

1960

# O. A. Tangren, etc. v. Adeline M. Ingalls et al : Brief of Appellant

Utah Supreme Court

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John E. Stone; O. A. Tangren; Attorneys for Appellant;

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

FILED

SEP 19 1960

O. A. TANGREN, ETC.,

—vs.—

Clerk, Supreme Court, Utah

ADELINE M. INGALLS,

124252

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ADELINE M. INGALLS,

—vs.—

AMERICAN SAVINGS & LOAN  
ASSN, et al,

124797

Case No.  
9297

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ADELINE M. INGALLS,

—vs.—

PRUDENTIAL FEDERAL SAV-  
INGS & LOAN ASSN., et al,

124798

---

BRIEF OF APPELLANT

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## TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF FACTS.....	1
STATEMENT OF POINTS.....	6
ARGUMENT .....	6
Point I. The trial court erred in granting Respondent's motions for summary judgment against Appel- lant's Counterclaims and in granting Respondent's motion to dismiss Appellant's complaint.....	6
CONCLUSION .....	13

## CASES CITED

First Security Bank of Utah, N.A. v. Iphegenia P. Demiris, et al.....	7-10-12
Greener v. Greener, 116 Utah 571, 212 P. 2d 194.....	7-9
Holt v. Bayles, 85 Utah 39 P. 2d 715.....	7-8-9-10
Moskowitz v. Marrow, 251 N.Y. 380, 167 N.E. 506.....	12
Neill v. Royce, 101 Utah 181, 210 P.2d 327.....	7
Sineft v. Sineft, 229 Iowa 56, 293 N.W. 841, 843.....	8
Teutenberg v. Shiller, 138 Cal. App. 2d 18, 291 P. 2d 53.....	11

## ANNOTATIONS CITED

64 A.L.R. 2d 918, 921.....	11
66 A.L.R. 870 .....	12
2101-2121, 6 Moore Federal Practices.....	12

## STATUTES CITED

Sec. 1020 Comp. Laws of Utah 1917.....	8
Ch. 8, Sec. 1, Special Session Laws of Utah 1919.....	8
528.64 Iowa Code .....	8
Rule 25, Utah Rules of Civil Procedure.....	11

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Case No.  
9297

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BRIEF OF APPELLANT

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STATEMENT OF FACTS

On February 3, 1960, Appellant Ben Stewart (Plaintiff below) brought an action against Respondent Adeline M. Ingalls (Defendant below) to declare certain

bank accounts with Prudential Federal Savings and Loan Association of Salt Lake City, Utah, and American Savings and Loan Association of Salt Lake City, Utah, totaling \$20,247.09, to be his sole and separate property. The Complaint alleges that on or about April 2, 1959, Appellant placed the name of the Respondent, Adeline M. Ingalls, on the two savings accounts, that the Respondent never put any funds into either of said savings accounts, that Appellant was never indebted to the Respondent, that Appellant did not realize that the Respondent would obtain an inheritable interest by such action or that the Respondent would have said bank accounts at her disposal; and further, that since placing her name on said accounts he had given her some \$4,000.00, this being the full amount he intended her to receive from his estate. (R. Case No. 124252, 1-2).

Contemporaneously with the filing of the action, notice was sent to Prudential Federal Savings and Loan Association and to American Savings and Loan Association (R. Case No. 124797, 6 and Case No. 124798, 10) instructing them not to permit Respondent to withdraw any funds and informing them that proper measures were being taken to remove her name from the respective accounts.

On April 1, 1960, Respondent made a Motion to Dismiss Appellant's Complaint on the ground that it failed to state a claim upon which any relief could be

granted (R. Case No. 124252, 7.) Meanwhile, on February 7, 1960, Appellant Ben Stewart died, and on March 4, 1960, an order substituting O. A. Tangren as executor of the estate of Ben Stewart was entered by the District Court (R. Case No. 124252, 5).

On March 16, 1960, Respondent initiated an action against Prudential Federal Savings and Loan Association and O. A. Tangren, executor of the estate of Ben Stewart, deceased, and against the American Savings and Loan Association and O. A. Tangren, executor of the estate of Ben Stewart, deceased, to recover the moneys desposited in the respective accounts. (R. Case No. 124798, 1-3 and Case No. 124797, 1-3).

On April 11, 1960, an Answer and Counterclaim was filed by the Appellant to these two suits (Case No. 124797, 15-18 and Case No. 124798, 11-14).

A Motion for Summary Judgment was then filed by Respondent involving the case of the two banks (R. Case No. 124797, 20-21 and Case No. 124798, 25-26), and at the hearing on May 31, 1960, it was stipulated that the two signature cards which were at issue in the action could be incorporated in the Plaintiff's Complaint and that all three cases could be consolidated on the Respondent's Motion for Summary Judgment (R. Case No. 124252, 16-17). In the same proceeding, the money having been paid into Court by the Prudential Federal Savings and

Loan Association and the American Savings and Loan Association, Summary Judgment could be entered against the other parties hereto since they had no interest in the controversy. (R. ~~26-27~~ <sup>124797</sup>).

The two signature card agreements were opened on or about April 2, 1959, and read in part as follows:

As Joint Tenants with right of survivorship and not as tenants in common, and not as tenants by the entirety, the undersigned hereby apply for a membership and a withdrawable account in the AMERICAN SAVINGS & LOAN ASSOCIATION, same to be issued subject to the provisions of the Laws under which the Association is organized and operating and the Articles of Incorporation and By-Laws of the Association.

You are directed to act pursuant to any one or more of the joint tenants' signatures, shown below, in any manner in connection with this account and to pay, without any liability for such payment, to any one or the survivor or survivors at any time. It is agreed by the signatory parties with each other and by the parties with you that any funds placed in or added to the account by any one of the parties is and shall be conclusively intended to be a gift at that time of such funds to the other signatory party or parties to the extent of his or their pro rata interest in the account.

The undersigned hereby apply for a membership for a savings share account in the Prudential Federal Savings and Loan Association and for the issuance of evidence of membership in the approved form in the joint names of the undersigned as joint tenants with the right of survivorship and not as tenants in common. Receipt is hereby acknowledged of a copy of the charter and by-laws of said association. Specimens of the signatures of the undersigned are shown below and the association is hereby authorized to act without further inquiry in accordance with writings bearing any such signature; it being understood and agreed that any of the undersigned who shall first act shall have power to act in all matters related to the membership and any share account in said association held by the undersigned, whether the other person or persons named in the certificate be living or not. The repurchase or redemption value of any such share account or other right relating thereto may be paid or delivered in whole or in part to any one of the undersigned who shall first act, and such payment or delivery of a receipt or acquittance signed by any one of the undersigned shall be a valid and sufficient release and discharge of said association.

On June 10, 1960, the Motion for the Summary Judgment was granted in the cases involving the two banks and the Motion for Dismissal was granted in the



original suit of Ben Stewart v. Adeline M. Ingalls, provided however, that the Plaintiff was granted leave to amend the Complaint and Counterclaim within ten (10) days in order to place in issue the validity of the signature card agreements involved in the action. Since the validity of signature card agreements, which is a conclusion of law, is dependent upon the operative facts which had already been pleaded in the Complaint and Counterclaim of the Appellant, the Appellant chose to appeal directly from the orders entered on June 21, 1960, which brings this case at issue before this Court.

## STATEMENT OF POINTS

### POINT I.

THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTIONS FOR SUMMARY JUDGMENT AGAINST APPELLANT'S COUNTERCLAIMS AND IN GRANTING RESPONDENT'S MOTION TO DISMISS APPELLANT'S COMPLAINT.

## ARGUMENT

### POINT I.

THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTIONS FOR SUMMARY JUDGMENT AGAINST

APPELLANT'S COUNTERCLAIMS AND IN GRANTING RESPONDENT'S MOTION TO DISMISS APPELLANT'S COMPLAINT.

This Court has had occasion recently to decide several cases on the issues of joint bank accounts. These include *Holt v. Bayles*, 85 Utah, 39 P.(2d) 715; *Neill v. Royce*, 101 Utah 181, 120 P.(2d) 327; *Greener v. Greener*, 116 Utah 571, 212 P.(2d) 194 and most recently, *First Security Bank of Utah N. A. v. Iphegenia P. Demiris, et al*, decided July 8, 1960.

The factor that distinguishes the instant case from those previously decided is this was an action by one cotenant against another in which the Complaint alleged lack of donative intent, mistake and the fact that the sum in the banks in question were entirely the Appellant's money. The appellant died before the conclusion of the litigation.

It was urged by the Respondent in the lower Court that the signature card agreements were regular in form, that a joint tenancy was created and that the joint tenancy terminated with the death of the cotenant and that hence the survivor was entitled to all the funds notwithstanding the fact that litigation had begun and notice had been given to the banks in question. The theory upon which this view is based upon the rule in *Holt v. Bayles, supra*, and the real property rule as to

the termination of joint tenancy during the course of the litigation by the death of a cotenant.

It is stated in *Holt v. Bayles, supra*, at page 719.

“Where such intention is clearly expressed in a written contract executed by the parties, which remained unaltered, and there is no fraud, undue influence, mistake or other infirmity alleged, the question of intention ceases to be an issue and the courts are bound by the agreement.”

It should be noted in this connection that mistake was alleged in the Appellant's Complaint which would distinguish this case from *Holt v. Bayles, supra*.

However, the reasoning of the rule, enunciated above, would appear to be questionable. The Court in that case construed Section 1020, *Comp. Laws Utah* 1917 (same as U.C. 73-4-5) and *Special Session Laws of Utah* 1919, Ch. 8, Section 1. This is substantially the same as the Iowa Code 528.64. In *Sineft v. Sineft*, 229 Iowa 56, 293 N.W. 841, 843 superseding on rehearing 284 N.W. 91 the code section is construed and it was held:

“This section adds nothing to the words of the certificate that in any way aids the Appellant in his action. The legal relationships created by the establishment of joint bank accounts have

long perplexed banks, depositors and the courts. The banks in particular were in a continuous quandry since until the rights of the depositors were determined, they could not be certain to whom the account might be safely paid. To remedy this situation many of the state passed statutes substantially identical in import with Sec. 9267. Vol. 45 of the *Banker's Law Journal* 733, 8813, 897 (1928) sets out the legislative enactment of many of the states as of that date carrying this matter. But as stated in an article in the *Cornell Law Quarterly*, Vol. 15, pages 96, et sequence, 'These statutes did not settle the rights of the depositors among themselves.' "

In *Greener v. Greener*, 116 Utah 571, 212 P.(2d) 194, the Court quoted *Holt v. Bayles*, 39 P.(2d) 715 and Justice Wolfe's comment was:

"The reason for the conclusive presumption, in the absence of statute, may not be clear for seemingly death would have no effect on the intent with which the joint deposit was created."

"However since both the parties in the instant case are still alive, we need not concern ourselves with the presumption of intent where one of the parties has died *before the assertion of conflicting right*." (Emphasis our own.)

116 Utah 571, 212 P.(2d) 194, 199. It should be noted that the Appellant in this case did assert his rights prior to his death.

In *First Security Bank of Utah, N.A., a Corporation, as Executor of the Estate of James C. Demir, deceased, v. Iphegenia P. Demir, et al, supra*, the Court stated that they were not overruling *Holt v. Bayles, supra*, but this is difficult to determine since that case involved a situation where an estate was suing a surviving cotenant. It was stated,

“The evidence points unerringly to the fact that insofar as the *purpose, desire and intent* decedent was concerned, the transfer of December 5, 1956, was for his convenience in the face of the exigency that he had to go to the hospital. Except for the bare fact that a joint tenancy account was opened there is no circumstance in this case which suggests any intent on his part to make a gift or transfer of ownership of this fund to his wife. On the contrary their marital history and attitudes, as disclosed by the record, would negative any such intent.” (Emphasis ours.)

It would not logically seem to make any difference where the estate sues the surviving cotenant whether the money is in the account or has been withdrawn prior to death by the surviving cotenant. This would give the implication that the sole function of the conclusive presumption in *Holt v. Bayles, supra*, was to protect the bank.

It was contended by the Appellant that the filing of the action and the giving of notice terminated the joint tenancy, if any existed, or, at least, gave the Court jurisdiction under the survivorship rule (Rule 25, *Utah Rules of Civil Procedure*) to litigate the matter after the death of either of the parties. The Respondent claimed that the joint tenancy would not be terminated until a final judgment or successful conclusion was reached. The contention of the Respondent in this respect appears to be correct, *but only insofar as it affects joint tenancies in real property*. The authority quoted by Respondent, however, Annotation, "Joint Tenancy—Termination," 64 *A.L.R.* 2d. 918, deliberately excluded from its scope the question of joint bank accounts.

"The questions covered here are those of severance or termination of joint tenancies in either real or personal property by act of the joint tenants, or one or some of them. The problems of joint bank accounts have, however, been excluded, not only because of the doubts which arise in regard to whether and when a joint bank account constitutes a joint tenancy, but because upon any view the bank account cases are special and peculiar and require separate consideration."

The annotation further determines that commencing an action is not sufficient to terminate a joint tenancy; a successful conclusion of the action is required, citing *Teutenberg v. Shiller*, 138 Cal. App. 2d. 18, 291 P.2d 53. Id. at 956.

However, in Judge Cardozo's concurring opinion in *Moskowitz v. Marrow*, 251 N. Y. 380, 167, N.E. 506, 66 *A.L.R.* 870, an opinion which has been followed in a series of Utah cases relating to the conclusive presumption of joint tenancy upon the death of a cotenant, the following language is found:

“As to what the true agreement was, the door to controversy was open during the joint lives of the depositors. It was closed upon the death of either. The question is not here whether a like result would follow if a suit to establish an agreement at war with the presumption had then been pending undetermined. A notice of revocation is not a notice of *lis pendens*.”  
*Id.* at 880-881.

It should also be pointed out that care is to be used concerning the use of the Summary Judgment in 6 *Moore Federal Practices*, 2101-2121. The matter of whether the Plaintiff's original Complaint stated a cause of action apparently has been conclusively decided by *First Security Bank of Utah v. Demir*, *Supra*, wherein it was held that a joint bank account was not created because the decedant had not intended to create the same.



## CONCLUSION

It will be seen then, that (1) the question of whether a joint tenancy had been created as between the parties themselves was a question of fact which should have been submitted to the trier of facts; and, (2) if a joint tenancy had been created it was terminated by the filing of the action and the notice given to the banks, and that the trial court consequently had jurisdiction over the subject matter and the parties, and therefore, the matter should have been heard on its merits. We respectfully submit, therefore, that the Judgment heretofore entered in this action be reversed, and that the matter be heard upon its merits.

Respectfully submitted,

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