LILLIAN NILES AND OTHERS (PLAINTIFFS) ..... } APPELLANTS; * 1946 Nov. 20, 21

AND

BLANCHE V. LAKE (DEFENDANT) .....RESPONDENT. * 1947 Feb. 4

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Trust—Contract—Banks and Banking—Account opened in bank in joint names of two persons, at instance of one of them, who, from her own moneys, made all deposits—Death of latter—Claim by survivor to moneys—Agreement, in bank form, executed by both persons under

* Present:—Kerwin, Taschereau, Rand and Kellock JJ. Hudson J. also sat at the hearing, but he died before judgment was delivered.

1947

NILES, ET AL. v. LAKE

seal—Terms of agreement—Circumstances in question—Resulting trust in favour of deceased—Moneys held to belong to her estate—Costs.

A arranged with a bank to open a "joint account" in the names of herself and L (a sister of A), in which A (who kept the bank-book) made the initial and other deposits from her own moneys and on which she issued cheques. She died within three months after the account was opened. Prior to A's death L made no deposits in, or cheques on, the account, nor did she know what deposits or withdrawals were made. When the account was opened, A and L, as required by the bank, executed under seal a document, in the bank's standard form, addressed to the bank, by which they "for valuable consideration (receipt whereof is hereby acknowledged)" mutually agreed "jointly and each with the other or others of us" and also with the bank, "that all moneys now or which may be hereafter deposited to the credit of the said account, and all interest thereon, shall be and continue the joint property of the undersigned with right of survivorship", and each of them "in order effectually to constitute the said joint deposit account hereby assigns and transfers to all of the undersigned jointly and to the survivor or survivors" of them any and all moneys theretofore, then or thereafter deposited to the credit of the account together with all interest "to be the joint property of the undersigned and the property of the survivor or survivors of them"; each irrevocably authorized the bank to accept from time to time as a sufficient discharge for any sum or sums withdrawn any receipt, cheque, etc., "signed by any one or more of the undersigned without any further signature or consent of the other or others of the undersigned thereto"; they agreed "with each other and with the said Bank that the death of one or more of the undersigned shall not affect the right of the survivors or any one of them or of the sole survivor to withdraw all of the said moneys and interest" from the bank and to give a valid and effectual discharge or receipt therefor.

Held: The moneys in the account at A's death belonged to her estate. The fact that all the deposits were made by A from her own money raised the presumption of a resulting trust in her favour, and neither the terms of the document nor other circumstances in evidence served to rebut that presumption or to cut down A's beneficial interest raised in equity under it.

The mere fact that the document was under seal did not prevent it being shown that there was no consideration from L.

The document should, under the circumstances and in its language, be construed as being for the protection of the bank and to facilitate its dealing with the account.

Judgment of the Court of Appeal for Ontario, [1946] O.R. 102, reversed, and judgment at trial, [1945] O.R. 652, restored.

This Court held that the costs throughout should be paid out of the fund in question. (*Per* Kellock J.: The proper construction of the document fundamentally affected the rights of the parties and as to that there had been such difference of judicial opinion as to make it

plain that there was an important and debatable legal issue: *Boyce* v. *Wasbrough*, [1922] 1 A.C. 425, at 435). (Kerwin J. took the view that L should pay the costs in this Court and in the Court of Appeal; that the case was not one where an exception should be made to the general rule that a litigant should pay the costs of carrying an unsuccessful defence to appeal. He would not interfere with the direction at trial that costs of all parties be paid out of the estate, except to provide that they come out of the fund. But he could not treat the case as analogous to the construction of a will or as exhibiting any special circumstances warranting an infraction of the general rule.)

APPEAL by the plaintiffs from the judgment of the Court of Appeal for Ontario (1) allowing the defendant's appeal from the judgment of Greene J. (2) declaring that the sum of $10,070.80 which, at the time of the death of Georgena Arnott (late of Port Hope, Ontario) was on deposit in the Royal Bank of Canada at Port Hope, Ontario, in a certain "joint account" in the names of the said Georgena Arnott and the defendant, belonged to and was an asset of the estate of the said Georgena Arnott, deceased, and ought to be distributed according to the terms of her will. The judgment of the Court of Appeal declared that the said sum was the property of the defendant.

F. A. Brewin and *Hugh Powell* for the appellants.

J. R. Cartwright K.C. for the respondent.

KERWIN J.—The plaintiffs in this action are four sisters and a brother of the late Mrs. Georgena Arnott, and the defendant, Mrs. Blanche V. Lake, is another sister. The dispute concerns a sum of money on deposit with the Port Hope Branch of the Royal Bank of Canada in Account No. 2047, standing in the names of Georgena Arnott and Blanche V. Lake or the survivor, which sum, when the account was closed, amounted to $10,070.80. Mrs. Arnott died February 27th, 1944, and this sum was transferred by Mrs. Lake, on September 9th, 1944, to her own account. The plaintiffs claim that it is an asset of the estate of Georgena Arnott.

Mrs. Arnott and her husband lived in Port Hope where the latter died December 9th, 1943. At that time Mrs. Arnott was in the Port Hope Hospital, and, while still

(1) [1946] O.R. 102; [1946] 2 D.L.R. 177.
(2) [1945] O.R. 652; [1945] 4 D.L.R. 795.

1947

NILES, ET AL. v. LAKE

Kerwin J.

there, sent for the Manager of the branch of the bank where she and her husband had had a joint account. This account and Account No. 2047, while commonly so described, are strictly not joint accounts, as money might be withdrawn by either of two parties and the survivor. The Manager saw Mrs. Arnott on December 16th, 1943, when she told him that she desired to open an account in the names of herself and her sister, the defendant, Blanche V. Lake. Having already been told by an intermediary of her desire to open a joint account, the Manager had taken with him the Bank's standard form, which he told Mrs. Arnott it would be necessary for her and her sister to sign. Mrs. Arnott signed it and handed him for deposit to the account the sum of $560, part of the assets of the estate of her husband, all of which had been willed by him to her. The document was sent by the Bank to Mrs. Lake who lives in Toronto, who also signed it and then returned it to the Bank.

The document is under seal and reads as follows:

Form LE 233A—Agreement re Joint Account
Revised 12-41

To The Royal Bank of Canada
Port Hope, Ontario Branch:

We, the undersigned, having opened a Savings Deposit Account with the above-named Branch of the Royal Bank of Canada in our joint names do for valuable consideration (receipt whereof is hereby acknowledged) hereby mutually agree, jointly and each with the other or others of us also with the said The Royal Bank of Canada, that all moneys now or which may be hereafter deposited to the credit of the said account, and all interest thereon, shall be and continue the joint property of the undersigned with right of survivorship; and each of the undersigned in order effectually to constitute the said joint deposit account hereby assigns and transfers to all of the undersigned jointly and to the survivor or survivors of them any and all moneys which may have been heretofore or may now or hereafter be deposited to the credit of the said account together with all interest which may accrue thereon to be the joint property of the undersigned and the property of the survivor or survivors of them.

Each of the undersigned hereby irrevocably authorizes the said Bank to accept from time to time as a sufficient discharge for any sum or sums withdrawn from the said deposit account any receipt, cheque or other similar document signed by any one or more of the undersigned without any further signature or consent of the other or others of the undersigned thereto.

It is understood and agreed by the undersigned with each other and with the said Bank that the death of one or more of the undersigned shall not affect the right of the survivors or any one of them

or of the sole survivor to withdraw all of the said moneys and interest from the said Bank and to give a valid and effectual discharge or receipt therefor. Provided, however, that this understanding and Agreement is subject to the requirements of any Succession Duty Act in respect of such moneys and the interest thereon.

This Agreement shall be binding upon the heirs, executors, administrators, and assigns of each of the undersigned parties thereto.

Witness our hands and seals this 16th day of December, A.D. 1943.

Signed, Sealed and Delivered
in the presence of

HAROLD GORDON JEX	GEORGENA ARNOTT (Seal)
ARTHUR J. D. LAKE	BLANCHE V. LAKE (Seal).

The bank-book for this account, No. 2047, was given to Mrs. Arnott who kept it and drew cheques on the account on the following dates in the amounts set out:

January 3, 1944	$ 97.00
January 18, 1944	5.75
February 7, 1944	112.30

These cheques were for personal and hospital expenses. In addition to the original deposit of $560, the following deposits were made in the account by Mr. Bonneville, Mrs. Arnott's solicitor, on her direction:

February 15, 1944	$1,139.26
February 17, 1944	6,570.00
February 24, 1944	1,977.83

All of these were the proceeds of insurance policies on the life of Mrs. Arnott's husband. Mrs. Arnott made her last will and testament on December 29, 1943, by which she appointed the defendant and the latter's husband executors, bequeathed a number of articles to various relatives, including the plaintiffs and defendant, and devised and bequeathed the residue of her estate to her sisters and brother in equal shares. The exact value of the estate is not shown in the evidence, but, from the statement of claim, it would appear that the money on deposit in Account 2047 would account for considerably more than half of the total.

Prior to December 16, 1943, Mrs. Arnott had told Mrs. Lake on one of the latter's visits to the hospital that she was going to open a bank account in their joint names, but the amount of money that would be deposited, or the purpose of having the account in the two names, was not mentioned. Nor was the matter discussed thereafter

1947

NILES, ET AL. v. LAKE

Kerwin J.

between them except that when Mrs. Lake made another visit to her sister in the hospital, Mrs. Arnott asked her if she had signed the document sent to her by the Bank and was told that she had done so. Mrs. Lake did not know what sums were deposited from time to time or what withdrawals were made. After Mrs. Arnott's death, when the relatives were meeting with Mr. Bonneville, Mrs. Lake said, according to her own testimony, that she supposed the joint account had been arranged for convenience, while, according to the evidence of some of the others who were present, the word "supposed" had been omitted. While unimportant in my view, the fact is that while Mrs. Lake lived in Toronto, one of the plaintiff sisters lived in Port Hope and another at Cobourg, about seven miles distant. All of the sisters and the brother were on good terms with each other.

Under these circumstances, unless the document prepared by the Bank and signed by Mrs. Arnott and Mrs. Lake leads to a different conclusion, the money in question should be held to be an asset of Mrs. Arnott's estate, as there would be a resulting trust in favour of Mrs. Arnott, since all the moneys deposited to the joint account had belonged to her. It is argued, first, however, that the document by its very terms shows a contrary intention. Particular emphasis is placed upon that part by which the two sisters

> hereby mutually agree, jointly and each with the other or others of us and also with the said The Royal Bank of Canada, that all moneys now or which may be hereafter deposited to the credit of the said account, and all interest thereon, shall be and continue the joint property of the undersigned with right of survivorship; and each of the undersigned in order effectually to constitute the said joint deposit account hereby assigns and transfers to all of the undersigned jointly and to the survivor or survivors of them any and all moneys which may have been heretofore or may now or hereafter be deposited to the credit of the said account together with all interest which may accrue thereon to be the joint property of the undersigned and the property of the survivor or survivors of them.

It is said that the agreement that the moneys should be the joint property of the two sisters and the transfer by the terms of the document of all moneys to them jointly and to the survivor distinguishes the present case from *In re Mailman* (1), and reliance is placed upon a number of decisions, particularly in the Ontario courts.

(1) [1941] S.C.R. 368.

The principle applicable to a case of this nature is set forth in the *Mailman* case (1), where most of the earlier decisions are referred to. It was there decided that the form prepared by the Bank and used by the parties did not rebut the presumption of a resulting trust. The document in that case is quite different from the one before us but, while it is true that the legal property in the chose in action was vested in Mrs. Arnott and Mrs. Lake and is now vested in Mrs. Lake, equity raises an equitable interest in Mrs. Arnott by virtue of the doctrine of resulting trusts, and there is nothing in the document to cut down that equitable interest. The language is no more absolute or unequivocal than in a deed of land or a transfer of shares of stock by the owner to the joint names of the transferor and transferee. "In fact", as pointed out in the second edition of Hanbury's Modern Equity, page 213, "cases of *transfer* by one person into the joint names of himself and a stranger are in no way different from *purchases* by one person in the joint names of himself and a stranger, in which cases the presumption most certainly arises."

It was next argued that, the document being under seal, consideration for the transfer was thereby imported. That means no more than that a deed requires no consideration to support it, and, notwithstanding this general rule, a deed is always impeachable for fraud. No fraud is suggested here nor is the plea of *non est factum* advanced on behalf of the appellants. The old law, before the coming into force of the *Law of Property Act, 1925,* in England, is set forth in all the textbooks and a convenient statement appears in the second edition of Norton on Deeds, page 410: "where A conveys the whole fee simple by a conveyance operating at common law, without consideration, there is a resulting use to him in fee simple, unless uses are declared." The doctrine of resulting trusts has been raised up, as is pointed out in Maitland's Equity, at page 79, in analogy to the law of resulting uses. It is not necessary to go into the moot point discussed by Maitland at the page indicated, but these matters are mentioned to show that the mere fact of the document in question being under seal does not prevent the appellants from showing that there was no

(1) [1941] S.C.R. 368.

1947

NILES, ET AL. v. LAKE

Kerwin J.

consideration. That, they have done, and the resulting trust follows. It would, I think, be unfortunate if the appellants could not succeed in this case where Mrs. Arnott executed a document prepared by a bank for its own protecton and without regard to the real intention of any one signing it.

The appeal should be allowed and the judgment at the trial restored by which it was declared that the sum of $10,070.80, which was on deposit in the Royal Bank of Canada at Port Hope in Account No. 2047, belonged to and was an asset of the estate of Georgena Arnott, deceased, formerly of the Town of Port Hope, and ought to be distributed according to the terms of her last will and testament. In my view, the respondent should pay the appellants their costs in the Court of Appeal and in this Court and an exception should not be made to the general rule that a litigant should pay the costs of carrying an unsuccessful defence to appeal. The trial judge, although deciding in favour of the present appellants, directed that the costs of all parties be paid out of the estate, and I would not interfere with that direction,—except to provide that the costs should come out of the fund. However, I am unable to treat the case as analagous to the construction of a will or as exhibiting any special circumstances that would warrant an infraction of the general rule.

TASCHEREAU J.—Georgena Arnott died in Port Hope, Ontario, on the 27th of February, 1944. Under the terms of her will, the appellants and the respondent were made residuary legatees, and the respondent was also appointed co-executor with her husband, Arthur Lake.

The late Georgena Arnott lived all her life in Port Hope, and shortly before her husband's death, which occurred on December the 8th, 1943, she had become seriously ill, and had been taken to a hospital where she was confined until she died.

In December, 1943, while in the hospital, she had expressed the wish to open a joint savings account with her sister, the respondent, Mrs. Blanche V. Lake, and for that purpose the manager of the Royal Bank, Mr. Freeman, went to see her. During the interview which took place

between Mrs. Arnott and the manager of the bank, and at which was present a personal friend, Mr. H. G. Jex, Mrs. Arnott then signed the following document:

Agreement re Joint Account

To The Royal Bank of Canada,

Port Hope, Ontario Branch:

We, the undersigned, having opened a Savings Deposit Account with the above named Branch of the Royal Bank of Canada in our joint names do for valuable consideration (receipt whereof is hereby acknowledged) hereby mutually agree, jointly and each with the other or others of us also with the said The Royal Bank of Canada, that all moneys now or which may be hereafter deposited to the credit of the said account, and all interest thereon, shall be and continue the joint property of the undersigned with right of survivorship; and each of the undersigned in order effectually to constitute the said joint deposit account hereby assigns and transfers to all of the undersigned jointly and to the survivor or survivors of them any and all moneys which may have been heretofore or may now or hereafter be deposited to the credit of the said account together with all interest which may accrue thereon to be the joint property of the undersigned and the property of the survivor or survivors of them.

Each of the undersigned hereby irrevocably authorizes the said Bank to accept from time to time as a sufficient discharge for any sum or sums withdrawn from the said deposit account any receipt, cheque or other similar document signed by any one or more of the undersigned without any further signature or consent of the other or others of the undersigned thereto.

It is understood and agreed by the undersigned with each other and with the said Bank that the death of one or more of the undersigned shall not affect the right of the survivors or any one of them or of the sole survivor to withdraw all of the said moneys and interest from the said Bank and to give a valid and effectual discharge or receipt therefor. Provided, however, that this understanding and Agreement is subject to the requirements of any Succession Duty Act in respect of such moneys and the interest thereon.

This Agreement shall be binding upon the heirs, executors, administrators, and assigns of each of the undersigned parties thereto.

WITNESS our hands and seals this 16th day of December, A.D. 1943.

SIGNED, SEALED AND
DELIVERED in the
presence of

Harold Gordon Jex	Georgena Arnott (Seal)
Arthur J. D. Lake	Blanche V. Lake (Seal)

The document was sent by the bank manager to Toronto, where it was signed and returned by Mrs. Lake. During the months of January and February of 1944, the initial

1947

NILES, ET AL. v. LAKE

Taschereau J.

deposit of $560 was increased by Mrs. Arnott personally and, when she died, there was in the joint account a sum of $10,070.80.

The appellants asked for a declaration that this sum of $10,070.80 belongs to, and is an asset of, the estate of the late Georgena Arnott and ought to be distributed according to her last will, that is to say, to the residuary legatees.

Mr. Justice Greene, who heard the case, granted the order, but the Court of Appeal unanimously came to the conclusion that the money was the sole property of the respondent. The appellants claim that Mrs. Lake, the survivor of the joint account, took only the legal interest in the account, and that there was a resulting trust of the beneficial interest in favour of the estate. The respondent's contention is that the moneys are her property beneficially.

This agreement expressly provides that "all moneys deposited to the credit of the account shall be the joint property of the undersigned", that there is "right of survivorship", that there is assignment or transfer to "all the undersigned jointly and to the survivor or survivors, of them, of all moneys in the account to be joint property of the undersigned and property of the survivor or survivors of them".

In view of this language, it is not disputed by the appellants that there has been an effective assignment to Mrs. Lake and that the execution by both of them of the bank agreement gave to Mrs. Lake as the survivor upon the death of Mrs. Arnott *a legal title* to the debt of the bank created by the opening of the account, but it is argued that the position in equity is otherwise, and that, in order to have the *beneficial interest* transferred to the donee, there must be satisfactory affirmative proof of intention on the part of the donor to do so. It is therefore submitted that, the document being silent on that point and there being no evidence of a beneficial or equitable ownership in favour of Mrs. Lake, as distinguished from the legal property, the doctrine of resulting trust must apply.

The law is well settled, I think, that when a person transfers his own money into his own name jointly with that of another person, except in cases with which we are not concerned, then there is *prima facie* a resulting trust for the transferor. This presumption, of course, is a presump-

tion of law which is rebuttable by oral or written evidence or other circumstances tending to show there was in fact an intention of giving beneficially to the transferee.

One of the leading cases on the matter is undoubtedly the case of *Dyer* v. *Dyer* (1), reported and annotated in White & Tudor's "Leading Cases in Equity", 9th Ed., at page 749. Eyre, C.B., who delivered the judgment of the Court, said:

> The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive—results to the man who advances the purchase-money.

Commenting on the principle enunciated by Chief Baron Eyre, the authors say at page 756, that it "applies to personal as well as real estate", and at page 763 they state:

> It is clear that a voluntary transfer of stock into the names of the transferor and a stranger makes that stranger a trustee by implication for the transferor. In *Standing* v. *Bowring* (2), the plaintiff *transferred* Consols into the joint names of herself and her godson, to whom she was not *in loco parentis*. It was held that there was *prima facie* a resulting trust, which was, however, displaced by evidence of intention.

And at the same page (763) we also find:

> All resulting trusts which arise simply from equitable presumption, may be rebutted by parol evidence: thus it may be shown that it was the *intention*, at the time of the purchase, of the person who advanced the purchase-money, that the person to whom the property was conveyed or transferred either solely or jointly with such person should take beneficially (3). And the person who paid the money cannot alter such intention at a subsequent period (4).

In 33 Halsbury, 2nd Ed., page 149, we find:

> Where a person purchases property in the name of another or in the name of himself and another jointly, or gratuitously transfers property to another or himself and another jointly, then, unless there is some further intimation or indication of an intention at the time to benefit the other person, the property is, as a rule, deemed in equity to be

(1) (1788) 2 Cox 92; 2 R.R. 14.

(2) (1885) 31 Ch. D. 282. In the authors' footnote giving the citation, there is added: "See *Batstone* v. *Salter*, L.R. 10 Ch. 431; and cf. *Re Howes*, 21 T.L.R. 501".

(3) The authors here cite as follows: *Goodright* v. *Hodges*, 1 Watk. Cop. 227; *Rider* v. *Kidder*, 10 V. 364; *Rundle* v. *R.*, 2 Vern. 252; see Order, n. (1), *ibid*; *Redington* v. *R.*, 3 Ridg. P.C. 181; *Deacon* v. *Colquhoun*, 2 Dr. 21; *Wheeler* v. *Smith*, 1 Gif. 300; *Nicholson* v. *Mulligan*, 3 Ir.R. Eq. 308; *Re Rowe*, 58 L.J. Ch. 703; *Fowkes* v. *Pascoe*, L.R. 10 Ch. 343; *Standing* v. *Bowring*, 31 Ch. D. 282.

(4) The authors here cite: *Groves* v. *G.*, 3 Y. & J. 163; *Redington* v. *R.*, 3 Ridg. P.C. 106; *Gooch* v. *G.*, 62 L.T. 384.

1947

NILES, ET AL. v. LAKE

Taschereau J.

held on a resulting trust for the purchaser or transferor. There is a resulting trust even where the transfer is into the joint names of the transferor and an infant to whom the transferor does not stand *in loco parentis,* and the mere fact that an infant cannot since 1925 be validly appointed a trustee does not affect the presumption.

On the same point, Underhill in Law of Trusts & Trustees, 8th Ed., page 158, says:

> When real or personal property is vested in a purchaser along with others, or in another or others alone, and whether jointly or successively, a resulting trust will be presumed in favour of the person who is proved (by parol or other evidence) to have paid the purchase-money in the character of purchaser.
>
> (2) This presumption may be rebutted—
>
> (*a*) by parol or other evidence that the purchaser intended to benefit the others; or
>
> (*b*) by the fact that the person in whom the property was vested was the lawful wife or child of the purchaser, or was some person towards whom he stood *in loco parentis,* or was trustee of a settlement by which he previously settled property.

Further authorities on the same subject may be found in Modern Equity, Hanbury, 3rd Ed., page 180, and following.

In *Russell* v. *Scott* (1), it was held that there was a presumption of a resulting trust in favour of an aunt who had opened a joint account with her nephew but, at the death of the aunt, the nephew was allowed to claim the balance of the account, because it was found that the presumption of any resulting trust in favour of the donor and her estate of the balance of the moneys had been rebutted.

All these authorities, as well as many others which it would be superfluous to cite here, clearly indicate that a mere gratuitous transfer of property, real or personal, although it may convey the legal title, will not benefit the transferee unless there is some other indication to show such an intent, and the property will be deemed in equity to be held on a resulting trust for the transferor.

The respondent has cited the *Mailman* case (2) in support of her contentions. The facts in that case were somewhat different from those with which we have now to deal. Particularly, the agreement signed by the parties to open the joint account was not drafted in the same terms. It read as follows:

(1) (1936) 55 Commonwealth Law Reports 440, particularly at 448 and 449.

(2) [1941] S.C.R. 368.

AGREEMENT
JOINT DEPOSIT ACCOUNTS

To the Bank of Nova Scotia,
Caledonia, Queens Co., N.S.

The undersigned, having opened a deposit account with you in their joint names, hereby agree with you and with each other that, except only in the case of some other lawful claim before repayment, all moneys from time to time deposited to the said account and interest, may be withdrawn by any one of the undersigned, or his or her attorney or agent, and each of the undersigned hereby irrevocably authorizes the said bank to accept from time to time as a sufficient acquittance for any amounts withdrawn from said account, any receipt, cheque, or other document signed by any one of the undersigned, his or her agent, without any further signature or consent.

The death of one or more of the undersigned shall in no way affect the right of the survivors, or any one of them, to withdraw all moneys deposited in the said account, as aforesaid.

Dated at Caledonia, Queens Co., N.S., this 30th day of September, 1935.

Witness(es)
L. G. Irving Hannah Mailman
L. G. Irving George B. Mailman.

It was found by this Court that this document contained no references expressed or implied to the ownership of the money when deposited, or to any previous agreement having been entered into between the parties concernnig the opening of the account. The Court reached the conclusion that the sole purpose and effect of the document was to authorize the bank to accept from time to time, as a sufficient acquittance for any amount withdrawn from the deposit account, any receipt, cheque or document signed by either. There was nothing to show that the intention of Mrs. Mailman who had opened the account with her husband, was other than the one presumed by the law, that is to say, there was no evidence of intention of creating a joint tenancy. The document as construed by the majority of the Court did not make the husband the beneficial owner of the money that he was authorized to withdraw and for which he was accountable to his wife or her estate.

The Court, however, held at page 376 as follows:

The deposit money having admittedly been owned by Mrs. Mailman when it was placed in the joint account, and the presumption of law unquestionably being that she did not intend to create a joint tenancy in favour of her husband, the decisive question is: Is there evidence upon which it can reasonably be held that her intention was other than that which the law presumes it to have been?

1947

NILES, ET AL. v. LAKE

Taschereau J.

It is obvious that if there is any such evidence there are but two sources in which it can be sought, viz.: the signed bank deposit agreement form and the appellant's own deposition before the Registrar of Probate.

In the present case, it is submitted that the document itself contains all that is required to support the proposition that Mrs. Lake, the respondent, took beneficially, and that, therefore, the presumption of a resulting trust has been negatived.

With this proposition I am unable to agree, and I have come to the conclusion that, although the legal interest has passed to Mrs. Lake, she did not take beneficially, and a resulting trust has been created in favour of the transferor and her estate.

Nothing in the document defeats the presumption, and the evidence adduced, far from rebutting it, destroys all possible suggestion that the transferor ever intended that Mrs. Lake would receive beneficially. Of course, the document, which is under seal, may be considered as conclusive, and I do not propose to vary its terms, but the terms themselves do not warrant the conclusion that the Court is now asked to draw.

The words "shall be the joint property of the undersigned" or "right of survivorship" and "all moneys in the account to be joint property of the undersigned" are indeed apt words to convey a legal title to the fund, but not to convey the whole fund beneficially. Something more than a mere transfer is required to destroy the presumption of a resulting trust and an intimation of such an intent must appear in the document itself, or as a result of evidence which reveals the intention to benefit the transferee.

Mrs. Arnott when she signed the agreement did not read it. She was merely told by the manager of the bank: "It will be necessary for you to sign one of our *standard forms* for the operation of a joint account". She furnished all the money that went in the account, kept the pass-book, and she was the only person who drew cheques on the account. Being ill in the hospital, she obviously relied on her sister's judgment whom she later appointed her

executor, to look after her affairs and thought it convenient to have an account opened upon which her sister could sign cheques, if she, Mrs. Arnott, became incapacitated. 1947 NILES, ET AL. v. LAKE Taschereau J.

The fact that Mrs. Arnott made a will ten days after the opening of the account and in which she treated all her sisters and brother alike, makes it improbable that she would deprive the will of all its effect by making a gift *inter vivos* of practically all her estate to one sister. Mrs. Lake, the respondent, was never told that there was any intention that she would take the residue of the account beneficially, and moreover, after the death of her sister she said that she supposed that the account had been opened "for convenience only".

All these facts show that Mrs. Arnott never intended to give beneficially to her sister and I am, therefore, of opinion that the presumption of a resulting trust has not been destroyed.

I would allow the appeal and restore the judgment of Mr. Justice Greene. The costs throughout of all parties, including the costs of the motion before Mr. Justice Hope on November 13, 1944, should be paid out of the fund.

RAND J.—This appeal raises the question of the beneficial interest in a bank account opened by the testatrix, Mrs. Arnott, in her own name and that of the respondent in the following circumstances. The testatrix was a sister of the parties to this proceeding. Shortly before the death of her husband on December 8, 1943, she had been seized with serious illness and taken to a hospital in Port Hope. Under his will, of which she was the sole beneficiary, she came into property consisting of a home and approximately $10,000 insurance money. On the 16th of December she had the local manager of the Royal Bank attend her at the hospital for the purpose of the account. Her words to him were few and simple: "I want to open a joint account in your bank with my sister, Mrs. Blanche V. Lake", and thereupon handed him $560 in cash. His reply was that "it will be necessary for you to sign one of our standard forms for the operation of a joint account" and "to give us a specimen of your signature": he had brought both forms with him and they were thereupon signed by

1947

NILES, ET AL. v. LAKE

Rand J.

the testatrix without the former being read over to her. On the same day, that document was forwarded to the respondent at Toronto with a letter stating "your sister wishes to place her savings account at this place in your joint names which we have done" and requesting her to "sign the enclosed form at the bottom below Mrs. Arnott's signature, and also supply us with a specimen of your signature on our Form LE 411, a copy of which we enclose." Mrs. Lake accordingly signed and returned both forms. Subsequently, deposits of the insurance cheques and three withdrawals for expenses were made by the testatrix who retained the account book.

On the 15th of December, Mrs. Arnott had called in a solicitor and had given him instructions for a will. We do not have this in evidence, but apparently it was revoked by a later will executed on the 29th day of December under which, apart from a few minor specific bequests, her estate was distributed equally between her sisters and brother. Although her health temporarily improved, she continued in the hospital until her death on the 27th of February, 1944. A few days later, at the reading of her will, the first mention of the joint account to the family was made by Mrs. Lake who remarked in relation to it, "I suppose it was for convenience".

The document, executed under the seals of both Mrs. Arnott and Mrs. Lake, is in these words:

To The Royal Bank of Canada,
Port Hope, Ontario Branch:

We, the undersigned, having opened a Savings Deposit Account with the above named Branch of the Royal Bank of Canada in our joint names do for valuable consideration (receipt whereof is hereby acknowledged) hereby mutually agree, jointly and each with the other or others of us and also with the said The Royal Bank of Canada, that all moneys now or which may be hereafter deposited to the credit of the said account, and all interest thereon, shall be and continue the joint property of the undersigned with right of survivorship; and each of the undersigned in order effectually to constitute the said joint deposit account hereby assigns and transfers to all the undersigned jointly and to the survivor or survivors of them any and all moneys which may have been heretofore or may now or hereafter be deposited to the credit of the said account together with all interest which may accrue thereon to be the joint property of the undersigned and the property of the survivor or survivors of them.

Each of the undersigned hereby irrevocably authorizes the said Bank to accept from time to time as a sufficient discharge for any sum or sums withdrawn from the said deposit account any receipt, cheque

or other similar document signed by any one or more of the undersigned without any further signature or consent of the other or others of the undersigned thereto.

It is understood and agreed by the undersigned with each other and with the said Bank that the death of one or more of the undersigned shall not affect the right of the survivors or any one of them or of the sole survivor to withdraw all of the said moneys and interest from the said Bank and to give a valid and effectual discharge or receipt therefor. Provided, however, that this understanding and Agreement is subject to the requirements of any Succession Duty Act in respect of such moneys and the interest thereon.

Apart from the document, I see nothing in the facts to indicate any intention on the part of the testatrix to transfer to her sister a beneficial interest in the funds. The presumption arising upon such a voluntary transfer of property into another title or legal power, without more, is that of a resulting trust to the donor, and the burden is on those asserting a beneficial transfer to establish that fact. That this elderly lady, facing all the possibilities of the future, intended to make an immediate gift of one-half of all her insurance money or a gift on her death of what then remained, to the sister, is an inference wholly unwarranted. Admittedly there was no special reason for a preference to this sister, and the equal division in the will would make such a gift all the more inexplicable. It is scarcely to be questioned, therefore, that the opening of the account was solely for the convenience of Mrs. Arnott, and that she at all times intended to preserve her beneficial ownership of the moneys deposited in it.

But it has been held by the Court of Appeal that the language of the agreement is conclusive that a joint tenancy in beneficial as well as legal interest was created and that evidence of a different intention is inadmissable because it would contradict that language; and it is necessary to decide whether or not that view is sound.

A careful examination of its language makes it perfectly clear to me that what was intended by all parties was the creation of a relationship to the bank in such terms as would preclude any challenge to the irrevocable authority of either of the depositors to deal with the account in unqualified fashion and as if she were the sole owner of the funds; that an estoppel should be raised that would remove the possibility of controversy between the depositors or persons representing them involving the bank.

1947

NILES, ET AL. v. LAKE

Rand J.

They agree "jointly"—necessarily with the bank—and "each with the other or others of us and also with the" bank: each agrees directly with the bank and with the other as to the bank; the undertaking with the bank is that the funds "shall be and *continue*" joint property with survivorship, regardless obviously of the amount that either may have withdrawn and regardless of any individual interest thus affected; from day to day the balance was to *continue* to be the *"joint property"*, a title by estoppel imposed on the fluctuating account whatever at any moment it might be. "In order *effectually to constitute* the joint deposit", formal assignments are made by each to the joint and surviving interest; an irrevocable authority in either to discharge the bank from its obligation is created; and the survivor is declared in absolute authority over what remains. These are all constituent elements of a conclusive relation to the bank; whatever the interest in the money of the depositors *inter se,* these were the terms interposed between them and the bank. They, therefore, do not set up a joint tenancy, a title characterized by an immediate beneficial interest of a moiety in each of the owners; and no one has suggested the category of ownership into which they fit. Whatever else may be the effect of the deposit, as to the account, the terms, among other things, create a body of irrevocable powers and commitments vis-a-vis the bank; but once these powers have been exercised, the terms are exhausted and to questions of ownership of funds *dehors* the bank they are irrelevant.

This accords with the actual intent of the testatrix toward her sister in relation to the agreement; it was necessary for the purposes of the bank; she did not intend its language to touch any interest in the money as between them; what she wanted was a joint account simply and the form was something required by the bank. Neither she nor her sister had in mind to contract with each other; the money was hers to retain or to make a gift of to the sister, but not to bargain about with her. If the language of the document did not, as it does, show the true purpose, the situation would seem to be such as Middleton J. had in mind when in *Re Hodgson* (1) he said: "unless it is

(1) (1921) 50 O.L.R. 531 at 534.

proved that the document is not intended to define the rights of the parties as between themselves and is a mere memorandum defining the rights and duties of the bank".

To hold otherwise would, as the result of the bank's requirement, deny to a depositor the privilege of opening a joint account for the purpose of convenience: that, in other words, the bank would dictate the terms of beneficial ownership, irrelevant to its protection, as a condition of that form of accommodation. The common sense of the situation is confirmed by the language of the agreement in negativing such a construction.

In *In re Mailman* (1), Crocket J. at p. 378 says:

> Even if one were disposed to regard it as an agreement between the parties themselves as to their respective rights concerning the deposit fund, those rights as already appears, are definitely restricted to the authority of each to withdraw money from the account in the manner stated in the first paragraph. This does not itself necessarily imply the right of the appellant to take the money as his own.

There was no clause declaring the property to be joint, but what is significant is the evident hesitation to treat the terms as defining the interests of the depositors *inter se,* as intended to do more than specify the basis of deposit from the standpoint of the bank.

I would allow the appeal and restore the judgment at trial. All costs should be paid out of the funds in question.

KELLOCK J.—Apart from the written document here in question, the evidence does not show that the deceased, Georgena Arnott, intended the respondent to have any beneficial interest in the moneys in the account. All that the deceased said to Mr. Jex was that she "wished to take out a joint savings account with" her sister. All that she said to the Bank manager was: "I want to open a joint account in your bank with my sister, Mrs. Blanche V. Lake". The manager said to her that "it will be necessary for you to sign one of our standard forms for the operation of a joint account". This she signed without reading. The respondent, who saw the deceased at the hospital on two occasions after the document was signed, but who had not seen her before the arrangement with the bank was made, was merely asked on one occasion if she had signed the bank

(1) [1941] S.C.R. 368.

1947

NILES, ET AL. v. LAKE

Kellock J.

document. There was no other conversation between the sisters regarding the account. The respondent expressed herself after the death to the effect that the object of the deceased in connection with the account was "convenience only".

It is, I think, well settled that in such circumstances, apart from the terms of the document itself, there would be a resulting trust of the beneficial interest in favour of the estate of the deceased; *Standing* v. *Bowring* (1). The question, then, becomes one as to the effect of the document, but the circumstances under which it came into being and that it was the bank which required it for its purposes affects its interpretation.

It may first be observed that the transaction which produced the document was the purchase by Mrs. Arnott of a contract with the bank. The document, which is signed by the sisters under seal, evidences the contract with the bank, an agreement between Mrs. Arnott and the respondent as well as an assignment by each.

In effect the two sisters agree with the bank and with each other that all deposits "shall be and continue to be the joint property of the sisters with right of survivorship". Each of the sisters *in order effectually to constitute the said joint deposit account* assigns to themselves jointly and to the survivor or survivors. There are further provisions for withdrawl on the cheque of either and that death shall not affect the right of the survivor "to withdraw" the moneys and to give a discharge to the bank. There is also a provision that the contents shall be binding upon the heirs, executors, administrators and assigns of each of the sisters.

The recital as to the existence of valuable consideration and the fact of execution under seal may be at once disposed of. That the agreement and assignment were in fact voluntary and that all moneys in the account were provided by the deceased may be proved notwithstanding; *Walrond* v. *Walrond* (2); *Kekewich* v. *Manning* (3); *Glesby* v. *Mitchell* (4).

(1) (1885) 31 Ch. Div. 282.
(2) (1858) 7 W.R. 33.
(3) (1851) 1 De G.M. & G. 176.
(4) [1932] S.C.R. 260.

The mere transfer into the joint names or purchase in joint names is sufficient to constitute joint ownership with its attendant right of survivorship. As put in Williams on Personal Property, 18th Ed., p. 518:

> If personal property, whether in possession or in action, be given to A and B simply, they will be joint owners * * *. As a further consequence of the unity of joint ownership, the important right of survivorship, which distinguishes a joint tenancy of real estate, belongs also to a joint ownership of personal property.

And again at p. 520:

> If, however, the persons are simply made joint owners, the law will be sufficient of itself to carry the property to the survivor. And it is now by no means unusual to vest personal estate in two or more persons, as joint owners, simply by conveying it to them without further words.

In such a case where the consideration is furnished wholly by one there is, as *Standing* v. *Bowring* (1), shows, a resulting trust for him if the other is a stranger.

Where it is expressly stated in the instrument that the property is to be joint, as in *Weese* v. *Weese* (2), and *Re Reid* (3), it is nonetheless always a question "whether the document was intended to embody the rights of the" (parties) or was a memorandum defining the rights and duties of the bank; *Stadder* v. *Canadian Bank of Commerce* (4); *re Hodgson* (5).

In *In re Jackson* (6), moneys to which three sisters were entitled as tenants in common were invested in mortgages in each of which there was a joint account clause by which it was declared that the mortgage money belonged to the mortgagees on joint account *in equity as well as at law* and that they and the survivors and survivor of them should remain entitled in equity as well as at law to the mortgage money and the interest and that the receipt of the survivors or survivor of them or of the executors or administrators of such survivor, or their or his assigns, should be an effectual discharge for the same and every part thereof respectively.

Had the joint account clause not been inserted in the mortgages the three sisters would have been entitled as tenants in common to the mortgage moneys. The evidence

(1) (1885) 31 Ch. Div. 282.
(2) (1916) 37 O.L.R. 649.
(3) (1921) 50 O.L.R. 595.
(4) (1929) 64 O.L.R. 69, at 71.
(5) (1921) 50 O.L.R. 531, at 534, *per* Middleton J.
(6) (1887) 34 Ch. D. 732.

1947

NILES, ET AL. v. LAKE

Kellock J.

showed that the clause had been inserted by the solicitor who prepared the documents without special instructions in order to facilitate any subsequent dealing with or discharge of the mortgage debt and security and not with the object of vesting the beneficial interest in the surviving sister or sisters to the exclusion of the predeceasing sister or sisters. There was evidence also that in connection with one of the mortgages the effect of the clause had been explained to the mortgagees. But it was held that it was a question of intention and that, notwithstanding the clause, the sisters had intended a tenancy in common.

So far as the evidence in the case at bar goes, there is no evidence that the deceased intended the beneficial interest to go to the respondent. As to the language in the document, which it is contended has that effect, the deceased was ignorant of this as she had never read it. In my opinion, the document is to be construed as not intended to affect the beneficial title as between the sisters at all, but merely to facilitate the bank in its dealing with the account. The decision in *In re Mailman* (1) does not decide anything in conflict with this.

I would therefore allow the appeal. With respect to costs, I think that the rule applied in *Boyce* v. *Wasbrough* (2) may, with propriety, be extended to the circumstances of this case. The proper construction of the document of December 16, 1943, fundamentally affects the rights of the parties and as to that there has been such difference of judicial opinion "as to make it plain that there was in fact a legal issue to be debated both important and debatable". I think, therefore, that the costs of all parties throughout should, as between party and party, be paid out of the fund which is the subject matter of the litigation.

Appeal allowed. Costs throughout of all parties to be paid out of the fund.

Solicitors for the appellants: *Mason, Cameron & Brewin.*

Solicitors for the respondent: *Smith, Rae, Greer & Cartwright.*

---

(1) [1941] S.C.R. 368.

(2) [1922] 1 A.C. 425, at 435.