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Joint Tenancy - Common Law Requirements of Four Unities Held Not Necessary To Create Joint Tenancy in Stock Certificates - Petri v. Rhein, 257 F.2d 268 (C.A. 7th, 1958)

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The reasoning employed by some of the courts in this area of the law is unrealistic and psychologically unsound. Where the state has in some extrinsic manner intensified or exaggerated the grisly aspects of an occurrence and attempts to introduce photographs of such conditions to the prejudice of the defendant, the growing trend is to repulse these efforts. It would appear to be the more enlightened view.

JOINT TENANCY–COMMON LAW REQUIREMENT OF FOUR UNITIES HELD NOT NECESSARY TO CREATE JOINT TENANCY IN STOCK CERTIFICATES

The decedent owned shares of stock in several corporations. In 1948 and 1950, he transferred the shares into his and defendant's name as "joint tenants with the right of survivorship and not as tenants in common." The transfer was accomplished by direct assignment executed in writing on the back of the stock certificate and signed by the decedent. Plaintiff, the decedent's widow, sought a declaratory judgment to fix ownership of these shares in her. Plaintiff contended that her husband had failed to create a joint tenancy because the common law requisites of unity of time and unity of title were not present in the transfer. The court of appeals, per Justice Finnegan, affirmed the decision of the district court holding for the defendant; and ruled that the transfer did create a valid joint tenancy, apparently basing its decision on the construction of an Illinois statute[1] and the interpretation of a prior Illinois Supreme Court decision.[2] *Petri v. Rhein*, 257 F. 2d 268 (C.A. 7th, 1958).

The issue thus raised by the instant case is whether a joint tenancy in personal property may be created without first conveying to a *strawman*[3] and then reconveying to the joint tenants.

At common law and in Illinois, a joint tenancy in personal property was recognized[4] when the unities of time and title were both present.[5] A joint tenancy by operation of law could never be created.[6] The unities were necessary so that both parties could gain equal interests at the same time. If one merely transferred part of the interest to another, it was con-

[1] Ill. Rev. Stat. (1957) c. 76.

[2] Hood v. Commonwealth Trust & Savings Bank, 376 Ill. 413, 34 N.E.2d 414 (1941).

[3] A strawman in the language of real estate brokers is a mere conduit or medium for the convenience in holding and passing title. Van Raalte v. Epstein, 202 Mo. 173, 99 S.W. 1077 (1906).

[4] Re Estate of Jirovec, 285 Ill. App. 499, 2 N.E. 354 (1936); Staples v. Berry, 110 Me. 32, 85 A. 303 (1912); Deslauriers v. Senesac, 331 Ill. 427, 163 N.E. 327 (1928); Case v. Owen, 139 Ind. 22, 38 N.E. 395 (1894); Neal v. Neal, 194 Ark. 226, 106 S.W.2d 595 (1937).

[5] Ibid. [6] Deslauriers v. Senesac, 311 Ill. 437, 163 N.E. 327 (1928).

strued that the transferor still had his original interest. If, however, the transferor conveyed his property to a *strawman* and the *strawman* then reconveyed to the original transferor and his chosen joint tenant, the interests of both parties would be acquired at the same time.

Various states have obviated the necessity for the unities by abolishing the need for *strawmen* through legislation[7] or judicial decisions.[8] In Illinois, the problem has been in a constant state of confusion for the past century; the basic issue being whether the unities need be present in order to effectuate a transfer of personal property into a joint tenancy. Prior to the 1941 case of *Hood v. Commonwealth Trust and Savings Bank*,[9] most Illinois decisions required the presence of all four of the unities. The court, in the *Hood* case, dispensed with the need of the unities by saying:

> [W]hen one of the stockholders transferred his shares to the bank for reconveyance and a new certificate was issued to the stockholder and wife as joint tenants and not as tenants in common . . . the transfer started a new period of stock ownership.[10]

In 1949, *In re Wilson Estate*,[11] in dicta, indicated that the unities had to be present in order to create a joint tenancy in personal property. Thus, the problem became more in flux than ever. The *Wilson* case held that the words of creation had to be explicit, "as joint tenants and not as tenants in common." It has been held, however, that as long as the intention can be realized, exact words are not necessary for the creation of such an estate.[12]

It soon became obvious that the necessity of making two conveyances through the use of the *strawman* in order to create a joint tenancy only led to unnecessary record keeping, dual costs and great inconvenience to all concerned. This burden plus the uncertainty of the law on the point, led the Illinois legislature to pass a statute effective July 1, 1953, which sanctioned the creation of a joint tenancy without the use of the *strawman*.[13]

Section 2.1 of the Joint Rights and Obligations Act[14] seems at first reading to be the basis of the decision in the instant case, but the application of simple arithmetic indicates that this is not so. The conveyances in question were made three and five years before the effective date of Section 2.1. Therefore, the statute did not affect these transactions since

[7] Mass. Laws Ann. (1950) c. 184, § 8; Missouri Rev. Laws (1952) c. 442, § 24; Tenn. Stat. (1949) c. 255; Utah Code Ann. (1953) § 57-1-5.

[8] Edge v. Brown, 316 Mass. 104, 55 N.E.2d 5 (1944); Boehninger v. Schmid, 254 N.Y. 355, 173 N.E. 220 (1930); Therrien v. Therrien, 94 N. H. 66, 46 A.2d 538 (1946).

[9] 376 Ill. 413, 34 N.E.2d 414 (1941).

[10] Ibid., at 424, 420.

[11] 404 Ill. 207, 88 N.E.2d 662 (1949).

[12] Lindner Boyden Bank v. Wardop, 291 Ill. App. 454, 10 N.E.2d 144 (1937).

[13] Ill. Rev. Stat. (1957) c. 76, § 2.1.

[14] Ibid.

the statute was not retroactive to past conveyances and had no life until 1953. The *Petri* case was decided on the strength of Judge Murphy's words in the *Hood* case, indicating that the surrender of a stock certificate to the corporation and the issuance of a new certificate to the parties as joint tenants was sufficient to satisfy the need for the four unities:

> To create an estate in joint tenancy it is necessary that there be unity of interest, unity of title, unity of time and unity of possession. . . . We assume . . . that the transfer of the stock was effected under circumstances to meet the requirements of section 2 of the Joint Rights and Obligations Act to create a joint estate in personal property, but when Otto E. Lucius surrendered the first certificate and caused the second to issue to him and his wife as joint tenants, he thereby terminated all title in the stock evidenced by the first certificate and thereafter held as a joint tenant with his wife. To create the joint estate it was essential that his interest as a joint tenant be created at the same time as that of his co-tenant, for if it be otherwise there would be no joint tenancy. By the creation of the joint estate the contractual relationship of Otto Lucius to the bank and its depositors was changed from that of an individual to that of a joint tenant. From the date he acquired his stock, . . . to the date of the surrender of the certificate, . . . constituted one period of ownership and from the date of the establishment of the joint tenancy . . . to the date the bank was closed constituted another period of ownership. . . .[15]

Thus, the effect of the *Petri* case is to dispense with the illogical and cumbersome requirement of using a *strawman* in creation of joint tenancies in stock certificates.

[15] Hood v. Commonwealth Trust & Savings Bank, 376 Ill. 413, 423, 424, 34 N.E.2d 414, 420, 421 (1941).

MUNICIPAL CORPORATIONS–FAILURE OF CITY POLICE TO PROTECT INFORMER HELD ACTIONABLE NEGLIGENCE

Arnold Shuster, plaintiff's intestate, after studying an F.B.I. flyer, supplied information to the New York City police which led to the arrest of Willie Sutton, a notorious and dangerous fugitive. Three weeks later, the decedent, on a public highway near his home, was shot and killed by a person or persons unknown. Shuster's part in the arrest had been widely publicized and as a result, he had received letters and telephone calls threatening his life, of which he notified the police. Limited protection was at first given Shuster, only to be terminated shortly thereafter because the police felt that the threats were the work of cranks. The administrator of Shuster's estate sought damages from the city for the alleged negligence of the police in failing to provide Shuster adequate protection in view of his known status as an informer upon a criminal who, as a matter of common knowledge, was of a dangerous nature and who was known to have