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Banks and Banking--Joint Accounts--Commercial Deposits (Matter of Wilkins, 131 Misc. 188 (Surr. Ct. 1928))

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RECENT DECISIONS

BANKS AND BANKING—JOINT ACCOUNTS—COMMERCIAL DEPOSITS.—In January, 1902, the testator opened a checking account in his own name in a commercial bank. In November following, he caused his wife's name to be added to the pass-book, "so she could have access to the funds in the account; that she had as much right to draw as he did." In the period that intervened before his death in 1906, the testator purchased various bonds and mortgages, taking them in the names of husband and wife. By will he directed that upon his wife's death or remarriage the residue of his estate should pass to designated persons. The wife, an executrix of the will, remarried in 1909. In 1927, proceedings for a compulsory accounting were instituted. *Held,* that the wife must account for the commercial bank deposit; as to the bonds and mortgages, title having passed to her by survivorship, she need not account. Matter of Wilkins, 131 Misc. 188 (Surr. Ct. 1928).

Surrogate Slater, in an exhaustive and interesting opinion, considered at great length the fundamental differences between savings and commercial banks—their purposes, their modes of conducting business, the relative unimportance of passbooks in commercial banking, the means of transferring ownership of deposits. While it is to be remembered that the decision of the precise point in issue was based upon the law as it existed at the time of the testator's death, the surrogate's learned discussion has, despite statutory changes,[1] great intrinsic value.

The widow contended that the bank deposit, having been jointly owned, became hers by survivorship. Since there had been no assignment, oral or written, of the account it became necessary to look for the intent of the testator.[2] From the evidence it appeared that the testator owned all the funds. There was found no indication that the testator intended to pass title to the funds to his wife, that he had made a present gift of them, or that he had declared a trust for her benefit. It was concluded that apparently the wife's name had been added to the passbook for convenience merely. Her interest, then, was solely that of an agent, and by the death of the husband the agency to draw money from the account had been terminated.[3] In fine, the right of survivorship ordinarily incident to savings bank deposits in this form, did not attach to the commercial account here concerned.

Upon the question of the ownership of the bonds and mortgages, there was not much need for discussion. It seems well settled that where husband and wife each advance money on a bond and mortgage, they become tenants in common without right of survivorship.[4] Here, however, the funds were entirely the husband's. The addition of the

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[1] Matter of Marshall, 217 App. Div. 229, 216 N. Y. Supp. 673 (1926).

[2] Matter of Totten, 179 N. Y. 112, 71 N. E. 748 (1904); Beaver *v.* Beaver, 117 N. Y. 421, 22 N. E. 940 (1889).

[3] Matter of Bolin, 136 N. Y. 177, 179, 32 N. E. 626 (1892).

[4] Matter of Albrecht, 136 N. Y. 91, 32 N. E. 632 (1892).

wife's name was presumably for her benefit [5] and survivorship attaches.

In 1914, the Banking Law was amended so as to provide that a deposit made by a person in the name of himself and another and in form payable to either or the survivor, and all accretions thereto, shall become the joint property of both parties, payable to either during the lifetime of both, or to the survivor of them.[6] This statutory provision, however, does not derogate from the value of Surrogate Slater's able review and discussion of bank deposit cases.

BILLS AND NOTES—LIABILITY OF UNAUTHORIZED AGENT UNDER NEGOTIABLE INSTRUMENTS LAW.—Plaintiff sued on a promissory note signed "J. & G. Lippmann, L. J. Lippmann, Pres.," alleging in its complaint that the corporate defendant denied the authority of the individual defendant to execute the note as its president, and demanding judgment against the corporate defendant, or in the alternative, against the individual defendant, in the manner authorized by the Practice Act.[1] The individual defendant attacked the complaint upon the ground that, granting he signed the note on behalf of the corporation without authority, he could not be held liable upon the note but only for breach of warranty of authority, and that, therefore, the complaint, predicated upon the note itself, stated no cause of action against him. *Held,* individual defendant liable upon the note, one justice dissenting (apparently on the ground that Negotiable Instruments Law §39[2] admits of no negative implication). New Georgia National Bank *v.* J. & G. Lippmann, a New York Corporation, impleaded with L. J. Lippmann, Individually, 222 App. Div. 383 (1st Dept. 1928).

The rule enunciated in the prevailing opinion that an agent who, without authority, executes a negotiable instrument in the name of his principal is himself liable on the instrument finds general approbation among courts and text writers.[3] This rule, however, was not followed

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[5] Matter of Blumenthal, 236 N. Y. 448, 141 N. E. 911 (1923).

[6] N. Y. Banking L., 1914, Sec. 198.

[1] N. Y. Civ. Prac. Act. §213.

[2] "Liability of person signing as agent. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument, if he was duly authorized." (Uniform N. I. L. §20).

[3] 2Williston, Contracts § 1144. "The words 'if he was duly authorized' seem to carry the implication that if unauthorized the agent is not merely liable for breach of a non-negotiable warranty, but liable on the instrument itself." Brannan's Neg. Inst. Law (4th Ed.) p. 163. Professor Ames, "Under this section, an agent signing without authority of the principal is, by implication, liable on the instrument."

Judge Brewster, one of the commissioners who drafted the N. I. L. writes: "There is no injustice. The agent should know whether he has authority. He should be liable as the maker of the note. Such is the rule of the German Code."

Accord, Professor McKeehan and Professor Chafee, the editor of the fourth edition of Brannan's Neg. Inst. Law.