

1954

Margaret Jardine et al v. Archulius Archibald et al : Brief of Respondents

Utah Supreme Court

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In The Supreme Court of of the State of Utah

MARGARET JARDINE, MELVIN H. BUTTARS,
MAYBELL GRIFFITHS, MAURICE BUTTARS, GALE
BUTTARS, ARLEN BUTTARS, GUY BUTTARS, VERL
G. BUTTARS, DeVAL BUTTARS, CLEO B. BUTTARS,
COLEEN B. SHEPPERD, ARLENE B. ROBINSON,
THERALD IRA BUTTARS,

Appellants,

vs.

ARCHULIUS ARCHIBALD, GROVER BUTTARS,
HATTIE HODGE, WALLACE BUTTARS, ORMAS
BUTTARS, VILLA BRONSON, ELMA MILNE, VADA
SMITH, OMAR BUTTARS, WENDELL BUTTARS,
TED BUTTARS, SHERWIN BUTTARS and ROLAND
BUTTARS.

Respondents.

Case
No. 8177

MARGARET JARDINE, MELVIN H. BUTTARS,
MAYBELL GRIFFITHS, MAURICE BUTTARS, GALE
BUTTARS, ARLEN BUTTARS, GUY BUTTARS, VERL
G. BUTTARS, DeVAL BUTTARS, CLEO B. BUTTARS,
COLEEN B. SHEPPERD, ARLENE B. ROBINSON,
THERALD IRA BUTTARS,

Appellants,

vs.

WALLACE BUTTARS, ARLENE BUTTARS, his wife,
GOVER BUTTARS, HATTIE HODGE, ARCHULIUS
ARCHIBALD, OMAS BUTTARS, VILLA BRONSON,
ELMA MILNE, VADA SMITH, OMAR BUTTARS,
WENDELL BUTTARS, TED BUTTARS, SHERWIN
BUTTARS, and ROLAND BUTTARS.

Respondents.

Case
No. 8178

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENTS

STATEMENT OF FACTS

We desire to supplement and to differ in some respects with the statement of facts contained in Appellants' brief. Our difference lays largely with respect to the mental condition of Emma G. Buttars. (References will be to the Clerk's numbering at the bottom of each page in blue numerals.)

(R. 56-57) Counsel for all parties stipulated that aside from the record in the former proceedings no further proof would be offered as to the mental condition of Mrs. Buttars. "Both counsel for both sides recognize the fact that undue influence and fraud may indirectly involve mental competency, but in this respect both parties desire to refrain from direct testimony as to mental condition. Mr. Daines: We so stipulate. Mr. Heinrich: We so stipulate." Thereupon the entire transcript in Case No. 5167 (the Will case) was offered and received. Upon the state of the record at that point in the case of *In Re Buttars' Estate* (Utah, Sept. 26, 1933), 261 P. 2d 171 becomes factual because this Court said:

"The evidence related above is proof that testatrix was essentric in her actions but is utterly insufficient to sustain the contestants' burden of proving by a preponderance of the evidence that she lacked testamentary capacity at the time she executed the Will."

In relation to all of the conveyances both real and personal property the following facts are also recited:

"Testatrix had always been a frugal woman who believed that one should earn what he received. Shortly after she executed her Will she made con-

veyances of a considerable part of her real property to Wallace and two of her younger daughters who lived near her. She also assigned some valuable bank stock and bought U. S. Savings Bonds for these daughters giving as her reason for doing so that they had received worthless stock from their father's estate, of which she one of the administrators, as part of their share in his estate. This was not worthless at the time of the distribution but became so within a few years thereafter."

All of the property involved in this Appeal is referred to in the quotation, and the references to individuals are to Archulius Archibald, Hattie Hodge and Wallace Butters. In view of the state of the record, it becomes unnecessary to again incorporate the same facts in this statement as Appellant has done. The Will was executed on March 22, 1945, so that at that time she has been judicially declared to be mentally competent, and since the stipulation above referred to takes care of the question of mentality, the only remaining question is one of undue influence. The lower Court made a finding that there was a "close and intimate" relationship between Wallace, Archulius and their Mother.

It was Mrs. Butters, herself, who made arrangements about her bank account (R.R. 93-94), and not because of any undue influence. (R.R. 94) She made some of her transactions even without the knowledge of her son and daughter who are charged with using undue influence. The facts concerning some of her bonds and 22 shares of bank stock were not known until after the death of Mrs. Butters (R.R. 95). There was no suggestion to Mrs. Butters by any one involved in this appeal as to what con-

veyances should be made by her (R.R. 103-104), and the conveyances were all made in pursuance to a plan that Mrs. Buttars had in mind since shortly after her husband's estate had been probated (R.R. 105-106). The testimony of Mrs. Mabell Griffiths (beginning R.R. 108) makes no mention of fraud, undue influence or mental condition.

Mrs. Jardine's testimony as to undue influence contains only the following: (R.R. 112). Supposedly the repetition of a statement made by Mrs. Buttars. "If they (the Archibalds) didn't have all the land they wanted why didn't they go to his own dad and get it, instead of hounding her for her's." Mrs. Buttars had reserved a life estate in real property to insure herself of a livelihood (R.R. 113). One of these deeds had been of record since the 28th day of March, 1945, (only six days after Mrs. Buttars had executed her Will) and Mrs. Jardine (and undoubtedly other appellants) had known of the deeds and conveyances since 1950, and they waited until after their Mother had died before bringing any action (R.R. 114-115-116). Mrs. Buttars died on July 1st, 1952 (R.R. 115).

Melvin Buttars' testimony begins at page 118 of the Record. His testimony begins with a recitation of dispositions of property made by his Father. Wallace, Archulus and Hattie were all minors at their father's death (R.R. 122). Careful examination of this testimony fails to disclose any mention of a fact touching on the matter of undue influence or fraud. The only other witness was a Mr. Nielsen, who is a real estate salesman and testified only to land values. Respondents pleaded and relied on the statute of limitations, and moved to dismiss because of the running of the statute (R.R. 149 to 152).

The above is the state of the Record so far as Appellants' testimony is concerned.

Erma Thompson, (not a member of the Buttars family) visited Mrs. Buttars when the latter told her that she was going to make the contemplated conveyances. This was in 1944 (R.R. 154).

Clara Stewart (not a member of the Buttars family) talked with Mrs. Buttars who told her that she had done well for the other children and "would like to make it up for the younger children," meaning Wallace, Archulius and Hattie (R. 160-161). That was in 1944.

Tom Buttars (R.R. 164) was a half brother of the father of all the parties to this litigation, and in talking with Mrs. Buttars mention was made that in the distribution of the father's estate the minors had not gotten their just rights and Mrs. Buttars then stated that she was going to see to it that such would be the case (R.R. 164 to 166). That was between 1930 and 1940 and the reference was to Wallace, Archulius and Hattie (R.R. 170).

David Sparks an impartial witness, stated (R.R. 174 to 176) that Mrs. Buttars told him between 1938 and 1940 that:

"She said she felt like the three younger children, Archulius, Wallace and Hattie, being the three youngest, you know, didn't get a square deal when their father's estate was fixed up. And she said that she had made up her mind that when the estate was settled every one of the family got their share, and they would go their way and do just as they pleased with their portion of the property. And she felt

like she had the same right to do with her property, she was going to see that those younger children was taken care of to her knowledge."

Wallace Buttars had never talked to his mother prior to her deposit of the money in the First National Bank and he did not know of the deposit at the time (R.R.193). There were statements in the safety box at the First Security Bank to the effect that certain transfers of stocks and bonds were made for the purpose of equalizing the father's estate. Wallace had nothing to do with such statements (R.R. 220) and he had nothing to do with the account at the First National Bank, and had nothing to do with transferring the money from First Security Bank to the First National Bank, except on April 1st, 1950, he signed the Joint Deposit ticket, (Ex. 16) with Emma G. Buttars there creating a joint and several account. (R 152)

Upon that state of the record the lower Court held that there was no fraud and no undue influence practiced on Mrs. Emma G. Buttars.

ARGUMENT

Point 1. *The findings and judgment of the Court, finding and adjudging that Archulius Archibald and Wallace Buttars, are the owners of the real property, mentioned and described in their respective cases, No. 7605 and No. 7607, are supported by competent and uncontradicted evidence.*

The evidence is direct and positive that Emma G. Buttars conveyed to the defendant Wallace Buttars 120 acres of dry farm land, as evidenced by two deeds of

conveyance, identified as Ex. 23 and Ex. 24; and, she conveyed to the defendant Archulius B. Archibald, 58.84 acres of land, as evidenced by two deeds of conveyance, identified as Ex. 21 and Ex. 22. These deeds were executed by Mrs. Buttars on and between the 28th day of March, 1945, and the 6th day of May 1948, and they were filed for record with the County Recorder on the date they bear, except Ex. 22, which was filed five days after date thereof.

Mrs. Buttars reserved a life estate in the property conveyed to Wallace and in the tract of 48.59 acres conveyed to Archulius. Thus she continued to receive the income from the property to and including the year 1952, and her estate will receive the income to and including 1954, as provided by the written leases. And this income is reflected in her bank accounts. (R. 137). And moreover, Mrs. Buttars retained title to additional real property and also the bank accounts as appears from the petition to probate her will. (R. 1-4).

The manner in which Emma G. Buttars conducted her business affairs was without suggestion from any individual. She selected the time when each of the aforesaid deeds were executed. The defendant Wallace Buttars testified from his business dealings and experience with her that — “I know definitely that no one could get Mother to do something she didn’t want to do,” and she kept her business matters to herself. (R. 368, 369).

With respect to the execution of said deeds, plaintiffs allege that the deeds were procured by unlawful means and undue influence and with intent to defraud

their brothers and sisters, and that Wallace and Archulius persuaded their mothers, Emma G. Buttars, to execute and deliver to them said deeds of conveyance. These allegations were denied by the defendants, and it is submitted that plaintiffs evidence fails to prove these allegations. In addition to the constructive notice given to the plaintiffs, by the recording of said deeds, Melvin, Maybell and Margaret had actual notice thereof at the meeting held at Cornish Service Station in the fall of 1950. (R.R. 94, 95, 102). Why didn't they then talk to their Mother about the deeds and bank account, if they were in fact obtained by fraudulent means?

The fact that they did not then talk to her indicates that they then knew their Mother had purposely executed the deeds and opened the Savings account in the First National Bank, in order to equalize for the property given to the older children by their father. Although they did not talk to their mother as a committee, it does appear that Maybell Griffith talked to her mother about the deeds made to Wallace and Archulius, and in response, Mrs. Buttars, according to the testimony of Archulius, "marked off portions on the table and she said — "your father gave the older boys their portions and I am going to give Wallace his." (R.R. 96).

The evidence discloses without dispute that Mrs. Buttars intended to give the three younger children, Archulius, Wallace and Hattie some property to equalize the property given by their father to the older children, particularly the older boys. (R.R. 174). Testimony to the same effect was given by the witness, David Sparks, who testified that — "And she said that she had made up

her mind that when the estate was settled every one of the family got their share, and they would go their way and do just as they pleased with their portion of the property. And she felt like she had the same right to do with her property, she was going to see that those younger children was taken care of to her knowledge" (R.R. 174). That conversation was had about the year 1945. (R.R. 174)

It will thus be seen that Mrs. Buttars had been intending for a period of time to give the younger children certain property to equalize for the property received by the older boys when they were married. And moreover, for many years Archulius and Wallace lived near their mother and saw her daily and when ever she needed a service of any kind one or the other responded. This is reflected throughout their testimony.

It should also be kept in mind that this is not a case where the grantor conveyed all of his or her property, to avoid heirs at law, or creditors. In the case at bar, Mrs. Buttars retained about 170 acres of farm land, and personal property, free of encumbrance, in which the plaintiffs herein will equally participate. In most, if not all of the cases cited in appellants brief, the grantor's conveyance included all of his or her property.

Plaintiffs and appellants contend that Mrs. Buttars was incompetent at the time each of the deeds were executed. The defendants witnesses testified that Mrs. Buttars was ~~in~~ incompetent at the time each of the deeds were executed, ~~on the 6th day of May, 1948.~~

In support of their contention they cite, *Kadogan v. Booker*, 66 S. E. 297. From an examination of the

opinion in that case it will be seen that the mental and physical condition of Laura Swain, the grantor, at the time she executed the deed was vastly different from the mental and physical condition of Mrs. Buttars, when each of the deeds in question were executed by her. And the circumstances under which the deed was executed in that case were entirely different from the facts and circumstances surrounding the execution of deeds in the case at bar. Despite that fact the Supreme Court of West Virginia stated the rule to be — “There exists a presumption that a grantor in a deed conveying real estate was mentally competent to execute the deed. Mere infirmity of mind and body is not sufficient to overcome such presumption. The time of the execution and delivery of the instrument is the time at which the question of mental capacity is to be determined.”

Appellants cite *Johnson vs. Reese*, 249 S. W. 538, (Ky.) as authority. Here again the facts and circumstances are at variance with the facts and circumstances surrounding the execution of the deeds by Mrs. Buttars. In the course of the opinion the court stated: “There was evidence that grantor was easily influenced,” and that, “The daughter and her husband, living with the grantor, had the opportunity to and undoubtedly did influence him. The record shows that the grantor was in bad health and had to be taken care of before and at the time of the execution of the deed.”

The case of *Morris vs. Williams-Garrison*, 128 S. E. 78, 99 W. Va. 140, is also cited by appellants. In reviewing the facts the court stated: “The grantor in that case

was a moron. From his childhood his mentality had been regarded subnormal by his family, and the people of the community. His mind had never grown up. His parents considered him mentally incapable of attending to any business, and managed all his affairs during their lifetime."

We have examined all the cases cited by appellants in their brief and in every instance the condition of the grantor was in a much more serious condition than was Emma C. Buttars when she executed each of the deeds involved in the case at bar. In fact her health was normal for a woman of her age. This is the testimony of some 15 witnesses including neighbors, business people and her physician, all of whom testified positively that until March 21, 1951, when she suffered a heart attack, she was healthy and normal in all respects. She took care of her own business, wrote and signed checks on her bank account. Made deposits to her checking and savings accounts, and it was during this time that she purchased the bonds and securities found in her bank box after her demise. As reflected by the evidence in this case Mrs. Buttars' business ability and acumen was far above average.

Point 2. *Appellants contend that there existed a confidential relationship between Emma G. Buttars and her children, Archulius and Wallace, at the time the transfers or attempted transfers were made.*

Appelants base their conclusions upon the fact that Archulius and Wallace lived near their mother and visited frequently. Appellants counsel cite the case of Fisher vs. Burgiel, (Ill.) 46 N. E. 380, contending that the facts in

that case are similar to the facts in the instant case. When the opinion in that case is examined it will be seen that the mental and physical condition of Nellie Hollingshead were such that she was suffering from senile dementia; that she did not understand or comprehend the nature of her acts. She was forgetful and absent minded, was dirty and unkempt in her house and personal habits; that she failed to recognize old friends. Her physician testified that from 1936, she had a progressive senile dementia. It was while in this condition that she signed the deeds and made withdrawals from the Bank. The foregoing facts appears from the opinion. There was some testimony to the contrary. There was no reservation of a life estate, and it does not appear whether she possessed or owned other property, but it is evident from the condition of her health that she was unable to and did not transact business as was done by Mrs. Buttars, for more than three years after the last deed was executed.

The case of Woolwine vs. Bryant, (Iowa) 54 N. W. 759, is cited but the facts in that case are dissimilar from the facts in case at bar. No relationship existed between the grantor and grantee, and a life estate in the property was not reserved in the deed. On conflicting evidence the court cancelled the deed and upon appeal judgment was affirmed. In the case at bar there was substantial evidence to support the judgment of the trial court, and although the plaintiffs attempted to show that there existed a confidential relationship between Mrs. Buttars and Wallace and Archulius, there was an abundance of testimony to the contrary, and the court had a right to resolve the conflict, if any, in favor of respondents.

By use of the Corpus Juris digest we were referred to a very late Oklahoma case, *Watkins vs. Musselman et. al.* 239 P. 2nd 418, where the facts are very similar to the facts in the instant case, and it was contended that fraud and undue influence had been exercised upon the grantor. The trial court there held that the deeds were executed and delivered as the free and voluntary act of the grantor, and that the transaction was free of any undue influence or fraud. In the course of the opinion the court held that – “the judgment of the trial court will not be disturbed on appeal, unless the same is clearly against the weight of the evidence.” In holding against the contention of the plaintiff and appellant in that case, that undue influence had been exercised upon the grantor when she executed the deed the court stated: “As we view the plaintiffs’ evidence it, at most, discloses that Patti Musselman had an opportunity to unduly influence Mrs. Brown, not that she in fact did.” In the course of the opinion the following rule is stated: “Power, motive and opportunity to exercise undue influence do not alone authorize the inference that such influence has in fact been exercised,” and, in referring to the court’s holding in a previous case, *Melton vs. Melton*, 135 P. 2d. 43, the opinion states: “we held: ‘To set aside any transaction on the ground of undue influence, it must be shown not only that such influence existed and that it was exercised, but also that it was exercised effectively; that is, that it was the efficient cause in bringing about the transaction complained of.’”

We also found a late case from the state of Colorado. *Mehlbrant vs. Hal*, 213 P. 2d. 605. The facts in that case reveal that in accordance with a previous wish the mother

executed a deed conveying certain real estate to her son. It appears that this was the only property she owned. Her daughter with whom she had lived shortly prior to the execution of this deed, and apparently the only other child took action as the administratrix of her estate to set aside the deed. The trial court held against the plaintiff and on appeal the judgment was affirmed.

Upon appeal the appellant contended that there was a fiduciary relationship between mother and son and that the son had exercised undue influence upon his mother in procuring the deed. The trial court in finding against the plaintiff stated: "The burden of proof is on the plaintiff, and after most mature consideration of all the facts, I must conclude that the plaintiff has not sustained the burden, and the issues in this case will be resolved in favor of the defendants and against the plaintiff, and the plaintiff's complaint will be dismissed."

In the course of the opinion the court followed a rule adopted by the court in an earlier case: "In equity the judgment is essentially a deduction as to what is just and true from the facts and circumstances proven in each particular case. It is therefore a question for the trial court as to the convincing effect of the evidence, when that tribunal enters a decree, and there is a quantum of admissible and proper evidence to support its conclusions, we must presume that it was governed by proper rules of law, unless the contrary appears, and that its findings are correct."

There are numerous decisions holding to the same effect. When that rule is applied to the undisputed facts

in the case at bar, it is respectfully submitted that the judgments of the trial court should be affirmed.

Point 3. *The findings and judgment of the court declaring Wallace Buttars and Archilus B. Archibald to be owners of the United States savings bond, mentioned and described in their respective cases, are supported by competent and uncontradicted evidence.*

The United States Savings Bonds involved in this matter were held in joint tenants and the parties so stipulated (R.R. 149). The Court asked the question (R.R. 149): "Q. Do I understand that either of these owners could present that bond for payment, and be paid in cash without the other persons consent or authorization in any way? A. That is right." (R.R. 149). This, of course, should dispose of the question of ownership of the bonds.

Davies v. Beach et al (Cal.) 168 2d 452. (Note: This case involved U. S. Bonds with the standard "payable at death" clause, but the Court did not consider the difference between such a clause and joint tenancy important) "the regulations of the Treasury Department, under which the bonds are issued, have the force of Federal Laws; the State cannot vary the terms of federal obligations Some of the bonds in those cases were issued to two persons as co-owners, and others to the purchaser, and upon his death, to a named beneficiary. There seems to be no logical distinction to be made between the rights in the bonds of a surviving beneficiary."

We believe that a recent Montana case sufficiently disposes of this particular question. In *Re Marsh's Estate* (Mont.) 234 P. 2d 459. In that case the bonds were made in the name of "C. H. Marsh," and others.

“However, government bonds (same type as involved in our case) because of the special nature of the contract can never be held in tenancy by the entirety. The characteristic that distinguishes the tenancy by the entirety from other co-tenancies is that neither of the cotenants alone can terminate the tenancy or sever the estate. *Either cotenant may sell government bonds upon surrender of the bond and receive the full accrued value.* The tenancy is thus severed and one cotenant can reduce the entire property to his own possession and his cotenant receives nothing.” (Italics supplied.)

The law relating to gifts inter vivos has no application to U. S. Treasury Bonds, and this has been held countless times. For an example see *Lee v. Anderson* (Ariz.) 218 P. 2d 732. Further citations would unduly lengthen this brief to no avail.

Point 4. *The findings and judgment of the court, finding and adjudging that Wallace Buttars is the owner of the savings account in the First National Bank, are supported by competent and uncontradicted evidence.*

From the evidence it appears that Emma G. Buttars, on January 29, 1947, deposited \$5,000.00, with the First National Bank of Logan, in a joint savings account in the names of Emma G. Buttars, ~~and~~ Wallace Buttars. (R.R. 147). The deposit ticket was identified as Con. No. 11, Case No. 5167, and was offered and received in evidence. With permission of the court a copy of this exhibit was substituted for the original. (R.R. 149). On that date the account was posted to the Savings account ledger sheet. (R.R. 147). And a joint deposit card (Con. Ex.

No. 13) was prepared with the names of Emma G. Buttars and Wallace Buttars, typed thereon under date of Jan. 29, 1947. This card contained the signatures of Emma G. Buttars and Wallace Buttars on the front side thereof, but apparently through oversight they did not sign their names to the reverse side thereof. (R.R. 152). This card was identified as exhibit No. 13.

The account remained in this condition until April 24, 1950, when a new card (Ex. No. 16) was prepared by the bank and presented to Emma G. Buttars, when she and Wallace signed it on both sides and in accordance therewith a joint account was legally established. This card remained in possession of the bank until it was offered in evidence in the trial of the case No. 5167,, and with permission of the court it was released to the bank and a copy thereof was substituted. (R.R. 153).

On January 6, 1948, Mr. Hanson, wrote a letter to Mrs. Buttars, to inquire whether she intended that the account should be a joint account with her son Wallace. "We are now concerned about what your wishes actually were. Is this account supposed to be a joint account with yourself and your son, and if so does your name and his name appear on your savings pass book." (Con. Ex. No. 19, Case No. 5167).

Mrs. Buttars replied to the aforesaid letter on Jan. 10, 1948, in which letter she stated: "In reply to your letter of Jan. 6, 1948. I wish to inform you that this account you mention should be a joint account with me and my son Wallace, and that his name does appear on the savings pass book. Thank you, very truly, EMMA G.

BUTTARS." The letter was likely written by the bank, because some of the plaintiffs called there to investigate the account. (R.R. 155) and Mr. Hanson wanted definite information directly from Mrs. Buttars, relative to the nature of the account. And from the language of her reply he received direct information from her that it was a joint account.

Subsequently thereto the bank discovered that the joint deposit card, Exhibit 13, did not contain the signatures of Emma G. Buttars and Wallace Buttars on the reverse side thereof below the JOINT DEPOSITORS AGREEMENT. Accordingly the bank prepared what is identified as Con. No. 16, Date April 24, 1950, and presented it to Mrs. Buttars and she and Wallace signed it on both sides and it is retained by the bank to evidence the joint ownership of the savings account.

The appellants have not cited any legal authority with respect to the bank account. They merely contend that she was unduly influenced by Wallace. The undisputed evidence shows that he was not aware of the savings account until after it had been made. (R. 194). The appellants admit in their brief, page 46, that Maybell learned of the savings account after it was made. And Russell Hanson testified that plaintiff Melvin Buttars and his brother Orson came to the bank in the year 1950, to investigate the Savings account, and that some of the girls came to the bank to talk to Mr. Hanson about the account. (R. 155). If in fact Wallace had unduly influenced his mother in giving him savings account, which is not admitted, why did not the boys and girls above referred to inform Mrs. Buttars that she had been defrauded? She

was alive and could have taken legal action against Wallace, if in fact he had taken undue advantage of her. And if she had been as weak minded as there testimony implies, a guardian could have been appointed to bring proper legal action against Wallace. But on the contrary not a thing is done until after her demise.

Mr. John Olson, assistant cashier of the First National Bank testified that Contestant's exhibit No. 16, created a joint account between Emma G. Buttars and Wallace Buttars, and that upon the death of either party, the survivor became the owner of the account. (R.R. 182).

The appellants contended that because the passbook to the account could not be found, it affected the legality of the joint account. However, Ariel Berntson, assistant cashier of the Bank testified that the ownership of the savings account in question was evidenced by the joint depositors's agreement on the reverse side of exhibit No. 16, dated April 24, 1950, and not upon the passbook. (R.R. 226). He also testified that if the passbook is lost, "we have them sign an indemnity bond protecting the bank." The ownership of the account is not affected by loss of the passbook. (R.R.227).

It is respectfully submitted that the decision of this Court in the case of Holt vs. Bayles, 39 P. 2d 716, is controlling and determinative in the case at bar. By comparison it will be seen that the deposit card signed by Anna M. Bayles and Emma Bayles, when the savings account was made is identical in substance with the card signed by Mrs. Buttars and Wallace, dated April 24, 1950. (Ex. No. 16). In the course of the opinion it is stated:

"The trial court in its decision was controlled largely by the agreement of joint tenancy executed by Anna and Emma Bayles. The effect to be given the writing is indeed the crux of the case."

This court also distinguishes three former decisions:

"The cases of *Holman v. Deseret Savings Bank*, *Olson v. Scott*, and *Boyle v. Dinsdale*, *supra*, turned on the question of whether or not there was a gift *inter vivos*, not whether there had been the creation of a joint ownership with right of Survivorship."

In view of the express provisions contained in the depositors signature card in that case, as is true in the case at bar, it was held that the account shall be owned by them jointly with right of survivorship.

For the foregoing reason defendants and respondents respectfully submits that the judgment of the trial court in both cases should be affirmed with costs.

Respectfully submitted,

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