

1960

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

Utah Supreme Court

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Romney, Boyer and Ronnow; Attorneys for Respondent;

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**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

O. A. TANGREN, ETC.,

vs.

ADELINE M. INGALLS 124252

ADELINE M. INGALLS

vs.

AMERICAN SAVINGS & LOAN  
ASS'N, et al 124797

ADELINE M. INGALLS

vs.

PRUDENTIAL FEDERAL SAV-  
INGS & LOAN ASS'N, et al 124798

Case No.  
9297

**FILED**

**BRIEF OF RESPONDENT - 1960**

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Clerk, Supreme Court, Utah

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## BRIEF OF RESPONDENT

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### STATEMENT OF FACTS

Respondent does not controvert the statement of facts of appellant but is of the opinion that a statement in chronological order may be helpful to the Court.

On April 2, 1959 the respondent, Adeline M. Ingalls, and Ben Stewart opened a joint savings account, #45889, with Prudential Federal Savings and Loan Association and entered into a written contract as follows:

The undersigned hereby apply for a membership and 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 and 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 rights 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. (Case #124798, pages 1 and 12.)

On the same day the same persons opened a joint savings account with American Savings & Loan Association, #OS-14673, and made a contract 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 an 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. (Case #124797, pages 1, 4, and 16.)

On February 7, 1960 Ben Stewart, one of the joint tenants named in said joint accounts, died. Thereafter, O. A. Tangren, the appellant, was appointed executor of the estate of Ben Stewart. On the date of the death of Ben Stewart there was on deposit in the account with Prudential Federal Savings and Loan Association the sum of \$10,000, and on deposit on account with American Savings & Loan Association he sum of \$10,247.09, which sums have since been deposited with the Clerk of of Salt Lake County, State of Utah. (Case #124797, pages 2 and 16; case #124798, pages 2 and 12.)

On February 4, 1960, three days prior to the death of Ben Stewart, an action was filed in the District Court

of Salt Lake County on behalf of Ben Stewart against the respondent. The Plaintiff sought an adjudication that the accounts referred to herein were his property, free and clear of any claim of the respondent. At about the same time Ben Stewart caused a letter to be sent to each of the loan companies, as follows:

You will please take notice that when I had Adeline M. Ingalls name placed on my savings account with you, #....., I little realized that I was placing her in a position equal to myself with respect to said account. I never intended that that should happen. I therefore direct that you do not let the said Adeline M. Ingalls, or any one on her behalf, withdraw any funds from that account. I am taking proper measures to have her name removed from the account.” (Case #124252, page 1; case #124798, pages 10 and 11, an dcase #124797 pages 6 and 15.)

Respondent commenced separate actions on March 16, 1960 against each of the loan companies and the appellant for the purpose of recovering the funds on deposit in said joint accounts. For convenience, the action commenced by Ben Stewart will be called the Stewart action and the actions commenced by the respondent will be called the Ingalls actions. (Case #124797, page 3; case #124798, page 3.)

Respondent filed a motion to dismiss in the Stewart action, and in the Ingalls actions filed motions to dismiss the counterclaims of the appellant and motions for summary judgment. These motions were consolidated

for hearing and argued before the Honorable Merrill C. Faux on May 31, 1960. On June 10, 1960 an order for dismissal was entered in the Stewart action and orders dismissing the counterclaims of the appellant were entered in the Ingalls actions, with provisions in each case that the appellant could amend within ten days. (Case #124252, pages 12-18.) No amendment was made. Consequently, on June 21, 1960 an order dismissing the Stewart action was entered, and in the Ingalls actions summary judgments were entered in favor of Respondent, and orders dismissing the counterclaims of Appellant were entered. This appeal is from the orders of June 10, 1960 and June 21, 1960. (Case #124797, pages 26-31; case #124798, pages 32, 33 and 35-38.)

## STATEMENT OF POINTS

### POINT I.

A CONCLUSIVE PRESUMPTION OF INTENTION TO CREATE A JOINT TENANCY IN THE FUNDS IN QUESTION APPLIES IN FAVOR OF THE RESPONDENT.

### POINT II.

THE JOINT TENANCY AGREEMENT IS NOT DESTROYED BY THE NOTICE TO THE LOAN COMPANIES.

### POINT III.

THE JOINT TENANCY AGREEMENT IS UNIMPAIRED BY THE STEWART ACTION.

## ARGUMENT

## POINT I.

A CONCLUSIVE PRESUMPTION OF INTENTION TO CREATE A JOINT TENANCY IN THE FUNDS IN QUESTION APPLIES IN FAVOR OF THE RESPONDENT.

This Court has dealt with joint bank accounts in the following cases: *Holt v. Bayles*, 85 Utah 364, 39 P. 2d 715; *Neill v. Royce*, 101 Utah 181, 120 P. 2d 327; *Greener v. Greener*, 116 Utah 571, 212 P. 2d 194; *First Security Bank of Utah, N. A. v. Demir*, 354 P. 2d 97.

In *Holt v. Bayles* the parties executed a joint tenancy agreement card and left it with the bank. The agreement contained all the essentials of joint tenancy. After the death of one of the joint tenants the survivor withdrew the funds and the action was between a representative of the estate of the deceased joint tenant and the surviving joint tenant. This Court held in favor of the survivor and stated, on page 718 of 39 P. 2d:

Where there is a joint agreement executed by the parties which clearly declares the intention to create a joint interest of each in the deposit or credit, the courts will sustain such intention thus expressed, especially where the contract is not attacked for fraud, mistake incapacity, or other infirmity. The plaintiffs have made no such attack on the instrument before us, but merely say that it is lacking in substance to create a joint tenancy or joint ownership in the deposit with right of survivorship. With this contention we cannot agree, since the language is

clear and explicit as expressing an intention to do that very thing. . . .

We do not regard the question of the original ownership of the money as controlling under the particular facts of this case.

The Court stated further, on 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. In such cases the delivery to and possession of the pass-book is not determinative of ownership of the account, since possession of the book is ordinarily in one of the parties, not both at the same time, and delivery to one must, in the nature of things, be a delivery to both.”

And again on page 719 the Court stated:

In many states joint deposits are regulated by statute, under which the survivor is entitled to the fund without regard to the prior ownership or title to the property. The controlling question involved is the intention of the parties making the deposit, and not its mere form. Where such intention is evidenced by a written agreement this question of intention ceases to be an issue, and the courts are bound by the agreement.

The rule of *Holt vs. Bayles* has been referred to in later Utah cases as a conclusive presumption of intention in the creation of a joint tenancy. Thus, in *Neill v. Royce*, *supra*, the conclusive presumption of *Holt v. Bayles* was

recognized, but as both parties to the joint tenancy agreement were alive the Court held that the presumption was not conclusive during the joint lives of the parties, but until the death of one of the parties was rebuttable and could be overcome by clear and convincing proof to the contrary. The Court also held that the proof submitted in that particular case did not overcome the presumption. Likewise, in *Greener v. Greener*, where both parties to the agreement were alive, this Court followed *Holt v. Bayles* but with the limitation as in *Neill v. Royce*. However, in the *Greener* case it was held that the proof was sufficient to overcome the presumption of joint tenancy. Again, in the very recent *Demiris* case the Court states, "We are not here disagreeing with the ruling in the case of *Holt v. Bayles*." The doctrine of *Holt v. Bayles* is firmly established in this State.

The instant case falls within the rule of *Holt v. Bayles*. The agreement cards signed by the parties at the time of making the deposits contained the essential elements of a joint tenancy agreement and clearly declared their intention to create a joint tenancy in the funds in question. Therefore, under the rule of *Holt v. Bayles*, upon the death of Ben Stewart and in the absence of fraud, mistake and undue influence, discussion of which appears in Point III, the conclusive presumption of intention to create a true joint tenancy became operative and ownership of the funds vested in Respondent as surviving joint tenant.

## POINT II.

THE JOINT TENANCY AGREEMENT IS NOT DESTROYED BY THE NOTICE TO THE LOAN COMPANIES.

The affect of notice to the loan companies is capably treated in the leading case of *Moskowitz v. Marrow*, 167

N. E. 506; 66 A. L. R. 870, the facts being as follows: On April 28, 1924 Fannie Manheimer was the owner of substantial deposits in her individual name in four accounts. On that date she made a transfer of the funds in each of the four banks creating deposits jointly with herself and Pearl Harris, her granddaughter. The passbooks were delivered to the granddaughter. On December 5, 1924 Fannie delivered a writing to each of the four banks, notifying each of them that the privilege granted by her to Pearl to withdraw any money from any account was revoked and instructed the banks to honor no signature other than her own for withdrawal. In January, 1925, Fannie withdrew the deposits in two of the banks and re-deposited them to the credit of herself individually. In April, 1925 the accounts in the latter two banks were reestablished in the joint names of herself and Pearl, payable to the survivor. On May 4, 1925 Fannie died. The contest is between the executor of her estate and Pearl as to the ownership of the funds in the bank accounts. The lower court held with respect to the two accounts which had been reestablished in the joint names that the survivor was entitled to such deposits but with respect to the two accounts which had not been disturbed after the notice had been given to the banks the survivor was not entitled to those accounts for the reason that the notice was effectual to revoke the joint tenancy arrangement. The appellant court, however, held that the survivor was entitled to the funds in all of the accounts and that the notice did not destroy the right of the survivor to the funds. Justice Cardozo wrote a concurring opinion. With respect to the affect of notice, Justice Cardoza says, on page 880 of 66 A.L.R.:

The tenancy, if joint in its creation, was not destroyed by revocation. Cf. *Kelly v. Beers*, supra, 194 N. Y. at page 58, 128 Am. St. Rep. 543, 86 N. E. 980. If the form of the deposit was an expression of the true agreement, there could be no change of ownership thereafter by an ex parte declaration;

and on page 881:

A notice of revocation is not a notice of lis pendens.

Further, on page 881:

To put it differently, title to the accounts was unaffected by the notice of withdrawal in the absence of a showing that by implication, if not otherwise, the privilege of withdrawal was one of the terms of the deposit. Such a showing was permissible during the joint lives, for it was then opposed by nothing except a presumption to the contrary. It was no longer permissible after either depositor was dead, for it was then opposed by a presumption declared to be conclusive.

### POINT III.

THE JOINT TENANCY AGREEMENT IS UNIMPAIRED  
BY THE STEWART ACTION.

The rule in *Holt v. Bayles* is conditioned upon there being no fraud, mistake, or undue influence. Appellant claims neither fraud nor undue influence, but, on page 7,

asserts that this case should be distinguished from *Holt v. Bayles* by the filing of the Stewart action in which the complaint contains allegations of lack of donative intent, mistake, and original ownership of the funds in the plaintiff.

Although Appellant asserts ownership of the fund as one of the distinctions between this case and *Holt v. Bayles*, the allegation of the complaint falls short of asserting ownership in the plaintiff. The complaint states:

The said Adeline M. Ingalls has never put any funds into either of the said savings accounts and this plaintiff was not, nor is he now, obligated to the said Adeline M. Ingalls in any sum or amount.

If original ownership of the funds were an issue, the fact is that the funds in question were created through the joint efforts of Ben Stewart and his wife, who predeceased him, who is the mother of Respondent. However, ownership of the funds is no distinction as the deceased joint tenant in *Holt v. Bayles* was the original owner of the funds. The Court stated with respect thereto:

We do not regard the question of the original ownership of the money as controlling under the particular facts of this case.

If mistake is alleged in the Stewart complaint it is no basis for distinction. The complaint alleges:

That at the time plaintiff placed the name of said Adeline M. Ingalls on said pass books he did not know or realize that by doing so he was plac-

ing his said savings account at the disposal of the said Adeline M. Ingalls or that he was placing her in a position where she would inherit all of said accounts upon his death or that he was placing himself in a position that he could not dispose of the said accounts by will or other disposition.

Obviously the foregoing is not an allegation of mistake of fact, but merely an allegation of mistake of law, and as such is no ground for relief. The general rule is stated in 17 C.J.S. 500: "A mistake of law will not invalidate a contract."

This Court, in *Board of Education v. Board of Education*, 85 Utah 276, 39 P.2d 340 quoted with approval from 13 C.J. 379:

The author says that it is laid down in general language in many cases that a mistake, in order that it may affect a contract, must be a mistake of fact, and that a mere mistake of law will not affect the enforceability of an agreement, and that a mistake of law is where the person knows the facts of the case but is ignorant of the legal consequences.

The third distinction asserted by Appellant is lack of donative intent. The allegation of the complaint in this regard is:

He never intended that the said Adeline M. Ingalls should have an inheritable interest to all of said savings accounts. That since the placing of her name on said pass books this plaintiff

has given said Adeline M. Ingalls approximately the sum of \$4,000.00, which is the full amount he intended for her to have of his estate.

Appellant apparently relies upon the Demiris case as authority for this point, as he states that it “held that a joint bank account was not created because the decedent had not intended to create the same.”

The Demiris case is not subject to the simplification Appellant would desire. The age, physical and mental condition of the decedent at the time of the creation of the joint account, the marital background, the claim of the exercise of undue influence on the decedent by his wife, and the alleged wrongful act of the wife in the withdrawal of the funds, were all involved in the Demiris case. Certainly the Demiris case is no authority for the proposition that a joint tenancy may be avoided solely by lack of intent to create the same. The real basis for the holding of the Demiris case was not lack of intent on the part of the decedent but the wrongful act of the surviving joint tenant in usurping the funds. The majority opinion stated, on page 99 of 354 P.2d

We are in accord with the doctrine that when the wife withdrew all of the funds from the account in the lifetime of her husband, obviously for the purpose of getting possession for herself, *with the intention of wrongfully depriving him of his rights therein*, her action was inimical to the relationship that exists between joint tenants and this act violative of the relationship rendered the question as to the true ownership open to determination. (Emphasis ours.)

Justice Henroid, who wrote a separate opinion, thought the holding should be based upon undue influence of the surviving joint tenant.

The allegation of lack of intent is in the nature of a unilateral mistake, which affords no basis for relief. The author, in 12 Am. Jur, page 624, says:

It has been declared that if, in the expression of the intention of one of the parties to an alleged contract, there is error, and that error is unknown to, and unsuspected by, the other party, that which was so expressed by the one party and agreed to by the other is a valid and binding contract, which the party not in error may enforce. In other words, a party to a contract cannot avoid it on the ground that he made a mistake where there has been no misrepresentation, there is no ambiguity in the terms of the contract, and the other contractor has no notice of such mistake and acts in perfect good faith. A unilateral error, it has been said, does not avoid a contract.

The danger of the doctrine urged by Appellant is apparent. Legal relationships would have no sanctity or finality if they could be abrogated by a subsequent unilateral, self-serving declaration of one of the parties that he did not intend that which he had previously done. Especially is this true if such were permitted after the party had died, as it would open up a field of inquiry which might be subject to rank hearsay.

We have found no case in which an action attacking a joint tenancy agreement was pending at the time of

the death of one of the joint tenants which was thereafter adjudicated. The author, in the annotation at 46 A.L.R. 2d 918, at page 956, says:

The mere commencing of an action to obtain a partition of joint-tenancy property does not operate as a severance of the joint tenancy. *Dando v Dando* (1940) 37 Cal App2d 371, 99 P2d 561; *Teutenberg v Schiller* (1955) 138 Cal App2d 18, 291 P2d 53; *Ellison v Murphy* (1927) 128 Misc 471, 219 NYS 667.

“It is not the filing of the partition action which terminates the joint tenancy, but only the judgment in such action” which has that effect. *Teutenberg v. Schiller* (1955) 138 Cal App 2d 18, 291 P2d 53.

The foregoing cases involved real property. The author, however, cites *Child v. Bulmer* (Eng. 3 Ch 59), which apparently involved bank accounts. The author's statement is:

In *Child v Bulmer*, where a fund had been carried to the separate account of three infants as joint tenants, and when the eldest of them attained the age of 21 (thereupon becoming entitled to receive one-third of the fund) he proceeded through solicitors to obtain payment of his share, and accordingly an amended summons was issued returnable on the 28th of March, and the parties attended on that day, but, owing to the pressure of business, the matter was not then reached and it was adjourned to April 22, it was held, the claimant having died in the interval of delay, that since no order was made in the matter and

until an order was made the claimant was “completely master of proceedings” and at liberty to discontinue them at any moment if he thought fit on paying costs, no severance resulted, and his share consequently inured to the others.

Appellant makes reference to the statement of Justice Cordoza in the concurring opinion in *Moskowitz v. Marrow*, 167 N. E. 506, wherein he says: “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.” (Emphasis ours.)

This Court need have no more concern with a pending suit “*to establish an agreement*” then did the Court of Appeals in the *Moskowitz* case for the Stewart complaint alleges no “*agreement*.” It contains nothing other than allegations of conclusions of law, unilateral mistake, and self-serving declarations, nor does it purport to attack the joint tenancy agreements on the ground of fraud, duress, mistake of fact, undue influence or otherwise. It does not state a cause of action, and the joint tenancy agreements are unimpaired thereby.

## CONCLUSION

The intention to create joint tenancy agreements is clearly expressed in the written signature cards. This Court is bound by the agreement of the parties. The joint tenancy agreements were not destroyed by notice to the loan companies nor by the Stewart action. Respondent is entitled to the funds as surviving joint tenant. Judgment of the lower court should be affirmed.

Respectfully submitted,

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