

Creation and Existence of Joint Tenancies in Personal Property - A Study of Formalities and Intent

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terpretation of "mutual economic benefit." A boy was in a roundhouse for the purpose of soliciting advertisements for a local paper from the superintendent (who had no authority to order such ads). His presence was not requested, there was no history of past dealings, and he was injured before accomplishing his purpose. The court held that he was an invitee saying, "[He] was engaged upon the course of a legitimate business venture which unquestionably promised benefit to himself and which held out at least potential benefit to defendant company."³¹

One of the underlying reasons for the apparent extension of liability in "invitee cases" well may be that the storekeeper actually did or did not do something which caused the damage and that it is only a matter of chance that the one injured (who was rightfully upon the premises) happened to be a non-customer. The storekeeper also seems to be in a better position to protect himself against the disastrous results of such injuries.

Although in close cases the courts talk about economic benefit and business dealings, the recent decisions would seem to be more properly based on what is often given as a secondary basis for liability; that is, an implied public invitation to enter for certain purposes, not necessarily tied up directly with profit to the storekeeper.³² This is the theory advocated by Professor Prosser,³³ which we have seen used as a supplementary basis for liability in the *Renfro* case,³⁴ and used by an increasing number of courts in the same way.³⁵ Although the practical results in terms of liability are usually the same under either theory it would seem that the theory of implied invitation is a more realistic approach to the problem.

CREATION AND EXISTENCE OF JOINT TENANCIES IN PERSONAL PROPERTY—A STUDY OF FORMALITIES AND INTENT

The creation of joint interests in personal property has become a needlessly complicated procedure. Although the intention of the parties may clearly be to create joint interests with the right of survivorship, too frequently the desired result is not attained because of an unwitting failure to comply with historical legal formalities. It is further complicated by the tendency of the courts to apply real property principles rather automatically to personal property problems.

Originally the courts favored the centralization of titles and encouraged

³¹ *Ibid.*, at 276.

³² *Renfro Drug Co. v. Lewis*, 235 S.W. 2d 609, 617 (Tex., 1950); *Campbell v. Weathers*, 153 Kan. 316, 111 P. 2d 72, 76 (1941).

³³ Prosser, *Business Visitors and Invitees*, 26 Minn. L. Rev. 602 (1942).

³⁴ *Renfro Drug Co. v. Lewis*, 235 S.W. 2d 609, 617 (Tex., 1950).

³⁵ Cases cited note 32, *supra*.

joint tenancies, but later this type of interest fell from favor.¹ These relationships were possible only if the strict requirements of the four unities—time, title, interest and possession—were met.² Similarly, although a joint tenancy in personalty was recognized at common law in Illinois,³ the creation of one by the deposit of an individual's own funds was impossible because of a lack of the unities.⁴ It has been said that a joint tenancy must be created by the explicit term "as joint tenants and not as tenants in common,"⁵ but there is a question as to whether the right of survivorship must be so expressed or if words of similar import are sufficient.⁶ Whatever view is accepted, it is clear that joint tenancies are frowned upon by the courts which seem desirous of protecting heirship rights.⁷

In Illinois, the Joint Rights and Obligations Act⁸ was an attempt to clarify the status of joint tenancies but did little to eliminate the confusion. Judicial interpretation established that the act was applicable to personal property⁹ and that it was not a remedial statute, i.e., it did not provide a simplified method for creating joint tenancies, but it simply confirmed the rigid common law requirements.¹⁰

The joint tenancy being considered an unusual type of property interest, it has been held in Illinois that a person claiming title as a surviving joint tenant has the burden of proving that he is within the exceptions established by the act.¹¹ Some states hold, especially in bank deposit and deposit box cases, that if the instrument creating the relationship uses the customary language of joint tenancy there is a presumption that such an interest was created.¹² This presumption is conclusive in the absence of fraud¹³ or cir-

¹ 2 Tiffany, Real Property § 421 (3d ed., 1939).

² *Ibid.*, at § 418.

³ *In re Estate of Halaska*, 307 Ill. App. 183, 30 N.E. 2d 117 (1940).

⁴ 2 Tiffany, Real Property § 418 (3d ed., 1939).

⁵ *Wilson v. Wilson*, 404 Ill. 207, 88 N.E. 2d 662 (1949); See *Wallace v. Riley*, 23 Cal. App. 2d 669, 74 P. 2d 800 (1937).

⁶ *Lindner & Boyden Bank v. Wardop*, 291 Ill. App. 454, 10 N.E. 2d 144 (1937); *In re Estate of Jirovec*, 285 Ill. App. 499, 2 N.E. 2d 354 (1936).

⁷ *Edward B. Marks Music Corp. v. Wonnell*, 61 F. Supp. 722 (S.D. N.Y., 1945).

⁸ Ill. Rev. Stat. (1949) c. 76, § 2. "Except as to executors and trustees, and except also whereby will or other instrument in writing expressing an intention to create a joint tenancy in personal property with 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 . . . has been made or shall hereafter be made in the names of two or more persons payable to them . . . such deposit . . . paid to any one of said persons . . . shall be valid and sufficient discharge from all parties to the bank for payments so made."

⁹ *David v. Ridgely-Farmers Safe Deposit Co.*, 342 Ill. App. 96, 95 N.E. 2d 725 (1950).

¹⁰ *Wilson v. Wilson*, 404 Ill. 207, 88 N.E. 2d 662 (1949).

¹¹ Case cited note 9 *supra*.

¹² *In re Juedel's Will*, 280 N.Y. 37, 19 N.E. 2d 671 (1939).

¹³ *In re Conover's Estate*, 163 N.Y. Misc. 699, 297 N.Y. Supp. 577 (Surr. Ct., 1937).

cumstances tending to vitiate the survivor's claim.¹⁴ In other states, statutes favor or presume the creation of a tenancy in common,¹⁵ but these are mere rules of construction and do not abolish joint tenancies¹⁶ or the possibility of providing survivorship rights.¹⁷ They merely necessitate their creation by explicit terms. The statutes normally are applied to both personalty and realty¹⁸ but in at least one jurisdiction such a statute has been held applicable only to realty.¹⁹ It has also been held that survivorship rights are not contrary to public policy.²⁰

Some courts, while denying the presumption of joint tenancies, have upheld rights of survivorship when such rights are based on a valid contract.²¹ It seems the courts consider a contract involving personalty with rights incidentally similar to real property joint tenancy as technically different from an express joint tenancy relation, favoring form rather than substance.

Where the right of joint tenancy in personal property is recognized by common law or by statute, such relationship can be created in both corporeal²² and incorporeal²³ interests. Joint tenancies can exist in any personal property which can be subjected to individual dominion.²⁴

Even though the validity of joint interests in personalty is recognized, the problem of how and in what circumstances they are created remains. Although the courts recognize the peculiarities of joint tenancies in bank accounts and safety deposit boxes, and treat these somewhat differently than joint tenancies in ordinary chattels and other choses in action, there are general principles applicable irrespective of the subject matter. The bank cases, as might be expected, comprise the bulk of litigation on these problems.

Joint tenancies can be created by contract, transfer, conveyance, or other similar means;²⁵ they can never be created by laws of descent or operation

¹⁴ *Long v. Dempsey*, 52 N.Y.S. 2d 93 (S. Ct., Monroe County, Dec. 28, 1944).

¹⁵ For these jurisdictions, see 48 C.J.S. Co-Tenancy § 2 (1939).

¹⁶ *Greenwood v. Comm. of Internal Revenue*, 134 F. 2d 915 (C.A. 9th, 1943).

¹⁷ *Edwards v. Comm. of Internal Revenue*, 102 F. 2d 757 (C.A. 10th, 1939).

¹⁸ Case cited note 16 supra.

¹⁹ *Gallagher v. R.I. Hospital Trust Co.*, 22 R.I. 141, 46 Atl. 451 (1900).

²⁰ *Manning v. U.S. Nat. Bank of Portland*, 174 Ore. 118, 148 P. 2d 255 (1944).

²¹ *Beach v. Holland*, 172 Ore. 396, 142 P. 2d 990 (1943).

²² *Johnston v. Johnston*, 173 Mo. 91, 73 S.W. 202 (1903).

²³ Insurance policies, *ibid.*; building and loan deposits, *Oleff v. Hodapp*, 129 Ohio St. 432, 195 N.E. 838 (1935); corporate securities, *In re McKelway's Estate*, 221 N.Y. 15, 116 N.E. 348 (1917).

²⁴ *Lindner & Boyden Bank v. Wardop*, 291 Ill. App. 454, 10 N.E. 2d 144 (1937); *Att'y Gen. ex rel. Treasurer and Receiver General v. Clark*, 222 Mass. 291, 110 N.E. 299 (1915) 5; *In re McKelway's Estate*, 221 N.Y. 15, 116 N.E. 348 (1917).

²⁵ See *David v. Ridgely-Farmers Safe Deposit Co.*, 342 Ill. App. 96, 95 N.E. 2d 725 (1950).

of law.²⁶ Some jurisdictions permit the relationship by oral contract.²⁷

A controversial point, at least in Illinois, is whether the technical unities of time, title, interest, and possession are required in the formation of a joint tenancy in personalty. *Wilson v. Wilson*²⁸ implies by dicta that the unities are necessary, but prior decisions have impliedly sanctioned their absence by upholding survivorship rights in spite of the obvious absence of the unities.²⁹ There is no Illinois ruling directly on the question but recent dicta indicates that the common law requisites are still in favor in Illinois.³⁰

By analogy to real property law this would seem to require a sole owner, desiring to effect a transfer into joint tenancy with himself and another, to transfer title to a third party who in turn would make a reconveyance to the proposed joint tenants.³¹

The sufficiency of the description of the property raises another problem. The *Wilson* case, involving a safety deposit box, stated that the contents must be described in an unambiguous document which conveys a present interest. If currency be the subject matter, the exact amount must be specified in the instrument of conveyance, and even a contract purporting to convey "any and all" contents of a safety deposit box seems insufficient.³² The accuracy of description required for the creation of a joint tenancy thus is greater than that required to pass property by will.

Another cause of uncertainty in the creation of joint tenancies is the question as to the necessity of an express statement that the parties are to enjoy the "right of survivorship" *in haec verba*. Are words of similar import sufficient or is that magic expression necessary to effectuate the parties intent? In *David v. Ridgely-Farmer's Safe Deposit Co.*,³³ the court indicated in its discussion of the *Wilson* decision that the right of survivorship must be spelled out expressly. This seems rather incongruous inasmuch as the courts are willing to ascertain and follow the intention of the parties, however expressed, in the real property cases.³⁴

²⁶ *Wilson v. Wilson*, 404 Ill. 207, 88 N.E. 2d 662 (1949).

²⁷ *Peterson v. Lake City Bank & Trust Co.*, 181 Minn. 128, 231 N.W. 794 (1930).

²⁸ 404 Ill. 207, 88 N.E. 2d 662 (1949).

²⁹ *In re Koester's Estate*, 286 Ill. App. 113, 3 N.E. 2d 102 (1936).

³⁰ See *David v. Ridgely-Farmers Safe Deposit Co.*, 342 Ill. App. 96, 95 N.E. 2d 725 (1950). But for dicta to contrary see *Strout v. Gurgess*, 69 A. 2d 241, (Me. 1949) in which a certificate of stock re-issued in the name of the owner and another was held a tenancy in common.

³¹ *Deslauriers v. Senesac*, 331 Ill. 437, 163 N.E. 327 (1928). See *Hood v. Comm. Trust & Sav. Bank*, 376 Ill. 413, 34 N.E. 2d 414 (1941).

³² See *David v. Ridgely-Farmers Safe Deposit Co.*, 342 Ill. App. 96, 95 N.E. 2d 725 (1950), in which it was said that the *Koester* case was overruled by implication since the latter case did not meet the requisites of the description as espoused in the *Wilson* decision.

³³ 342 Ill. App. 96, 95 N.E. 2d 725 (1950).

³⁴ *Deslauriers v. Senesac*, 331 Ill. 437, 163 N.E. 327 (1928).

This inconsistency disappears if a distinction is made between joint tenancies in personal property and real property, as one Illinois case did, saying, "... the only common element is survivorship."³⁵

The litigation over joint tenancies involving banks is abundant. These cases involve: (a) deposit accounts; (b) safety deposit boxes. The basic fact situation terminating in litigation occurs when A and B execute what is intended to be a joint tenancy instrument, in conjunction with a deposit in an account or a safety deposit box agreement. On the death of A, a dispute arises between the alleged joint tenant and the executor or administrator of the deceased to determine the status of each.

Bank accounts are held in joint tenancy according to intent,³⁶ and the same applies to safety deposit boxes,³⁷ but in view of the *Wilson* and *David* decisions, the Illinois courts seem oblivious to intention and rely on presumptions, almost conclusive, against joint tenancies.

Lack of knowledge of one party to a joint deposit will not defeat his rights as a survivor in either a bank deposit³⁸ or a safety deposit box.³⁹

Generally speaking, the courts allow recovery on one of three theories: (a) gift, (b) contract, (c) trust.⁴⁰ It may be assumed that recovery by the survivor anywhere can be had on any theory if the circumstances clearly substantiate it. The problem arises in the absence of any clear factual situation. At times, recovery is allowed without indication of the theoretical basis.⁴¹

Under the *gift theory*, a donor-decedent makes a deposit in his name and the name of a donee-survivor. The general rule is that if the elements of a personal property gift are present, i.e., intention, delivery, and acceptance, the donee-survivor takes an interest,⁴² but a mere deposit by A in the name of A and B, even if receipts are payable to either is not in itself a gift.⁴³

The problem in the gift theory is to show delivery to the donee and relinquishment of control by the donor. There must be either a cessation of dominion over the money⁴⁴ or the intent to give, even if the donor kept

³⁵ See dissent in *Ill. Trust & Sav. Bank v. Van Vlack*, 310 Ill. 185, 141 N.E. 546 (1923).

³⁶ *William v. Tuch*, 313 Ill. App. 230, 39 N.E. 2d 695 (1942); *In re Estate of Halaska*, 307 Ill. App. 183, 30 N.E. 2d 117 (1940).

³⁷ *Lindsay v. Dean*, 68 Cal. App. 2d 86, 155 P. 2d 901 (1945).

³⁸ *Cuilini v. Northern Trust Co.*, 335 Ill. App. 86, 80 N.E. 2d 275 (1948).

³⁹ *David v. Ridgely-Farmers Safe Deposit Co.*, 342 Ill. App. 96, 95 N.E. 2d 725 (1950) (semble).

⁴⁰ *Lindner & Boyden Bank v. Wardrop*, 291 Ill. App. 454, 10 N.E. 2d 144 (1937).

⁴¹ See *Quigley v. Quigley*, 85 F. 2d 300 (App. D.C., 1936); *Garrett v. Keister*, 56 F. 2d 909 (App. D.C., 1932).

⁴² *Reder v. Reder*, 312 Ill. 209, 143 N.E. 418 (1924); *Millard v. Millard*, 221 Ill. 86, 77 N.E. 595 (1906).

⁴³ *Engelbrecht v. Engelbrecht*, 323 Ill. 208, 153 N.E. 827 (1926); but see *Pendley v. Pendley*, 163 N.Y. Misc., 571, 298 N.Y. Supp. 311 (S. Ct., Dutchess County, 1937).

⁴⁴ *McDermott v. Bennett*, 279 N.Y. 579, 17 N.E. 2d 448 (1938); *Hurley v. Malloy*, 21 N.Y.S. 2d 974 (S. Ct., N.Y. County, 1940).

control of the income.⁴⁵ The courts are divided as to the time title is to pass; some saying it must pass at deposit,⁴⁶ while others say it can pass at the death of the donor.⁴⁷

Jurisdictions differ as to whether joint tenancy by gift is in fact a testamentary disposition without compliance with the statute of wills.⁴⁸

The leading case of *Matthew v. Moncrief*,⁴⁹ dealing with the existence of a contract and its relation to the gift theory, stated that circumstances of the particular case should control, while other cases take the position that the contract is prima facie evidence of a gift.⁵⁰

It can be generally stated that Illinois rejects recovery on a gift theory in favor of the contract concept, when the latter can be applied reasonably.⁵¹

The *contract theory* is applied by the courts in one of two ways. The first operates as a "gift of an interest therein created by contract."⁵² The second is somewhat more in accord with true contract principles and may be referred to as the Illinois rule, for this jurisdiction relies conspicuously on the agreement of the depositor in determining the rights of the parties.⁵³ As will be seen, the courts no longer concern themselves with the existence of unities. Exemplifying this is the case of *Cuilini v. Northern Trust Company*.⁵⁴ In that case, A was aged and unable to carry on regular banking practices. For convenience of withdrawal, A, and B, a nephew, signed a joint tenancy agreement with the bank. B admitted he was to act as agent and never considered himself to have any interest in the funds. Yet, upon litigation, a judgment was entered for B, as survivor, as against the heirs of A. The courts said that the contract was clear, and in the absence of fraud, parol evidence was inadmissible to determine ownership. The Illinois court has also said it is not necessary for both parties to sign the agreement,⁵⁵

⁴⁵ *Goldston v. Randolph*, 293 Mass. 253, 199 N.E. 896 (1936).

⁴⁶ *McDermott v. Bennett*, 279 N.Y. 579, 17 N.E. 2d 448 (1938).

⁴⁷ *Batal v. Buss*, 293 Mass. 329, 199 N.E. 750 (1936).

⁴⁸ Held such is testamentary disposition. *Phoenix Title & Trust Co. v. King*, 58 Ariz. 477, 121 P. 2d 429 (1942); *Taylor v. Grimes*, 223 Iowa 821, 273 N.W. 898 (1937). But see *Erwin v. Felter*, 283 Ill. 36, 119 N.E. 926 (1918); *Reder v. Reder*, 312 Ill. 209, 143 N.E. 418 (1924).

⁴⁹ 135 F. 2d 645 (C.A. D.C., 1943).

⁵⁰ *Holbrook v. Hendrick's Estate*, 175 Ore. 159, 152 P. 2d 573 (1944). But see Massachusetts which states that the contract controls the relationship but its efficacy rests on the intention to make a gift, *Goldston v. Randolph*, 293 Mass. 253, 199 N.E. 896 (1936), or the contract dispenses with the formal requisites of a gift, *Sullivan v. Hudgins*, 303 Mass. 442, 22 N.E. 2d 43 (1939).

⁵¹ *Landretto v. First Trust & Sav. Bank of Chicago*, 333 Ill. 442, 164 N.E. 836 (1928).

⁵² *Goldston v. Randolph*, 293 Mass. 253, 199 N.E. 896 (1936).

⁵³ *Landretto v. First Trust & Sav. Bank of Chicago*, 333 Ill. 442, 164 N.E. 836 (1928); *Hood v. Commonwealth Trust & Sav. Bank*, 376 Ill. 413, 34 N.E. 2d 414 (1941).

⁵⁴ 335 Ill. App. 86, 80 N.E. 2d 275 (1948).

⁵⁵ *Vaughan v. Millikan Nat. Bank*, 263 Ill. App. 301 (1931).

and that the contract may be with the bank or between the parties.⁵⁶

As in any other contract, one creating a joint tenancy must be based on a consideration.⁵⁷ Illinois relies on the fact that consideration between the bank and the depositor establishes the co-depositor as a third party donee-beneficiary.⁵⁸

The result as to the survivorship in safety deposit box cases based on a contract is altogether different. Here again the courts overlook any agreement the parties made in favor of the stringent requirements of common law joint tenancies. This is best illustrated by the *Wilson* case. In that case, a husband and wife rented two safety deposit boxes and signed a printed card stating, "as joint tenants with right of survivorship, and not as tenants in common." Placed in the box, along with currency and bonds accumulated by the husband, was a memorandum signed by him, stating, "there is \$37,000 in this box and it is a joint tenancy between my wife and myself." The court held that a joint tenancy in the contents of the box was established by neither the lease agreement nor the memorandum, because the former did not purport to convey anything and left the subject matter to conjecture, while the latter neither expressly provided for survivorship nor purported to be a transfer of any interest.

One may wonder at this paradox between the desire to protect the survivor in bank accounts on one hand, and the contrary desire to defeat such rights in safety deposit boxes on the other. Can these attitudes in any way be reconciled?

In a bank deposit, the title to the money is in the bank, and the depositor is merely a creditor.⁵⁹ Consequently, an agreement with the bank to deliver the money to the survivor is binding upon the bank, who, as owner, can transfer the funds on deposit.

In a safety deposit box agreement, the bank is either a bailee or a lessor depending on the jurisdiction. In either case, no title to the contents passes to the bank; consequently, the contract to deliver to the survivor is merely to discharge the bank from liability and cannot operate as a transfer of the property because the bank was never owner.⁶⁰

The courts sometimes apply the *constructive trust theory* in one of two ways, to both bank deposits and safety deposit cases. The first situation

⁵⁶ *Ibid.*

⁵⁷ *Hamilton v. 1st State Bank of Willow Hill*, 254 Ill. App. 55 (1929). Some courts say the deposit is evidence of services tendered for the survivor, *Armstrong v. Morris Plan Industrial Bank*, 282 Ky. 192, 138 S.W. 2d 359 (1940). Others say the act of depositing is an execution of the contract and consideration is dispensed with, *Sage v. Flueck*, 132 Ohio St. 377, 7 N.E. 2d 802 (1937).

⁵⁸ *McIlrath v. McIlrath*, 276 Ill. App. 408 (1934); *Castle v. Wightman*, 303 Mass. 74 20 N.E. 2d 436 (1939).

⁵⁹ *Mutual Accident Ass'n of the Northwest v. Jacobs*, 141 Ill. 261 (1892).

⁶⁰ Case cited note 9 *supra*.

exists when the joint tenant is allowed to take as survivor but is compelled to hold the deposit in trust for the contributor's heirs.⁶¹ In the case cited, an aged invalid signed a joint tenancy agreement with a nephew to facilitate payment of medical expenses. The court said that, as far as the bank was concerned, the joint tenancy was valid but that any title in the nephew was held in trust for the decedent's heirs.

The other application of the trust theory exists when the joint tenancy fails as such; nevertheless, since the intent was to have an interest pass, the courts, as in *Strout v. Burgess*,⁶² make the survivor a tenant in common, with the interest of the decedent held in trust for such survivor.

There must be some evidence of an intent to create a trust;⁶³ a mere provision for payment to either party of a joint deposit is not sufficient.⁶⁴

There are several other collateral circumstances which may affect the ownership claim of an alleged joint tenancy relationship in banks.⁶⁵

The sufficiency of the written instrument creating the alleged joint tenancy is an important problem in Illinois. It has been held that in a rental of a safety deposit box, a card stamped "... either or survivor" could take the contents was not an instrument creating a joint tenancy.⁶⁶ Again, a letter written by the lessee of a safety deposit box saying, "I want you to have what's in there, if I don't get back," was not an instrument in writing as required by the statute.⁶⁷ Nor was a rental agreement stating the contents were to be in joint tenancy with survivorship sufficient.⁶⁸ By contrast, in bank accounts no written instrument is needed,⁶⁹ although opening an account in the name of "Mr. and Mrs. A," even if both could draw, did not establish the right of survivorship under joint tenancy.⁷⁰

In addition, there is no joint tenancy with survivorship created by issu-

⁶¹ *Williams v. Tuch*, 313 Ill. App. 230, 39 N.E. 2d 695 (1942).

⁶² 68 A. 2d 241 (Me., 1949). But see *Kane v. Johnson*, 397 Ill. 112, 73 N.E. 2d 321 (1947).

⁶³ *Sturgis v. Citizens Nat. Bank of Pokamoke City*, 152 Md. 654, 137 Atl. 378 (1927); *Greeley v. O'Connor*, 294 Mass. 527, 2 N.E. 2d 471 (1936).

⁶⁴ *Bolton v. Bolton*, 306 Ill. 473, 138 N.E. 158 (1923).

⁶⁵ Possession of passbook immaterial, *Kroening v. Kroening*, 330 Ill. App. 7, 69 N.E. 2d 696 (1946); *Cuilini v. Northern Trust Co.*, 335 Ill. App. 86, 80 N.E. 2d 275 (1948). But see *McDermott v. Bennett*, 279 N.Y. 579, 17 N.E. 2d 448 (1938). Ownership of funds immaterial, *Cuilini v. Northern Trust Co.*, 335 Ill. App. 86, 80 N.E. 2d 275 (1948). Ignorance of deposit immaterial, *Vaughan v. Millikin Nat. Bank*, 263 Ill. App. 301 (1931).

⁶⁶ *In re Estate of Jirovec*, 285 Ill. App. 499, 2 N.E. 2d 354 (1936).

⁶⁷ *In re Estate of Brokow*, 339 Ill. App. 353, 90 N.E. 2d 300 (1950).

⁶⁸ *Wilson v. Wilson*, 404 Ill. 207, 88 N.E. 2d 662 (1949). But see *In re Koester's Estate*, 286 Ill. App. 113, 3 N.E. 2d 102 (1936).

⁶⁹ *Vaughan v. Millikin Nat. Bank*, 263 Ill. App. 301 (1931).

⁷⁰ *Crawford v. Crawford*, 245 Ill. App. 227 (1924).

ance of certificates of deposit, payable to "A, or B, or survivor" if the amount was from A's account and without consideration.⁷¹

Although the Joint Rights and Obligations Act in Illinois does not require a tenancy in common to exist if the joint tenancy has failed,⁷² there are cases where a tenancy in common was upheld upon the failure of the joint tenancy to be perfected,⁷³ on the ground of an implied gift of one-half undivided interest.⁷⁴ This is not merely the interpretation that the court gives to the decedent's intent but is the interest passed when an admitted joint tenancy fails for some reason.⁷⁵

The problems involved in the creation and existence of joint tenancies are numerous; worse than this they are unnecessary. The obvious defeat of the decedent's intent is an unfortunate aspect of the law. The formalities are disturbing not only to the layman, but to the banker and attorney as well. The frequency of litigation is also a discouraging feature in joint tenancies in personalty.

It seems advisable in light of the situation to clarify the status of joint tenancy relationships. The statute in Illinois today is obviously inadequate because it merely recognizes that joint tenancies can be created but furnishes no simple procedure for creating such an interest.

The conclusion is obvious: Unless the statute is revised or amended the stringent common law formalities will remain supreme over the intention of the parties.

⁷¹ *Hamilton v. 1st State Bank of Willow Hill*, 254 Ill. App. 55 (1929); *Engelbrecht v. Engelbrecht*, 323 Ill. 208, 153 N.E. 827 (1926).

⁷² *Harrington v. Emmerman*, 186 F. 2d 757 (App. D.C., 1950); *David v. Ridgely-Farmers Safe Deposit Co.*, 342 Ill. App. 96, 95 N.E. 2d 725 (1950); *In re Estate of Grote*, 203 Ill. App. 50 (1916).

⁷³ *Crawford v. Crawford*, 245 Ill. App. 227 (1924).

⁷⁴ *Ibid.*

⁷⁵ *Harrington v. Emmerman*, 186 F. 2d 757 (App. D.C., 1950).