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Contracts—Duress; Inheritance Tax—Constitutionality of Retroactive Provisions; New Trials—Statutory Grounds—Effect on the Inherent Power of Trial Court; Sales—Trust Receipts—Recording; Banks and Banking—Joint Accounts—Rights Between Depositors

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RECENT CASES

CONTRACTS—DURESS. The plaintiffs sought to have a note and mortgage held by the defendant cancelled because of duress. The plaintiff's son-in-law was guilty of embezzling money from his employer and in danger of being prosecuted for the embezzlement. The son-in-law's bondsmen threatened to prosecute if they had to pay on the bond. Fearing that such a prosecution would endanger the health of their daughter, the plaintiffs gave a note and mortgage to the defendant, and the son-in-law accordingly was never prosecuted. *Held*: (1) As a matter of fact, that no duress had been practiced, since the defendant exerted no pressure to force the plaintiffs to give the note and mortgage, no decision being made as to the degree of relationship necessary to constitute duress when prosecution is threatened against a third person; and (2) as an alternative ground of decision, that the plaintiffs had waived any misconduct of the defendant by renewing the note after the statute of limitations had run against the crime. *Bair et al. v. Spokane Savings Bank et al.*, 186 Wash. 472, 58 P. (2d) 819 (1936).

The Washington court in *Whitman Realty & Investment Co. v. Day*, 161 Wash. 72, 296 Pac. 171 (1931), stated that "duress does not exist unless one, by the unlawful act of another, is induced to make a contract under circumstances which deprive him of the exercise of free will." In *Ingebrigt v. Seattle Taxicab & Transfer Co.*, 78 Wash. 433, 139 Pac. 188 (1914), it was held that it was not duress to threaten a civil suit and at the same time to point out possible criminal charges. In *Cornwall v. Anderson*, 85 Wash. 369, 148 Pac. 1 (1915), it was held that a threat of litigation and of prosecution was not duress, since the threat was not to prosecute at a definite time. *Cooley v. Davis*, 114 Wash. 196, 194 Pac. 968 (1921), is in accord, holding that a threat of prosecution without actual restraint of liberty does not constitute duress. The Washington courts thus seem inclined to hold that anything short of an actual arrest or an actual prosecution will not be duress. But see *Delta County Bank v. McGranahan*, 37 Wash. 307, 97 Pac. 796 (1905). A majority of courts, however, hold that a threat of prosecution does amount to duress. WILLISTON, CONTRACTS, § 1612.

The Washington court in *Delta County Bank v. McGranahan, supra*, held that the relationship of husband and wife was close enough to overcome the general rule that threats to a third person will not be duress. There have been no Washington cases which decide what other degrees of relationship are close enough to warrant a finding of duress. Generally only a husband, wife, child, parent, or other near relative will be close enough to allow a finding of duress. 13 C. J. 265. The *Bair* case intimated that a threat to a son-in-law was not a threat to a near relative so as to come under the above rule, but opposed to this view is the case of *Neb. Mut. Bond Ass'n. v. Klee*, 70 Neb. 383, 97 N. W. 476 (1903) where duress was found to exist on a threat of prosecution against a son-in-law. In *Kronmeyer v. Buck*, 258 Ill. 586, 101 N. E. 935 (1913) and *Henry v. State Bank of Laurens*, 131 Iowa 97, 107 N. W. 1034 (1906) threats to a brother were held to be duress. As a general rule it seems to be held that marriage relations are not close enough to cause duress to exist, and the Washington court would likely rule that way if a case is presented upon that point.

B. G.

INHERITANCE TAX — CONSTITUTIONALITY OF RETROACTIVE PROVISIONS. The amendment to the inheritance tax law, contained in Wash. Laws 1935, c. 180, became effective while an appeal was pending, and the court allowed re-argument to determine the effect of this amendment on the case at bar. Sec. 124 (REM. 1935 Sup. § 11201) of the act expressly provided that the higher inheritance tax rates therein enacted should apply to all estates pending, on the date of the approval of the act,' in the inheritance tax and escheat division or in any of the courts of the state, whether on appeal or otherwise, and whether the date of death of the decedent occurred prior or subsequent to that date. The act also contained a provision to the effect that the inheritance tax due before the passage of the act would be accepted if the tax were paid within ten months of the effective date of the act. The executor argued that imposing an inheritance tax on the estate of a decedent whose death occurred prior to the passage of the act at a higher rate than the tax in effect at the date of death was a taking of property without due process of law. *Held*: The statute is not unconstitutional. *In re Frothringham's Estate*, 183 Wash. 579, 49 P. (2d) 480 (1935).

In an excellent opinion, written by Justice Steinert, the court pointed out that "an inheritance tax is not a tax on property but is an excise or impost laid upon the receiving of property by inheritance; it is a tax on the right or privilege of succession"; and that "the right of inheritance being a privilege, and not an inherent right, the authority which confers it, namely, the legislature, may impose any conditions thereto that it sees fit. Stated in another way the state's power over property subject to inheritance is plenary." Though there are cases to the contrary, these statements are supported by the great weight of authority in the United States. *Carpenter v. Commonwealth*, 58 U. S. 456, 15 L. ed. 127 (1855).

Since the enactment of the Fourteenth Amendment the Supreme Court of the United States has on numerous occasions held that such tax statutes were not a denial of due process of law. *Cahen v. Brewster*, 203 U. S. 543, 51 L. ed. 564, 27 Sup. Ct. 466 (1906); *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. 594 (1898); and *Plummer v. Coler*, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. 829 (1900). See also *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 Pac. 267 (1897).

To impose some limit upon the states' power to tax retroactively, the courts have set the period of distribution as the point at which the rights of the legatee, devisee or donee become fixed so that a further attempt to tax will be unconstitutional. Mr. Justice Campbell, speaking for the court in *Carpenter v. Commonwealth*, *supra*, said: "The rights of the donee are subordinate to the conditions, formalities and administrative control prescribed by the state in the interests of its public order, and are only irrevocably established upon its abdication of this control, at the period of distribution."

Some text writers, without discussing the problem, have suggested that the rule might be different respecting real and personal property. Thus, in 4 COOLEY, TAXATION (4th ed., 1924) § 1734, we find: "The statute in force at the time of death of decedent governs rather than the statute in force when the estate is distributed, but an inheritance tax may be made applicable to the personal estate of a person who has died before it was enacted." Generally speaking, the title to real estate vests in the heirs immediately upon death for there can be no abeyance of seisin. The title to personalty, on the other hand, passes to the personal representative of the decedent until the determination of those entitled to it. With this in mind there is reason for a distinction between the applicability of retroactive inheritance tax statutes to personal estates and to realty. However, the United States Supreme Court, in numerous cases coming before it under the Fourteenth Amendment, has sustained such taxes imposed upon real estate on the theory that the taxes were levied upon the *actual coming into possession* of the property, as the result of the death of another, even though the person thus benefited was the owner of an interest in the property regarded by the law as vested. Neither is any operative distinction made between vested and contingent remainders, especially in view of the fact that most state tax statutes ignore the technical differences between the two. *Keeney v. New York*, 222 U. S. 525, 56 L. ed. 299, 32 Sup. Ct. 105 (1912); *Stebbins v. Riley*, 268 U. S. 137, 69 L. ed. 884, 45 Sup. Ct. 424 (1925); *Saltonstall v. Saltonstall*, 276 U. S. 260, 72 L. ed. 565, 48 Sup. Ct. 225 (1928); and *Salamon v. New York*, 278 U. S. 484, 73 L. ed. 464, 49 Sup. Ct. 192 (1929). *Cf. Coolidge v. Long*, 282 U. S. 582, 75 L. ed. 562, 51 Sup. Ct. 306 (1930).

L. W. T.

NEW TRIALS—STATUTORY GROUNDS—EFFECT ON THE INHERENT POWER OF TRIAL COURT. The defendant having been charged as a hit and run driver issued a subpoena for William Brown, an important witness, which was not served by the sheriff because of a wrong address. Brown did not appear at the trial, and, although this fact was called to the attention of the court, there was no request for a delay or continuance at any time during the trial. The verdict went against the defendant, and a motion for a new trial was made upon several of the grounds enumerated in REM. REV. STAT. § 2181. In support of the ground of newly discovered evidence an affidavit of Brown was tendered stating that he could give substantial testimony in support of the defendant's case. The trial court granted the new trial "being of the opinion that the testimony of said William Brown would have been material in the trial of the cause and might have affected the result thereof and that the failure of the sheriff to serve the subpoena and produce said William Brown at the trial hereof entitled the defendant to a new trial . . ." Although the motion had been made upon several grounds stated in the statute, on appeal the Supreme Court considered all of them inapplicable to the case, excepting "newly discovered evidence." *Held:* Granting a new trial on the ground of newly discovered evidence was an abuse of discretion where due diligence had not been used to get a witness to the trial or in asking for a continuance. *State v. Douglas*, 93 Wash. Dec. 385, 75 P. (2d) 1005 (1938).

The dissenting opinion brings up the question as to whether the new trial must necessarily be upon the statutory grounds, and whether the requirement of due diligence in the statute binds the court where it believes that an injustice has been done that could be cured by a new trial. In considering the cases on this subject no distinction is made between the grounds for a new trial set out in §§ 2181 and 399 of REM. REV. STAT.

It has long been considered to be the inherent right of the trial court to grant a new trial where, in the exercise of its sound discretion, it thought an injustice had been done. In *Sylvester v. Oleson*, 63 Wash. 285, 115 Pac. 175 (1911), the court reviewed the earliest common law cases and stated, "The enumeration of grounds for a new trial 'does not restrict the inherent power of the courts to relieve a party where an injustice has been done, or to grant new trials for any other sufficient cause not enumerated, unless the restriction is expressed'." Whenever a motion for a new trial is made upon any or all of the statutory grounds and such motion is granted upon the general ground of justice to the parties, the order granting a new trial is universally upheld when within the sound discretion of the lower court. *Davis v. Riegal*, 182 Wash. 1, 44 P. (2d) 771 (1934), lists several cases on this point.

Where the motion for a new trial is granted on the ground that the verdict is against the weight of the evidence, the "order will not be disturbed unless the evidence is undisputed or the discretion has been clearly, and as said in one case, grossly abused." See *Snider v. Washington Water Power Co.*, 66 Wash. 598, 120 Pac. 88 (1912) and *Rotting v. Clemen*, 12 Wash. 615, 41 Pac. 907 (1895). While on the other hand, where the trial judge has denied a motion for a new trial, although he has believed the verdict was against the weight of the evidence, the supreme court has treated this as a breach of duty on the part of the trial court in not granting a new trial. *Clark v. Great Northern R. R. Co.*, 37 Wash. 537, 79 Pac. 1108 (1905); *Stickney v. Congdon*, 140 Wash. 670, 250 Pac. 32 (1926); *Scribner v. National Refining Co.*, 169 Wash. 44, 13 P. (2d) 61 (1932); *Ziomko v. Puget Sound Electric R. R.*, 112 Wash. 426, 192 Pac. 1109 (1920).

Where there has been misconduct of a party or counsel, the trial court is allowed considerable discretion in granting new trials, for it is thought to be best able to determine the effect of such misconduct on the jury. See *Sylvester v. Olson, supra; Snider v. Washington Water Power Co., supra*, and *Cranford v. O'Shea*, 75 Wash. 33, 143 Pac. 486 (1913).

In 1933 the legislature amended Rem. Rev. Stat. § 399 so that subsection 5 states that a new trial will be granted where the damages are so excessive or inadequate as to *unmistakably indicate that the verdict must have been the result of passion or prejudice*, and subsection 7 now says that a new trial might be granted where there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law.

In *Brammer v. Lappenbusch*, 176 Wash. 625, 30 P. (2d) 947 (1934), the court interpreted the new amendments, as stated above, to have no effect upon the trial court's inherent power to grant a new trial where the justice of the case required it. The court there said: "The statute does not attempt to limit the inherent power of the court. The form of its language, it will be noted, is permissive, not restrictive. It says that, for certain causes, the court *may* grant a new trial. It does not say that it shall not do so for any other cause." This was followed in *Hatcher v. Globe Union Mfg. Co.*, 178 Wash. 411, 35 P. (2d) 32 (1934); *Robertson v. Ebert*, 180 Wash. 387, 39 P. (2d) 992 (1935); *Davis v. Reigal, supra; Swanson v. Sewall*, 183 Wash. 55, 48 P. (2d) 939 (1935) and *Lowther v. Tollefson*, 184 Wash. 55, 49 P. (2d) 908 (1935). In the holding as set out above the court continued with the rule used under the former statute and allowed a reduction or increase in damages whenever the trial court thought that substantial justice had not been done. See *Norland v. Peterson*, 169 Wash. 380, 13 P. (2d) 483 (1932).

Then there is the new statute, REM. REV. STAT. (Supp.) § 399-1 providing that the supreme court shall review *de novo* the trial court's action in reducing or increasing the jury's verdict for damages, consented to in order to avoid a new trial, and shall reinstate the verdict of the jury "unless the supreme court shall find from the record that the damages awarded in such verdict by the jury were so excessive or so inadequate as *unmistakably to indicate that the amount of the verdict must have been the result of passion and prejudice*, which was first considered by the supreme court in *Bennett v. King County*, 188 Wash. 196, 61 P. (2d) 1316 (1936). They held that they would not interfere where the trial court exercised its discretion and the record showed no abuse of discretion, despite the new statute requiring them to find passion or prejudice on the part of the jury.

In the various cases cited above it is readily apparent that the court has refused to be bound by any restrictions in the statute and has found repeatedly that the granting of new trials is an inherent power of trial court, the statutory grounds being merely directory. In *Billias v. Panageotou*, 93 Wash. Dec. 472, 76 P. (2d) 987 (1938) the court quoting from *Corblay v. Pierce County*, 93 Wash. Dec. 8, 74 P. (2d) 993 (1938) said, "The trial courts have wide discretion in granting or refusing new trials and the exercising of this discretion in granting a new trial will not be interfered with except in situations in which purely questions of law are involved." What might be considered a pure question of law in granting a new trial is not clear, but it does not appear that *State v. Douglas, supra*, presents such a question even though the letter of the statute requiring due diligence was not followed, for the trial court thought that the defendant had not been done substantial justice. The new trial should have been sustained in that case unless there was no ground whatsoever upon which the trial court could believe that an injustice had been done the party. The requirement of due diligence in finding newly discovered evidence should not bind the trial court where it is thought that the moving party has been done an injustice.

W. H. P.

SALES—TRUST RECEIPTS—RECORDING. An automobile dealer financed the purchase of cars as follows: (1) He ordered them from the manufacturer; (2) the manufacturer shipped the cars, sending the following documents: (a) sight draft for ten per cent of the purchase price; (b) trust receipt and bill of sale made out in favor of the finance company; (c) promissory note for the balance of the purchase price; (d) bill of lading. Dealer paid the sight draft and signed the trust receipt and promissory note for the balance of the purchase price. The finance company paid the remaining ninety per cent of the purchase price to the manufacturer and obtained the bill of sale, the trust receipt, and the promissory note signed by the dealer for the ninety per cent of purchase price. The bank then surrendered the bill of lading to the dealer, who obtained possession of the automobiles. The trust receipt was in the usual form, providing for the risk of loss to be on the dealer; that the cars would be returned on demand; and that they would not be sold or encumbered without the prior release of the finance company. The trust receipt was not recorded or filed. In an action by the finance company against the assignee of the dealer for the benefit of the creditors, *held:*

trust receipt was either a chattel mortgage or a conditional sale and because of the failure to record the assignee prevailed. *General Motors Acceptance Corp. v. Seattle Association of Credit Men*, 190 Wash. 284, 67 P. (2d) 882 (1937).

The majority of cases hold that a trust receipt is not a chattel mortgage nor a conditional sale but most closely resembles a bailment and therefore, unless there is a recordation statute for trust receipts independent of the chattel mortgage or conditional sale recordation statutes, they are valid as against unauthorized transfers and against creditors of the dealer. *In re James*, 30 F. (2d) 555 (1929); *General Motors Acceptance Corp. v. Kline*, 78 Fed. (2d) 618 (1935); *General Motors Acceptance Corp. v. Hupfer*, 113 Neb. 228, 202 N. W. 627 (1925); See generally, 12 WASH. L. REV. 301. *Ivy v. Commercial Credit Co.*, 173 Wash. 360, 23 P. (2d) 19 (1933).

A distinction, however, may be drawn between a bipartite and a tripartite transaction. Whenever the dealer receives the document of title directly from the manufacturer and thereafter conveys the document of title to the finance company as security for a loan, upon the execution of a trust receipt whereby it is expressed that the dealer holds the cars in trust for the finance company, the majority of courts uniformly construe it as a chattel mortgage and not valid as against certain classes of third parties unless recorded. *Root v. Republic Acceptance Corp.* 279 Pac. 55, 123 Atl. 650 (1924); *Barker Piano Co. v. Commercial Security Co.*, 93 Conn. 129, 105 Atl. 328 (1918). If the manufacturer delivers the goods to the buyer, upon the buyer signing a note for the purchase price and a trust receipt is issued whereby the buyer is to retain possession but the title remains with the seller until the goods are paid for, the courts generally hold such a transaction to be a conditional sale and subject to the recording statute of the particular jurisdiction. *In re Shiffert*, 281 Fed. 284 (1922); *Maxwell Motor Sales Corp. v. Banker's Mortgage & Securities Co.*, 195 Iowa 384, 192 N. W. 19 (1923); *Commonwealth Finance Co. v. Schutt*, 97 N. J. L. 225, 116 Atl. 722 (1922). But if the title in the first instance passes from the manufacturer to the finance company and thereupon the finance company surrenders the document of title to the dealer upon the execution of a trust receipt, this is a true tripartite transaction and the majority of courts give validity to the trust irrespective of the failure to record. *In re James, supra; General Motors Acceptance Corp. v. Kline, supra; Ivy v. Commercial Credit Co., supra.*

There are, however, some jurisdictions that do not recognize this distinction between bipartite and tripartite transactions and construe even tripartite trust receipts as either chattel mortgages or condiional sales, denying the trust receipt holder protection unless the trust receipt has been recorded or filed. *In re Bettman-Johnson Co.*, 250 Fed. 657 (1918); *In re Ford-Rennie Leather Co.*, 27 F. (2d) 750 (1924); *Mohr v. Hanford First National Bank*, 69 Cal. 756, 232 Pac. 748 (1924).

An intermediate situation exists where the distinction between a bipartite and a tripartite trust receipt is not so readily distinguishable. Where all the papers are sent to an intermediary bank, which simultaneously surrenders the document of title to the dealer upon his executing a note and signing a trust receipt covering the goods in question and delivers to the finance company the trust receipt and dealer's note, upon the finance company paying the purchase price, it has been plausibly argued that this is a bipartite transaction and a chattel mortgage because the document of title was delivered from the distant seller to the dealer and the security interest held by the finance company came to it by a conveyance from the dealer. *In re Cullen*, 282 Fed. 902 (1922); *In re Schuttig*, 1 F. (2d) 443 (1924); it would seem to be more reasonable and to more accurately express the intent of the parties to hold that the arrangement is still tripartite in that the document of title passes from the bank *on behalf* of the finance company to the dealer. *In re James, supra; General Motors Acceptance Corp. v. Hupfer*, 113 Neb. 228, 202 N. W. 627 (1925).

The Washington court has had upon two occasions the opportunity to determine the validity of the trust receipt in the absence of recording. In *Ivy v. Commercial Credit Co., supra*, the court tacitly recognized the distinction between a bipartite and a tripartite transaction by giving validity to the trust receipt irrespective of the failure to record. But in the subsequent case, *General Motors Acceptance Corp. v. Seattle Association of Credit Men, supra*, the court construed a trust receipt transaction, which properly falls within the intermediary class, as either a chattel mortgage or a conditional sale, without deciding which, and since it was not recorded the assignee for the benefit of creditors prevailed over the holder of the trust receipt.

The court in arriving at this conclusion distinguished the two cases on the basis that in the former case there was: (1) no debt and no promissory note evidencing it; (2) that the cars were not ordered by the dealer direct from the manufacturer; (3) that a negotiable promissory note was not given for the balance due. The Washington court takes the view that when such circumstances are present the finance company retains the possession merely as security and therefore it is either a chattel mortgage or a conditional sale. "One of the principal tests by which to determine whether a document or transaction results in security, or there is retention of ownership, is a binding promise to pay on the part of the dealer." *General Motors Acceptance Corp. v. Seattle Association of Credit Men, supra.*

Therefore, it would seem that in a purely consignment arrangement by the use of a trust receipt, the trust receipt will not have to be recorded and the courts will give effect to the trust. But if there is a down payment, or a negotiable promissory note executed for the unconditional payment of the cars, then they will treat the finance company as having only a security title and this will not be valid as against certain classes of third parties, unless the trust receipt is filed or recorded either as a chattel mortgage or a conditional sale. It is suggested that this distinction made on a factual basis seems satisfactory, but will leave the borderline cases in a state of uncertainty until fixed by case law or remedied by appropriate legislation.

W. M. Jr.

Banks and Banking—Joint Account—Rights Between Depositors. Appellant, intervener, had owned joint bank accounts with *D*. Overtaken by serious illness and fearing death, appellant transferred the accounts into new accounts between *D* and *P*, appellant's son, *P* to hold in trust for appellant in case of recovery. *D* withdrew the funds and placed them in new joint accounts with third parties. *P* thereupon sued to establish an interest in the accounts for himself, and appellant sought to intervene. *Held:* Appellant stated a sufficient cause for intervention because equity will enforce an oral trust, and *P* as joint owner of a deposit account is presumed to have a one-half interest in the withdrawn funds. *Wallace v. Riley et al. (Wallace, Intervener)*, 74 P. (2d) 800 (Cal., 1937).

In any joint deposit case, two separate transactions must be recognized: The transaction between the named depositors, with which we are here interested, and the contract between bank and depositors. The latter, although a provision be made by contract or statute whereby the bank may pay any or all of the account to either party, has no bearing whatever on the rights of the depositors between themselves. Such a provision is only for the bank's protection. *Godwin v. Godwin*, 141 Miss. 633, 107 So. 13 (1926); *Tompkins v. McGinn et al.*, 85 S. W. 452 (Tex. Civ. App., 1905).

Rights between living joint depositors are not affected by the statutes abolishing survivorship, such as REM. REV. STAT. § 1344. A majority of states do not apply these statutes to bank accounts for any purpose, thus allowing survivorship. *Malone v. Sullivan et al.*, 136 Kan. 193, 14 P. (2d) 647, 85 A. L. R. 275 (1932); see note 85 A. L. R. 282. By dictum in *Winner v. Carroll*, 169 Wash. 208, 13 P. (2d) 450 (1932), the Washington court stated that REM. REV. STAT. § 1344 did abolish survivorship even in bank accounts.

The title to the fund as between named joint depositors depends upon the transaction between them. When all has been contributed by one party, the general rule is that a contract, gift, or trust must be shown before any title shifts from the original owner. Mere deposit in a joint account will not, in the absence of statute, create any new title. *Denigan v. Hibernia Savings & Loan Soc.*, 127 Cal. 137, 59 Pac. 389 (1889); *In Garland's Appeal*, 126 Me. 84, 136 Atl. 459 (1927) (*certiorari* denied in 274 U. S. 759, 71 L. ed. 1338, 47 Sup. Ct. Rep. 769); see *Commercial Trust Co. v White*, 99 N. J. Eq. 328, 132 Atl. 761 (1926). The claimant must show both intent and delivery before he can claim under a gift. If he cannot show these, he was only an agent for the purpose of withdrawing the owner's funds. *Meyers v. Albert*, 76 Wash. 218, 135 Pac. 1003 (1913); *Wolfe v. Hoefke*, 124 Wash. 495, 214 Pac. 1047 (1923); *Daly v. Pacific Savings & Loan Ass'n*, 154 Wash. 249, 282 Pac. 60 (1929). States vary in the leniency with which they find intent or delivery.

The rules in some states have been varied by statutory presumptions. N. Y. BANKING LAW, § 249 (Cahill, 1930) (applicable to savings banks); CAL. GENERAL LAWS, Act 652, § 15a (Deering, 1931) (all banks); Washington: REM. REV. STAT. § 3348 (mutual savings banks); REM. REV. STAT. § 3717-41 (savings and loan associations). The effect of these statutes is to create a presumption that the essential elements of gift were present whenever money was deposited into an account in the form of a joint account. The presumption is conclusive as to any money remaining in the account after the death of either depositor; but it is rebuttable as to money in the account or spent during the lifetime of the joint depositors. *Moskowitz v. Marrow*, 251 N. Y. 380, 167 N. E. 506, 66 A. L. R. 870 (1929); *Hill v. Badeljy*, 107 Cal. App. 598, 290 Pac. 637 (1930); *Winner v. Carroll, supra; Nelson v. Olympia Federal Savings & Loan Ass'n*, 93 Wash. Dec. 207, 74 P. (2d) 1019 (1938). These Washington statutes have the additional effect of restoring the survivorship abolished by REM. REV. STAT., § 1344. *Winner v. Carroll, supra.*

Between living parties, if an intent to transfer an interest in the money deposited is proven, or if the presumption of shift of title raised by statute is not rebutted, a presumption that each named depositor owns one-half of the account arises. *In re Farmers' & Merchants' Bank of Grand Rapids*, 221 Mich. 243, 190 N. W. 698 (1922); *Moskowitz v. Marrow, supra; Tomkins v. McGinn, supra.*

Does one depositor have the right to pursue the amounts withdrawn by the other, and demand an accounting? The California court in the instant case makes this statement, "Contrary to the canon of the common law, our courts have established the rule that, when money is taken from a joint tenancy during the joint lives of the depositors, property acquired by the money so withdrawn, or another account into which the money is traced, will retain its character as property held in joint tenancy, unless a change in the character has been effected by some agreement between the parties." The rule thus stated is supported by a line of California cases beginning with *In re Harris' Estate*, 169 Cal. 725, 147 Pac. 967 (1915). The effect of the rule is to require restoration to any joint tenancy account unless you can find consent to the withdrawals. This is admittedly contrary to the common law, in which the first consideration is whether a true joint tenancy exists or not, according to the elements or statutes discussed earlier in this note. If a joint tenancy does exist, either party may withdraw a moiety or less without the other's consent. *In re Sutter's Estate*, 138 Misc. Rep. 85, 245 N. Y. S. 636 (1930); *In re Porianda's Estate*, 135 Misc. Rep. 389, 237 N. Y. S. 715 (1929). The amounts thus withdrawn are severed from the joint tenancy and become the private property of the withdrawer. See note 77 A. L. R. 799. If a true joint tenancy is not created due to a lack of some element, the right to demand an accounting for the whole fund still exists in the depositor. *Brumer v. Brumer*, 223 App. Div. 186, 228 N. Y. S. 63 (1928). Also, if more than a moiety is withdrawn, the courts consider an attempt has been made to destroy the joint tenancy, rather than to make a severance, and they then require an accounting for the whole fund. *O'Connor v. Dunnigan*, 158 App. Div. 334, 143 N. Y. S. 373 (1913); *In re Sutter's Estate, supra.* It is submitted that the California court need not state the rule so broadly, as the common law rules would have procured the desired result in most instances. The instant case could have reached the same result by applying the rule of the *O'Connor* case.

A. T. W.

BOOK REVIEW

THE MIND OF THE JUROR. *By* ALBERT S. OSBURN. 1937. Albany: The Boyd Printing Company. Pp. 239.

Provocative, but wholesomely so, is this penetrating and ably written commentary (of moderate length) on the present state of the administration of justice in the United States. One almost hesitates to denominate the author a layman, because his qualifications as one of the foremost document specialists of all time have taken him, during a period of over forty years, into the courts of