NEW YORK SURROGATE'S COURT

In re McKelway's Estate

160 N.Y.S. 783 (N.Y. Sur. Ct. 1916) · Decided May 15, 1916

SUMMARY

The New York Surrogate’s Court held that an agreement placing securities in joint ownership between a husband and wife created a joint tenancy with a right of survivorship. Because the transfer was completed during the decedent’s lifetime, it was not subject to the transfer tax, and the widow’s appeal was sustained.

CASE DETAILS

COURT	New York Surrogate's Court
WRITING FOR THE COURT	Ketcham, S.
JURISDICTION	New York
DECIDED	May 15, 1916
DISPOSITION	other
PROCEDURAL POSTURE	The decedent's widow appealed portions of an order imposing a transfer tax on securities held under an agreement with a trust company.
PRECEDENTIAL VALUE	Published state trial-court opinion
PARTIES	Widow of the decedent v. State Comptroller

TOPICS

transfer tax · probate · trusts · estate administration

PRACTICE AREAS

Probate · Transfer taxation · Trusts and estates

QUESTIONS PRESENTED

1. Whether the agreement and related conduct created a joint tenancy in the securities with a right of survivorship.
2. Whether the agreement's revocation provision or equal-income provision negated joint ownership.

3. Whether the transfer of the securities was subject to a transfer tax upon the husband's death under the Transfer Tax Act or chapter 664 of the Laws of 1915.

HOLDINGS

1. The agreement had the present effect of making the husband and wife joint tenants and owners of the securities described in it; the later submission of additional securities had the same effect as to those securities.
2. The agreement's provision allowing revocation applied to the agreement between the joint owners and the trust company, not to the arrangement establishing joint ownership, and the provision requiring equal payment of income was not inconsistent with joint ownership.
3. The securities were not subject to transfer taxation upon the decedent's death because any transfer was consummated during his lifetime, and the transfer did not become taxable under chapter 664 of the Laws of 1915.

KEY QUOTATIONS

> *"Hence the only transfer, whether of the securities mentioned in the contract or those which were later brought within its operation, was a transfer consummated in the lifetime of the decedent and was not then taxable under the Transfer Tax Act."* (784)

FACTUAL BACKGROUND

On November 24, 1913, the decedent and his wife entered into an agreement with a trust company declaring that specified securities were owned by them jointly. They later submitted additional securities to the operation of the agreement. The agreement provided for revocation and directed the trustee to pay the securities' income to the husband and wife in equal shares. After the husband's death, the taxing authority imposed a transfer tax on the securities.

PROCEDURAL HISTORY

The New York Surrogate's Court reviewed an order imposing a transfer tax. The court sustained the widow's appeal in all respects and directed that the order be modified.

DISPOSITION

other

REMAND INSTRUCTIONS

The order imposing the transfer tax was to be modified in accordance with the court's determination; the appeal was sustained in all respects.

CASES CITED

- Matter of Maguire, 95 Misc. Rep. 76, 160 N.Y. Supp. 512

- Matter of Lansing, 182 N.Y. 238, 74 N.E. 882
- Matter of Hoffman, 161 App. Div. 836, 146 N.Y. Supp. 898, affirmed, 212 N.Y. 604, 106 N.E. 1034
