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Article 14

Property - Signature Card Signed by Both Parties Necessary to Create Joint Tenancy in Bank Account

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employer to the sympathetic public; its purpose is analogous to the union label affixed to union produced goods. Therefore, it is well to note, that similar to the ruling in the *Di Leo* case, the union label can not be withheld from an employer to accomplish an unlawful labor objective, even though it be conceded that the union has a property right in the label.[13] Moreover, the withdrawal of the shop card is an indication of the union's disapproval of an employer, similar to the disapproval achieved by picketing. Peaceful picketing, analogous to the union label and shop card situation, has also been conditioned upon a lawful labor objective.[14]

The Supreme Judicial Court of Massachusetts in the present case seems to have handled the conduct of the Barbers' Union more satisfactorily than any previous decision. The case seems to indicate a future disposal of such cases on truly equitable grounds. Although acknowledging the union's contract and property rights in the card, the court still insisted on restricting this union's withdrawal of its shop cards to instances in which the objective to be accomplished by such withdrawal would be lawful. The reasoning of the court is fully applicable to the analogous rules governing union labels and picketing. The courts have come to a realization of the great strength and influence of labor unions, and have insisted as in the present case that labor shall not bring about the ruination of employers who refuse to submit to arbitrary rules having little bearing on the functions of organized labor.

PROPERTY–SIGNATURE CARD SIGNED BY BOTH PARTIES NECESSARY TO CREATE JOINT TENANCY IN BANK ACCOUNT

Plaintiff brought an action against the executors of her husband's will to recover money deposited in a bank on the ground that it was a joint account and that she had survivorship rights. The evidence showed that the now deceased husband opened the account in his name alone. No changes were made in the form of the account until shortly before his death, at which time he directed the assistant cashier to write the name of the plaintiff after his name. At the deceased's direction, the cashier wrote above both names: "Payable to either of them or survivor with full survivorship rights." No signature card or other agreement was signed at that time or subsequently by either the deceased or the plaintiff. The Illinois Supreme Court held that the plaintiff was not entitled to the deposit by right of survivorship due to her failure to comply with the Illinois Joint Rights and Obligations Statute,[1] which requires both

[13] Connors v. Connolly, 86 Conn. 641, 86 Atl. 600 (1913). Contra: Saulsberry v. Coopers' International Union, 147 Ky. 170, 143 S.W. 1018 (1912).

[14] Teamsters' Union v. Hanke, 339 U.S. 470 (1950); Dorchy v. Kansas, 272 U.S. 306 (1926); Outdoor Sports Corp. v. A.F. of L., 6 N.J.L. 217, 78 A. 2d 69 (1951); Brennan v. United Hatters, 73 N.J.L. 729, 65 Atl. 165 (1906).

[1] Ill. Rev. Stat. (1951) c. 76, § 2.

parties to sign the agreement permitting payment to the survivor. *Doubler v. Doubler*, 412 Ill. 597, 107 N.E. 2d 789 (1952).

Although the Illinois Courts have been called upon to construe the Statute in former opinions,[2] the precise question as to whether a written agreement between the parties of a joint bank account, authorizing payment to the survivor, is necessary to create the right of survivorship, has never before been decided.

The lower court in the present case allowed survivorship rights for the wife on the ground that a written agreement signed by both parties is not necessary. The court stated that joint ownership and survivorship rights became vested in the plaintiff when the deposit was changed into a joint one. Therefore, the court reasoned that an agreement[3] authorizing payment to the survivor was not necessary.[4]

However, the Illinois Supreme Court reversal was based squarely upon a construction and application of Section 2 of the Illinois Joint Rights and Obligation Act.[5] The court held that the policy of the legislature, as expressed in Section 2, does not favor the right of survivorship in personal property between joint owners and that the section unequivocally abolishes such rights except as to executors, trustees, or where an instrument in writing expresses an *intention* to create survivorship rights. The writing on the passbook, the court determined, was not an "instrument in writing" because it did not comply with the requirements as set forth in the landmark case of *In Re Wilson*.[6]

In this case the Illinois Supreme Court held that in order to constitute

[2] In Re Estate of Wilson, 404 Ill. 207, 88 N.E. 2d 662 (1949); Illinois Trust and Saving Bank v. Van Vlack, 310 Ill. 185, 141 N.E. 546 (1923). Each of these cases involved a bank deposit in the name of the decedent and another, and, in each of these cases, an agreement had been signed authorizing payment of the account to the survivor.

[3] In banking practice this is the contract of deposit on the signature cards.

[4] Doubler v. Doubler, 343 Ill. App. 643, 100 N.E. 2d 761 (1950). This same construction was given to the 1917 Act.

[5] Ill. Rev. Stat. (1951) c. 76, § 2. "Except as to executors and trustees, and except also where by will or other instrument in writing expressing an intention to create a joint tenancy in personal property with the right of survivorship, the right or incident of survivorship as between joint tenants or owners of personal property is hereby abolished, and all such joint tenancies or ownerships shall, to all intents and purposes, be deemed tenancies in common; provided, that. . . . When a deposit in any bank or trust company transacting business in this State has been made or shall hereafter be made in the names of two or more persons payable to them when the account is opened or thereafter, such deposit or any part thereof or any interest or dividend thereon may be paid to any one of said persons whether the other or others be living or not, and when an agreement permitting such payment is signed by all said persons at the time the account is opened or thereafter the receipt or acquitance of the person so paid shall be valid and sufficient discharge from all parties to the bank for any payments so made. . . ."

[6] 404 Ill. 207, 88 N.E. 2d 662 (1949).

an "instrument in writing" within the meaning of Section 2 of the Act: 1. the instrument must be in writing expressing an intention to create joint tenancy in personal property with the right of survivorship and 2. the writing should have the general requirements of a will or grant and must contain a description of the "property, parties, and certainty of objects" intended to pass to the survivor.

Therefore, the court, in the instant case, concluded that since the plaintiff did not have an "instrument in writing," she had the burden of showing that she came within the last proviso of the statute referring to bank accounts. The court concluded that because of the failure to comply with the statutory requirement that the agreement permitting payment to survivor be signed by the parties, the plaintiff was not entitled to the deposit by right of survivorship.

At one time, when one of the parties to a joint bank account died, the question whether the survivor took the entire estate to the exclusion of his cotenant's heir or devisee was decided on the theory of the real property doctrine of joint tenancy.[7] Under this doctrine, the title of the joint tenants, required the four unities: unity of interest, title, time, and possession. However, modernly, in the great majority of jurisdictions, the law of joint tenancy applicable to real property and its rules relating to the unities are not the criteria in deciding if the survivor recovers;[8] the usual theories being either gift, trust, or contract.[9]

In those cases in which the gift theory is applied, the requirements generally necessary to sustain a gift must be fulfilled—namely, intention, delivery, and acceptance. Thus, if a donor decedent had made a deposit in his name and the name of a donee-survivor and if the elements of a gift were present, the survivor takes an interest.[10]

Other courts use the trust doctrine, in which either the bank or the depositing party is made trustee for the benefit of the other party named in the account. However, there must be some evidence of an intent to create a trust, and a mere provision for payment to either party of a joint deposit is not sufficient.[11]

[7] 32 Ill. L. Rev. 57 (1937).

[8] Ibid., at 62. Jepson v. Killian, 151 Mass. 593, 24 N.E. 856 (1890). The Illinois Supreme Court, however, in the case of In Re Wilson, 404 Ill. 207, 88 N.E. 2d 662 (1949), discussed joint interests of personal property in a safety deposit box in terms of common law unities. See also In Re Estate of Jirouec, 285 Ill. App. 499, 2 N.E. 2d 354 (1936).

[9] Lindner and Boyden Bank v. Wardrop, 291 Ill. App. 454, 10 N.E. 2d 144 (1937); First National Bank v. Mulich, 83 Colo. 518, 266 Pac. 1110 (1928). See 1 De Paul L. Rev. 135 (1951).

[10] Reder v. Reder, 312 Ill. 209, 143 N.E. 418 (1924); Millard v. Millard, 221 Ill. 86, 77 N.E. 595 (1906).

[11] Bolton v. Bolton, 306 Ill. 473, 138 N.E. 158 (1923); Bell v. Moloney, 175 Cal. 366, 165 Pac. 917 (1917). Some Jurisdictions depend on the use of the deposit form "in trust for" in order to find a trust. See McDevit v. Sponseller, 160 Md. 497, 154 Atl. 140 (1931).

Still other courts follow a contract theory which allows a survivor to take under 1. a contract between the depositor and the bank for the benefit of the party jointly named;[12] 2. a novation whereby the account originally in the depositor's name was changed to a joint account, the bank becoming a debtor of the decedent and the survivor who were joint creditors;[13] 3. a contract between the depositors themselves supported by consideration.[14] The English courts, not recognizing third party beneficiary contracts, rely on an agency theory. Thus, the English courts have held that the depositor in opening the account acts as agent for the beneficiary and, when the beneficiary learns of the account, he may notify the bank.[15]

At present, most cases of joint bank accounts are governed by specific statutes so that the decisions must be examined in the light of these statutes. In Illinois, as in other jurisdictions, the cases have not only employed different theories, but the applicable statute has been altered from time to time.[16] Under the 1821 statute, the Illinois Supreme Court seemed to be committed to the contract theory,[17] but the Appellate Court had indicated the gift theory as an alternative ground.[18] Under the present statute, the Illinois courts have for the most part disposed of the cases on a contract basis.[19]

In the instant case, the court decided the question on a contract theory, and further required that a written agreement permitting payment to the survivor must be signed by *both* parties, the deceased and the widow. This holding apparently overrules a prior case which held that the signature of the depositor alone is sufficient to effect a written agreement with the bank.[20]

[12] Authorities cited note 9 supra.

[13] Cleveland Trust Co. v. Scobie, 114 Ohio St. 241, 151 N.E. 373 (1926); Chippendale v. North Adams Savings Bank, 222 Mass. 499, 111 N.E. 371 (1916); Deal's Administrator v. Merchants' and Mechanics' Savings Bank, 120 Va. 297, 91 S.E. 135 (1917).

[14] Attorney General v. Clark, 222 Mass. 291, 110 N.E. 299 (1915) (contribution by each party of one-half the account good consideration for right of survivorship to whole account); Mardis v. Steen, 293 Pa. 13, 141 Atl. 629 (1928) (seal "imports" consideration).

[15] Willis, Nature of a Joint Account, 14 Can. Bar Rev. 457 (1936) criticized this theory.

[16] 32 Ill. L. Rev. 57 (1937).

[17] Ibid.

[18] Reder v. Reder, 228 Ill. App. 21 (1923); Felter v. Erwin, 206 Ill. App. 518 (1917).

[19] Contract within Statute—Illinois Trust and Savings Bank v. Van Vlack, 310 Ill. 185, 141 N.E. 546 (1923); Reder v. Reder, 228 Ill. App. 21 (1923). Contract not within statute—Hamilton v. First State Bank of Willow Hill, 254 Ill. App. 55 (1929). Engelbrecht v. Engelbrecht, 323 Ill. 208, 153 N.E. 827 (1926) (did not involve a contract directing bank to pay depositor). In Re Estate of McIlrath, 276 Ill. App. 408 (1934) (involved a mistake in entering the contract).

[20] Erwin v. Felter, 283 Ill. 36, 119 N.E. 926 (1918).

While there is valid ground to question the strict construction of the Joint Rights and Obligations Act by the Illinois Supreme Court in the instant case and the resulting defeat of the decedent's intention, the decision nevertheless indicates once more the basic inadequacy of the statute–namely, it recognizes that a joint tenancy can be created but it furnishes no simple procedure for creating such interest.

STATUTE OF FRAUDS–NECESSITY OF WRITTEN AUTHORITY FOR AGENT TO SIGN LAND CONTRACTS

Defendant, in writing, appointed an investment broker to act as his agent for the sale of a ranch. The broker secured a customer and with the defendant vendor's approval signed a written contract selling the property to plaintiff. Upon refusal to convey the land, plaintiff brought an action for specific performance, and as a defense, the vendor replied that the Wyoming Statute of Frauds[1] required that "every agreement or contract for the sale of real estate" be "void unless . . . subscribed by the party to be charged therewith." The Supreme Court of Wyoming, in affirming a dismissal of the action on demurrer, held that where a contract is within the Statute of Frauds, an appointment of an agent to sign for one party must be in writing. *Wallis v. Bosler*, 246 P. 2d 771 (Wyo., 1952).

One discrepancy in the case immediately is evident. The "Real Estate Brokers Agency Contract" whereby the vendor appointed his agent appears to have been "s/ Frank C. Bosler, Owner." Other than reprinting the document and referring to it in quotation marks as a "written appointment," the court nowhere considered its effect. If it were in fact signed by the owner, it must be concluded that the document was overlooked in applying the facts to the holding. But as the court ignored the "appointment" it will not be treated in this note.

The Statute of Frauds[2] originally passed by Parliament in 1677[3] provided in Section 4 that:

> . . . no action shall be brought to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, (or upon any contract for sale of lands, tenements, or hereditaments or any interest in or concerning them,) or upon

[1] Wyo. Comp. Stat. (1945) c. 5, § 5-101.

[2] 29 Charles II (1677) c. 3, § 4.

[3] Costigan, Date and Authorship of Statute of Frauds, 26 Harv. L. Rev. 329 (1913); Hening, Original Drafts of the Statute of Frauds and Their Authors, 61 U. of Pa. L. Rev. 282 (1913).