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Personal Property—Joint Tenancy in Safe Deposit Box

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tory application of the no-solicitation rule. The majority in the present case applies the *holding* of the *Livingston Shirt* case (that a no-solicitation rule applying only to working hours leaves the employer's right to speak unqualified), inasmuch as the union organizer asked only for an opportunity to speak on *working* time, and did not ask for an opportunity to speak on non-working time.

The dissenting opinion, in accord with the decision of the Board, declared that there was no issue of employer free speech involved. It maintained, rather, that section 8(a)(1), forbidding as unfair labor practices employer interference with employees' exercise of their rights to self-organization, was involved.

By expanding the *holding* of the *Livingston Shirt Corp.* case and failing to follow the dictum of that case the court has given the employer great leeway under section 8(c). But the court has at most overruled previous restrictive interpretations of the employer free speech amendment. This would seem to carry out the intention of the legislature in passing the amendment.

Dawn Girard

PERSONAL PROPERTY — JOINT TENANCY IN SAFE DEPOSIT BOX

Decedent and his niece executed an agreement making the niece joint owner of the contents of a safe deposit box with right of access to it. Both acknowledged receipt of keys from the bank, but decedent retained possession of both. *Held* (4-3): No valid inter vivos gift of the contents was made since decedent did not sufficiently divest himself of dominion over the property. *Chadrow v. Kellman*, ___ Pa. ___, 106 A. 2d 594 (1954).

The mere deposit of an article in a jointly leased or used safe-deposit box of itself results in no change of title. *Bauernschmidt v. Bauernschmidt*, 97 Md. 35, 54 A. 637 (1903); *Mercantile Safe Deposit Co. v. Huntington*, 89 Hun 465, 35 N. Y. Supp. 390 (Sup. Ct. 1895); *In re Brown*, 86 Misc. 187, 149 N. Y. Supp. 138 (Surr. Ct. 1914), *aff'd* 167 App. Div. 912, 151 N. Y. Supp. 1106 (1915), 217 N. Y. 621, 111 N. E. 1085 (1916). Even when the language of the lease is in terms of joint tenancy with right of survivorship, unless the lease clearly refers to the contents, it is generally construed as giving no further right than the use of the box. *Wohleber's Estate*, 320 Pa. 83, 181 A. 479 (1935); *Richards v. Richards*, 141 N. J. Eq. 579, 58 A. 2d 544 (1948); *In re Dean's Estate*, 68 Cal. 2d 86, 155 P. 2d 901 (1945). Thus, a contract with a bank signed by a husband and his wife stating that they were joint

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tenants with right of survivorship operated to give the surviving wife sole title to the box only, but had no effect on the ownership of the contents. In re *Wilson's Estate*; 404 Ill. 207, 88 N. E. 2d 662 (1949).

Even where the intent to make a gift is clear, the survivor claiming ownership to the contents of the safe deposit box is often defeated because of an inadequate delivery by the deceased co-user. *Millard v. Millard*, 221 Ill. 86, 77 N. E. 595 (1906); In re *Van Alstyne*, 207 N. Y. 298, 100 N. E. 802 (1913); In re *Gosman's Estate*, 83 N. Y. S. 2d 81 (Surr. Ct. 1948). "It is a general rule that to constitute a valid gift *inter vivos* two essential elements must combine: an intention to make the gift then and there, and such an actual or constructive delivery at the same time to the donee as divests the donor of all dominion over the subject, and invests the donee therewith." In re *Rynier's Estate*, 347 Pa. 471, 32 A. 2d 736 (1943).

In these cases, the intent was to make a gift of a particular item in the box; in the principal case, the intent as shown in the agreement was to make a gift of a joint interest in the contents of the box. How is delivery of this type of gift—a joint interest—to be accomplished?

Some courts analogize the situation to that of the savings bank deposit, where a joint account with survivorship may be set up by the deposit of funds belonging to only one of the parties. *Graham v. Barnes*, 259 Mass. 534, 156 N. E. 865 (1927); *Brown v. Navarre*, 64 Ariz. 262, 169 P. 2d 85 (1946). The better reasoned theory, however, would admit the impossibility of an actual or constructive delivery of a gift of a joint interest in the contents of the box, and permit a symbolic delivery. See Mechem, *Requirements of Delivery*, 21 ILL. L. REV. 457 (1926). The New York Court of Appeals in *In re Van Alstyne, supra*, demanded actual delivery if it was possible, but admitted that symbolic delivery would be sufficient if conditions were so adverse to actual delivery as to make a symbolic delivery as nearly perfect and complete a delivery as the circumstances will allow.

Even though the intent as shown in the agreement is clear, a problem is raised if there is evidence of another intent. In *Young v. Young*, 126 Cal. 306, 14 P. 2d 580 (1932), it was held that the intent expressed in the agreement with the bank was to be followed and the title to the contents was to pass if the agreement so provided. Similarly, it has been held that where the agreement is a clear, unambiguous statement of the contract between the parties and there is no evidence tending to show duress or fraud, it should be conclusive as to their relations to the property.

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In re *Koester's Estate*, 286 Ill. 113, 3 N. E. 2d 102 (1936); *Kleman v. Sheridan*, 75 Ariz. 311, 256 P. 2d 553 (1953). A different view is typified by *Black v. Black*, 199 Ark. 609, 135 S. W. 2d 837 (1940). This view reasons that the intent as expressed in the agreement sets up only a rebuttable presumption that the contents of the box are jointly owned. This presumption has been held rebutted, on the one hand, by a clear showing of a contrary intent, *Black v. Black, supra*, and on the other, by the mere showing that the article in the box was purchased out of the funds of someone other than the survivor. *Clevidence v. Merchantile Home Bank and Trust Co.*, 355 Mo. 904, 199 S. W. 2d 1 (1947). The reluctance of these courts to find passage of title in such agreements stems from their feeling that the true purpose of this type of agreement is not to pass title to the contents of the box, but rather to protect the bank from liability. *Black v. Black, supra*.

In New York, the case most closely in point is *In re Raggi's Estate*, 171 Misc. 836, 13 N. Y. S. 2d 691 (Surr. Ct. 1939), which relied most heavily on *Young v. Young, supra*. There, the agreement was between a husband, his wife and the bank and provided that property placed in the safe deposit box would become "the joint property of the lessees, and upon the death of either" would pass to the survivor. The court, after considering the intent of the parties as expressed by the terms of the agreement itself and the surrounding circumstances shedding light on the purpose of the parties in entering the agreement, held that a valid joint tenancy was created in the personal property in the box and the surviving wife was entitled to the property. The case suggests that any similar agreement, regardless of who the parties are or what relation they are to each other, would be construed so as to give effect to the intent of the parties as expressed in the agreement.

It is thought that the intent as expressed in the agreement should be conclusive if it is unambiguous. While it is difficult to find in the deposit of property in a safe deposit box anything closely approaching a traditional title-changing event, a person should be able to give a gift of a joint interest. If the intent is clear, the court should allow a type of delivery which is consonant with a joint tenancy gift. This necessarily means that the donor cannot be expected to divest himself of dominion since he is to retain an interest in the property.

James R. Lindsay