PennState Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 33
Issue 4 *Dickinson Law Review - Volume 33, Issue 4*

3-1-1929

Creation and Taxation of Joint Bank Deposits

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Recommended Citation

Morton Klaus, *Creation and Taxation of Joint Bank Deposits*, 33 DICK. L. REV. 257 (1929).
Available at: https://ideas.dickinsonlaw.psu.edu/dlra/vol33/iss4/8

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are two cases in which the widow's claim is not superior. Where the decedent had executed a mortgage, the mortgagee has priority over the claim of the widow,[44] and the costs of the administration also take priority to the right of the widow.[45] The reason assigned in the last case is that such expenses are incurred in the ascertainment of the amount of the estate without which, the estate has not legal existence.[46] It is submitted, however, that since the purpose of the exemption is to furnish subsistence *until* the estate has been ascertained, the exemption should take precedence to the costs of the administration of the estate.

W. ROBERT THOMPSON.

CREATION AND TAXATION OF JOINT BANK DEPOSITS—The first situation to be considered is the case in which a deposit is made in a bank by one person in the names of two others. If these two persons are not husband and wife the deposit will create a joint-tenancy. At common law the right of survivorship was an incident of a joint-tenancy. But this right of survivorship has been abolished by the Act of March 31, 1812, 5 Sm. L. 395.[1] Thus, a mere deposit in the names of two persons not husband and wife would by virtue of the Act of 1812 create a joint-tenancy without the right of suvivorship. Therefore, upon the death of one of the persons in whose name the deposit is made, the decedent's interest in the fund would not vest in the survivor by operation of the right of survivorship, and could, consequently, be subjected to an inheritance tax. But if in the creation of the joint -tenancy it has been provided[2] that the right of survivorship shall apply, then upon the death of one of the joint-tenants, the survivor is deemed to be the sole owner by virtue of the right of survivorship[3] and a tax levied upon the decedent's interest in the fund is improper. The reason for this is that the Act

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[44]Kauffman's Appeal, supra; Allentown's Appeal, supra; Nerpel's Appeal, 91 Pa. 334 (1879).

[45]McIntyre's Estate, 44 C. C. (Pa.) 111 (1915).

[46]Weir's Estate, supra.

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[1]Mardis, Admrx. v. Steen, 293 Pa. 13, 16.

[2]Arnold v. Jack's Admr., 24 Pa. 57 (right of survivorship given by direction of testator); Redemptorist's Fathers v. Lawler, 205 Pa. 24; Kerr v. Verner, 66 Pa. 326; Jones v. Cable, 114 Pa. 586; Lentz v. Lentz, 2 Phila. 148 (by implication of words in will).

[3]Mardis, Admrx. v. Steen, supra.

of 1812 has been interpreted to mean merely that the fact that a joint-tenancy has been created does not, as a matter of law, give the survivor the entire ownership of the property. In other words the Act of 1812 simply abolishes the legal presumption that the right of survivorship attaches when a joint tenancy is created, and the creator of the tenancy may still provide for the same right of survivorship as applied before the statute.[4]

It might be well to note in passing that the context of the Act of 1812 seems to apply merely to joint-tenancies in real property and does not seem to have any application to joint-tenancies in personal property. The statute speaks only of real property and yet it has been extended to cover joint-tenancies in personal property for apparently no other reason then to make uniform the laws as to real and personal property.[5]

The cases dealt with thus far have been those in which one party makes a deposit in the names of two others, or conveys or devises lands, or conveys or bequeaths personal property to two others. In such cases it has been shown that if the donees or devisees are not husband and wife a joint-tenancy is created. But suppose a man makes a deposit in the joint names of himself and another instead of the joint names of two other persons. The fund on deposit is subject to the check of the donor, and therefore he has not really relinquished control over it. Prior to the case of *Mardis, Admrx. v. Steen, 293 Pa. 13*, it was held that because the donor had not relinquished control over the fund he never parted with title, and hence there was no delivery of the subject of the alleged gift.[6] In a case decided in 1914[7] it was held, "the gift must be completed by actual or constructive delivery beyond the power of revocation". If the donor retained a right of revocation, as by the power to draw on the fund, then the gift was not complete and no joint-tenancy arose.[8] Notwithstanding these holdings the Supreme Court decided that the fact that the funds were at all times subject to the check of either party

[4]Leach's Estate, 282 Pa. 545, 549. That the rule applies to real and personal property, see cases cited in Note 2.

[5]Yard's Appeal, 86 Pa. 125.

[6]Flanagan v. Nash, 185 Pa. 41; Terpoak v. Terpoak, 85 Pa. Super. 470.

[7]Turner's Estate, 244 Pa. 568.

[8]Flanagan v. Nash, Supra.; Waltman v. G. T. Co. 92 Pa. Super. 480.

did not make the transaction subject to the objection that the gift was not complete. Therefore, even though the fund is subject to the check of the donor, and he thereby has a right of revocation, the gift is a complete one and a joint-tenancy arises. Then, if the intention of the donor is that the joint deposit should be a joint-tenancy with the right of survivorship it will be so held.[9]

Upon the death of one of the joint-tenants a tax such as the one authorized by the Transfer Inheritance Tax Act of June 20, 1919, P. L. 521, as amended by the Act of May 4, 1921, P. L. 341, could not be imposed upon the interest of the decedent.[10] The survivor of the joint-tenants becomes the owner of the property by virtue of the stipulation made by the donor at the time of the making of the deposit and not because of the transfer at the death of the decedent. For this reason the Transfer Inheritance Tax, supra, which taxes "transfers of property - - - by deed - - - made or intended to take effect in possession or in enjoyment at or after such death" is not effective.

The next situation which arises is the case of a deposit in the names of a husband and a wife. Where husband and wife hold property jointly they hold by the entireties.[11] The estate by entireties may exist in personalty as well as in realty, in choses in action as well as in choses in possession.[12] The tenancy established by a conveyance to a husband and wife is not destroyed or affected by the Act of 1812, which abolished survivorship in joint-tenancies.[13] Thus the right of survivorship is incident to an estate held by entireties.

The first case to be discussed is the one in which a third party makes a deposit in the names of husband and wife. It is not necessary that the husband and wife be described as such in the instrument creating the tenancy in order that a tenancy by entireties may arise. Whether or not it does arise depends solely on the relation of the par-

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[9]Mardis, Admrx. v. Steen, Supra.

[10]McIntosh's Estate, 289 Pa. 509; Leach's Estate, Supra.

[11]Donnelly's Estate, 7 Pa. C. C. 177; Stuckey v. Keefe, 26 Pa. 401; Gillon v. Dixon, 65 Pa. 395; Slaymaker v. The Bank, 10 Pa. 373; Klenke's Estate, 210 Pa. 572.

[12]Klenke's Estate, supra; Bramberry's Estate, 156 Pa. 628; Parry's Estate, 188 Pa. 33.

[13]Bramberry's Estate, supra; (nor is it affected by the Married Women's Property Act of 1893).

ties.[14] It is plain, then, that in the case of a deposit by a stranger in the names of a husband and a wife, the tenancy created is one by entireties with the right of survivorship attached even without an express stipulation to that effect, and upon the death of one the interest of the decedent in the fund cannot be taxed by a taxing statute such as was previously mentioned.[15]

Again, as in the case of joint-tenancies, there is a diversity of opinion in cases in which the donor makes a deposit in the joint names of himself and another. Does a tenancy by the entireties arise where a husband, out of his own funds, makes a deposit in the joint names of his wife and himself? In *Parry's Estate, 6 Dist. 717,* the court held that no tenancy arose because the gift was incomplete. The husband still had the right to draw upon the account, which in this case was a letter of credit, and therefore since he did not relinquish control over the fund the gift was incomplete and no tenancy arose. Upon trial in the Supreme Court, however, the decision of the lower court was reversed.[16] The Supreme Court held that an estate by entireties was created. The reasoning employed was that although it was not an absolute gift to the wife of the whole amount, it was an estate in personalty, the value of which to her depended on two contingencies, 1. Survivorship, 2. Balance remaining at the death of her husband. Both contingencies having happened the gift is executed.

There are cases which do not use the reasoning of the Supreme Court in the *Parry case,* but simply say that the gift is a complete one and that therefore an estate by the entireties is created.[17] An estate by the entireties created in this manner would likewise not be subject to the taxing statute.[18]

Moreover, it has been held, that a federal taxing statute which attempts to tax the "transfer of a net estate of a decedent to the extent of the interest therein held as tenants in the entirety by a decedent and any other person"[19] etc., is unconstitutional because in an estate by entireties the husband and wife are each deemed to hold the

[14]Raible's Estate, 10 D. & C. 747.

[15]Transfer Inheritance Tax of 1919, as amended in 1921.

[16]Parry's Estate 188 Pa. 33.

[17]Griffith's Estate, 1 Lack. L. N. 311; Sloan's Estate, 254 Pa. 346; Roka v. Trust Co., 10 D. & C. 94.

[18]See Note 15.

[19]Estate Tax, Act of 1916, Sept. 8, C. 463 (39 Statute 777).

entire title, and that no new estate is conferred on the survivor on the death of the spouse. Therefore the tax is a direct tax upon property, requiring apportionment according to the U. S. Constitution, [20] and is not a tax upon the transfer of property[21] which according to the Constitution requires merely that it be subject to geographical uniformity.[22]

Morton Klaus

LIABILITY OF AN INFANT PARTNER TO FIRM CREDITORS—The contracts of an infant, with few exceptions, are not void, but merely voidable. An infant has a general contractual capacity quite the same as an adult, but protection is extended by affording him a personal opportunity to avoid obligations which otherwise would be binding.[1]

An infant may become a partner, and, as in other contracts, the partnership agreement is voidable at the option of the infant.[2] However, the infant's liability is rendered somewhat peculiar and is not the same as in ordinary contracts.

By weight of authority, an infant who has contributed property to the firm upon becoming a member, may not withdraw his contribution so as to jeopardize firm creditors; although he may exempt himself from personal liability by repudiating his contract,[3] and he thereby frees his individual estate from attack. A few Pennsylvania cases have more or less directly passed upon this rule.

Although *Dulty v. Brownfield*[4] is hardly on point, it was deemed advisable to note it as there is a dearth of

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[20]Art. 1, sec. 2, Subsec. 3.

[21]Tyler v. United States, 28 Fed. 2nd 887.

[22]Art. 1, Sec. 8, Subsec. 1, Knowlton v. Moore, 178 U. S. 41; Randolph v. Craig, 267 Fed. 993. That the same rule should apply to joint-tenancies, see McIntosh's Estate, Supra.

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[1]31 C. J. sec. 149; Gilmore on Part. 79.

[2]31 C. J. sec. 193; Burdick on Part. (2nd Ed.) 94.

[3]31 C. J. sec. 193½; 16 A. & E. Encyc. of Law (2nd Ed.) 287; Crane and Magruder's Cases on Part. 97; Gilmore on Part. 82; Jennings v. Stannus, 191 Fed. 347, 112 C. C. A. 91; Bush v. Linthicum, 59 Md. 344; Adams v. Beall, 67 Md. 53, 8 A. 644; Dana v. Stearns, 3 Cush. (Mass.) 372; Whitemore v. Elliott, 7 Hun. (N. Y.) 518; Lovell v. Beauchamp, A. C. (Eng.) 607; Burdick's Cases on Part. 155.

[4]1 Pa. 497.