Finance Law was unconstitutional in its application to these items, he vetoed that portion of the bill which attempted to confer the power of segregation on members of the Legislature. Upon an agreed statement of facts, the issue was presented to the Court, the Governor contending that the "Legislature had no constitutional power to assign to its chairmen the function of approvers of the segregation of lump sum appropriations." The respondent (the Attorney-General) asserts that the Governor had no power to veto the segregation clause without vetoing the items to which it referred. The Court of Appeals states the question in the case in the following language: "The first question to be considered is whether the chairman of the Senate Finance Committee and the chairman of the Assembly Ways and Means Committee may constitutionally be given the power to approve segregation of lump sums appropriated by the Legislature to the State departments." The Court of Appeals reversed the Appellate Division of the Third Department and held invalid Section 139 of the Finance Law and similar provisions designed to give to two members of the Legislature and the Governor the power to approve the segregation of lump sum appropriations within departments. *People v. Tremaine*, 252 N. Y. —, 168 N. E. — (decided Nov. 19, 1929).

These provisions were attacked on several grounds, all of which seem to have been upheld by the Court. The prevailing opinion by Judge Pound stresses the invalidity of the attacked law on the ground that it violates Section 7 of Article III of the State Constitution which forbids the giving to members of the Legislature of "any civil appointments." Resting on a number of decisions of this court, conspicuously on *Matter of Hulbert*,<sup>1</sup> the Court held that the attempt made in Section 139 of the State Finance Law was void since it gave a civil appointment to two members of the Legislature. Other points, made the sole ground of the decision by Crane, *J.*, in a concurring opinion, are not lost sight of by the majority. Most significant is the statement by Crane, *J.*, that the invalid law has attempted to confer administrative power on a member of the Legislature. He argues with great force that even though the Legislature can itemize any appropriation, nevertheless, "if it makes lump sum appropriations,

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<sup>1</sup> 124 Misc. 273, *aff'd* 213 App. Div. 865, 241 N. Y. 525 (1925). The instances in which members of the Legislature were permitted to hold administrative offices are dismissed by the Court on the ground that such appointments were either temporary or *ex-officio* (*People ex rel. Washington v. Nichols*, 52 N. Y. 478 (1873); and on the ground that acquiescence therein does not amount to a new grant of power (*Los Angeles v. Los Angeles C. W. Co.*, 177 U. S. 558, 579, 20 Sup. Ct. Rep. 736 (1900)).

whatever conditions it may attach to its expenditure, it cannot make one of those conditions the approval by one of its own members; that is, to confer upon him the duties of an administrative office."

The development of the Executive Budget is part of a long and dignified history of the evolution of modern government. The decision strengthens the foundation upon which Budget reform is based and prevents the attempt by the Legislature to decentralize the responsibility for public expenditures. To have held otherwise, would have been an irremediable injury to the efficiency of our administrative department of government.

R. L.

CONSTITUTIONAL LAW—MUNICIPAL CORPORATIONS—POWER OF LEGISLATURE TO ENACT MULTIPLE DWELLING LAW.—Plaintiff, owner of a multiple dwelling, challenges the constitutionality of the Multiple Dwelling Law on the ground that it violates the Home Rule provisions of the New York State Constitution insofar as it required him to light the halls of his multiple dwelling. He contends that the provisions of said statute relate to the property, affairs of government of the city of New York and, therefore, should have been passed as the result of an emergency message of the Governor with the concurrent assent of two-thirds of the members of each house of the Legislature and not by a majority vote. The Special Term declared the law unconstitutional. On appeal to the Court of Appeals, *held*, reversed and complaint dismissed. *Adler v. Deegan*, 251 N. Y. 467, 167 N. E. 705 (1929).

The Tenement House Law<sup>1</sup> was enacted to remedy the evils existing in housing conditions, containing provisions in respect to light, air, fire protection and sanitation. Its validity has been upheld by the Court of Appeals<sup>2</sup> and by the United States Supreme Court,<sup>3</sup> not as a local city law but as a public health measure under the police power. The Multiple Dwelling Law<sup>4</sup> is virtually a revision of the Tenement House Law and was adopted, after a complete survey of the housing field, to meet modern conditions. The determining factor on this appeal was the interpretation of the words "property, affairs or government of cities" as used in Section 2, Article XII of the Constitu-

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<sup>1</sup>Laws of 1901, ch. 334, as amended—Consol. Laws, ch. 61.

<sup>2</sup>Tenement House Department v. Moeschel, 179 N. Y. 325, 72 N. E. 231 (1904).

<sup>3</sup>*Ibid.* 203 U. S. 583 (1906).

<sup>4</sup>Laws of 1929, ch. 713—Consol. Laws, ch. 61-a.