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Joint Savings Accounts: Rights of Nondepositors While Original Joint Tenants Still Alive

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the legislature necessarily must miss, but which justice in sentencing demands.

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JOINT SAVINGS ACCOUNTS: RIGHTS OF NONDEPOSITORS WHILE ORIGINAL JOINT TENANTS STILL ALIVE

First National Bank v. Munns[1]

On November 3, 1975,[2] Mrs. Munns, a widow, opened a Citizens Savings Association (Citizens) savings account with her two children. The account was entitled "Margaret E. Munns and Margaret Ann Rouse and Robert L. Munns, joint tenants with right of survivorship and not as tenants in common."[3] Mrs. Munns desposited into that account $15,500,[4] the proceeds from the sale of her home. She intended to make a gift, effective at her death, of the funds remaining in the account to the surviving joint tenants. A recital on the signature card, however, authorized any of the joint tenants to withdraw from or pledge the account.[5]

On December 14, 1976,[6] Robert withdrew $15,104.86 from the joint savings account at Citizens and opened another account with the money, also at Citizens, on the same day. This account was entitled "Robert L. Munns, trustee for Margaret E. Munns and Margaret Ann Rouse, Beneficiaries." Mrs. Munns was unaware of both the withdrawal from the joint savings account and the creation of the trust account. When he opened the account, Robert executed a "Discretionary Revocable Trust Agreement," which gave the trustee the power "to hold, manage, invest and reinvest said funds in his sole discretion." The agreement also provided that the grantor, Robert, could revoke the trust in full or in part at any time by withdrawal. No other method of revocation was to be valid unless written notice of the revocation was given to Citizens. The trust was to continue for the life of the grantor, subject to revocation, and then to be paid to the beneficiaries.[7]

1. 602 S.W.2d 910 (Mo. App., E.D. 1980).
2. Transcript on Appeal at 39. The transcript was filed August 2, 1979, with the Audrain County, Missouri, Circuit Court Clerk as No. 15,337.
3. 602 S.W.2d at 912.
4. Transcript on Appeal at 64.
5. 602 S.W.2d at 912.
6. Transcript on Appeal at 62.
7. 602 S.W.2d at 912.

On the *same day* that he had withdrawn the money from the joint savings account and had opened the trust account,[8] Robert borrowed $15,000 from the First National Bank of Mexico (Bank) and assigned the trust certificate of desposit to the Bank as security. On the following day, the Bank gave written notice of the assignment to Citizens.[9]

Robert made no payment on the loan.[10] Fifteen months after the loan was made,[11] the Bank brought an action to recover on the note and to order delivery of the funds held by Citizens in the trust account.[12] Mrs. Munns and her daughter intervened as defendants and claimed an interest in the account. They filed an answer and counterclaim to the Bank's petition and a crossclaim against Robert and Citizens.[13] The Bank and Mrs. Munns both filed motions for summary judgment on the issue of ownership of the funds.[14]

The trial court ruled that Robert "converted" the $15,104.86 "to his own use and thereby became justly and lawfully indebted to defendant Margaret E. Munns."[15] Nevertheless, the trial court sustained the Bank's motion for summary judgment and ordered the funds in the trust account to be delivered to the Bank. The trial court found that the trust agreement created a valid Totten trust, which was revoked when Robert pledged the trust account.[16] Robert did not file an answer, and Mrs. Munns, her daughter, and the Bank obtained a default judgment against him.[17]

On appeal to the Missouri Court of Appeals for the Eastern District, Mrs. Munns and her daughter argued for reversal on four grounds: (1) that no Totten trust arose because Robert did not deposit his own funds into the trust account, (2) that the assignment of the trust account did not

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8. Transcript on Appeal at 62.
9. *Id.* at 44.
10. *Id.* at 47 (testimony of Bank's assistant cashier).
11. *Id.* at 6A.
12. 602 S.W.2d at 912.
13. *Id.* at 911-12. Against Citizens, Mrs. Munns sought damages for conversion of the joint savings account which allegedly occurred when Citizens refused her demand for payment because Robert had closed the account. Transcript on Appeal at 17-18. It is unclear why she did not sue Citizens for having permitted Robert's shift from the joint savings account to the trust account.
14. 602 S.W.2d at 912.
15. Transcript on Appeal at 65.
16. The trial court sustained the Bank's motion for summary judgment, *id.* at 65-66, in which the Bank argued that the trust account was a Totten trust, *id.* at 32. The term "Totten trust" has been coined to refer usually to a bank deposit in the form "*A* in trust for *B*" where *A* is the depositor. This form of the account, when no other terms were present, was held to create a trust revocable by the depositor during his life in *In re* Totten, 179 N.Y. 112, 125-26, 71 N.E. 748, 752 (1904).
17. 602 S.W.2d at 912.

revoke the trust, (3) that the Bank was under a duty to inquire of the trust beneficiaries concerning the assignment of the trust certificate, and (4) that the Bank took the assignment subject to the rights of the beneficiaries.[18] The court of appeals was unpersuaded and affirmed the trial court.[19]

The inability of a joint tenant to convey any interest in the jointly held property, except his own, is well established in the area of real property.[20] While joint savings accounts are not required to comply with the common law requirements for a joint tenancy,[21] a savings account joint tenant, like a real property joint tenant, would seem unable to convey any interest except his own.[22] The *Munns* court, however, allowed one joint tenant to convey good title to *all* of the jointly held property and said nothing about the rule that one joint tenant cannot convey any interest, except his own.

Munns is the first Missiouri case to address the issue of title among nonmarried joint tenants to a joint savings account with right of survivorship while all joint tenants are still alive, when the account is created by a single depositor.[23] The *Munns* court construed Missouri Revised Statutes

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18. *Id.*

19. *Id.* at 916.

20. "One joint tenant cannot alienate the interest of the other joint tenants or in any way affect such interest." G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY § 1780, at 31 (1979).

21. *In re* Estate of LaGarce, 487 S.W.2d 493, 500 (Mo. En Banc 1972). For an excellent, brief discussion of the requirements for common law joint tenancies, see Eckhardt & Peterson, *Possessory Estates, Future Interests and Conveyances in Missouri*, 23 V.A.M.S. § 39 (1952).

22. For a discussion of a case that imposed a constructive trust after wrongful withdrawal from a joint account, Feltz v. Pavlik, 257 S.W.2d 214 (Mo. App., St. L. 1953), see note 23 *infra*.

23. For commentaries on joint savings accounts, *see generally* Annot., 77 A.L.R. 782, 799 (1932) (right to trace funds withdrawn from joint bank account); Kepner, *Five More Years of the Joint Bank Account Muddle*, 26 U. CHI. L. REV. 376 (1959); Kepner, *The Joint and Survivorship Bank Account—A Concept Without a Name*, 41 CALIF. L. REV. 596 (1953); Comment, *Bank Deposits as Will Substitutes in Missouri*, 28 MO. L. REV. 482 (1963).

Previous cases had dealt with similar areas. *See, e.g.*, Feltz v. Pavlik, 257 S.W.2d 214, 218-19 (Mo. App., St. L. 1953) (funds traced after husband's wrongful withdrawal; constructive trust imposed on recipient even though statute said that the money in the account shall become the property of the joint tenants). *Feltz* concluded that "'[i]t would be preposterous to claim that an appropriation by one joint owner to his personal use could divest the interest of the other joint owner or could in any way be presumed to have been by the consent of his co-owner.'" *Id.* at 219 (quoting with approval O'Connor v. Dunnigan, 158 A.D. 334, 336, 143 N.Y.S. 373, 375 (1913), *aff'd mem.*, 213 N.Y. 676, 107 N.E. 1082 (1914)). *See also In re* Estate of Thompson, 539 S.W.2d 650, 651-52 (Mo. App., K.C. 1976) (guardian of incompetent depositor can withdraw entire fund); Hap-

section 369.174.1 to bestow on Robert a present interest in the joint savings account.[24] The extent of that interest, however, is left uncertain because of the default judgment against Robert.[25] This uncertainty arises because Robert was held to possess a present interest in the account[26] and also was held liable for all amounts he withdrew.[27] Logic suggests that Robert should not be liable for a withdrawal up to the amount of his present interest. Perhaps the court is saying that if he had defended on the merits, Robert would have been liable only for the amount withdrawn in excess of his interest.

To determine simply whether Robert had a present interest in the joint savings account, the *Munns* court turned to an earlier Missouri case, *In re Estate of LaGarce*.[28] *LaGarce*, according to the *Munns* court, construed the joint savings account statute as creating present inter vivos rights in all joint tenants. Robert, the *Munns* court concluded, was a "present joint owner."[29] In *LaGarce*, the testator was the sole depositor in a joint savings account with right of survivorship. The award of the funds to the executrix, testator's widow, over the survivors of the account was reversed and remanded.[30] *LaGarce* emphasized the portion of the joint savings account statute which states that the funds in the account "shall become the property of such persons [*i.e.*, the account holders] as joint tenants."[31] *LaGarce*, however, did not determine rights among the joint tenants prior to the death of the depositor, but instead decided rights between the survivors and the depositor's executrix. This situation differs from *Munns*, where the court determined rights between the depositor and the other

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pel v. Grogan, 514 S.W.2d 178, 180-81 (Mo. App., Spr. 1974) (mother-depositor could obtain payment of certificate issued in name of mother, son, and two daughters when son predeceased mother); Skidmore v. Back, 512 S.W.2d 223, 226 (Mo. App., Spr. 1974) (on death of depositor, survivors normally entitled to funds remaining in account).

24. 602 S.W.2d at 914. *See* RSMo § 369.174.1 (1978).

25. 602 S.W.2d at 912.

26. *Id.* at 914.

27. Transcript on Appeal at 65.

28. 487 S.W.2d 493 (Mo. En Banc 1972), *noted in Joint Bank Accounts—Right of Survivorship*, 39 MO. L. REV. 270 (1974).

29. 602 S.W.2d at 914. The conclusion that Robert was "a present owner" still leaves unresolved the more important problem of defining the extent of his present interest in the account. The conclusion also left unclear what was meant by the word "owner." One can be an owner for many purposes short of complete dominion over the property owned.

30. 487 S.W.2d at 501. The widow of the testator later was adjudged by the St. Louis Court of Appeals to take the funds over the surviving joint tenants because the court found that the transfer was in fraud of her marital rights. *In re* Estate of LaGarce, 532 S.W.2d 511, 518 (Mo. App., St. L. 1975).

31. 487 S.W.2d at 500. *LaGarce* was decided under RSMo § 369.150 (1969) (repealed 1971).

joint tenants. Since *LaGarce* did not decide whether the joint savings account statute created rights in nondepositors prior to the depositor's death, *Munns* seems to expand greatly, under a guise of reliance, the interpretation of the statute set forth in *LaGarce*.[32]

A statute similar to Missouri Revised Statutes section 369.174.1 was first enacted in 1915.[33] The early cases found legislative purpose both to protect banks and savings institutions from double liability and to create a rebuttable presumption that the transaction represented a gift from the depositor to the nondepositor(s) where a savings account was in the form of a joint tenancy with right of survivorship.[34] Prior to *LaGarce*, the courts of appeals treated the accounts in accordance with the depositor's most likely intent, namely, as a will substitute.[35] *LaGarce* converted the rebuttable

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32. *Munns'* reliance on *LaGarce* is difficult to reconcile with language used in the *LaGarce* opinion. "It is our view that if the statute [RSMO § 369.150 (1969) (repealed 1971)] is complied with, in the absence of fraud, undue influence, mental incapacity, or mistake, the *survivor will* become the owner of the account." 487 S.W.2d at 501 (emphasis added). This language suggests that the court looked to the depositor's death as the event when the ownership interest vests in the nondepositors.

Munns is also difficult to reconcile with an earlier St. Louis Court of Appeals case, Carroll v. Hahn, 498 S.W.2d 602 (Mo. App., St. L. 1973). *Carroll* interpreted *LaGarce* as establishing the rights of the joint tenants only after the death of the depositor and not during the original parties' joint lives. *Id.* at 607. In *Carroll*, the decedent opened a joint savings account with right of survivorship and named the plaintiff as the other joint tenant. The decedent later withdrew the funds from this account and placed them in a different joint savings account with right of survivorship and named the defendant as a joint tenant. Plaintiff's argument that he had acquired a present ownership in the fund, not subject to divestment by decedent's withdrawal, was unsuccessful. The *Munns* court did not discuss *Carroll* but, if read literally, *Munns* would seem to overrule *Carroll* because the *Carroll* nondepositing joint tenant was adjudged not to have acquired a present interest in the account.

33. 1915 Mo. Laws 154, § 107, *codified at* RSMO § 11779 (1919).

34. *See, e.g.*, Ball v. Mercantile Trust Co., 220 Mo. App. 1165, 1172-73, 297 S.W. 415, 417 (St. L. 1927). This view can be contrasted to that of some states where such statutes are construed as intended to protect the institutions only. *Joint Bank Accounts—Right of Survivorship*, *supra* note 28, at 272-73. For a discussion of a statute similar to Missouri's, see Wellman, *The Joint and Survivor Account in Michigan—Progress through Confusion*, 63 MICH. L. REV. 629 (1965).

35. Comment, *Control of Family Assets in Missouri*, 43 U.M.K.C. L. REV. 360, 364-65 (1975). In Butler State Bank v. Duncan, 319 S.W.2d 913 (Mo. App., K.C. 1959), the court noted, " 'Whatever the inference may be, as to the intention of the depositor arising from the form of the deposit, evidence of his words and conduct is admissible to show what his actual intention was.' " *Id.* at 915 (quoting with approval I A. SCOTT, THE LAW OF TRUSTS § 58.1, at 478 (2d ed. 1956)). *See also* Jenkins v. Meyer, 380 S.W.2d 315, 320 (Mo. 1964) (certificate of deposit

presumption of joint tenancy into a conclusive one and thereby brought the case law into accordance with the plain meaning of the statute. After *LaGarce*, the nondepositor's interest in a joint savings account was characterized as an "expectancy."[36] In other words, each depositor owned completely the money he contributed to the account and each joint tenant had an expectancy in the entire fund subject to revocation.

This approach is similar to that taken by the Uniform Probate Code section 6-103(a).[37] The Comment to this section states:

> This section reflects the assumption that a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. . . . Presumably, overwithdrawal leaves the party making the excessive withdrawal liable to the beneficial owner as a debtor or trustee.[38]

The recital on Mrs. Munns' signature card suggests that Citizens had not adopted the Uniform Probate Code approach. The card stated that "any funds placed in or added to the account by any one of the parties *are and shall be conclusively intended to be a gift and delivery* 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."[39] In other words, the funds purportedly were owned in proportion to each joint tenant's pro rata interest in the account. This approach differs from that of the Uniform Probate Code where the funds are owned in proportion to each joint tenant's net contribution.

Despite the recital on Mrs. Munns' signature card, the court found that Robert converted the entire account. A problem that the court did not address was the issue of the Bank's knowledge, if any, of Robert's conversion. The facts suggest that someone coached Robert through these transactions. He withdrew the money from the joint savings account, opened the trust account, obtained the loan, and pledged the trust account, all on the same day. This possibility raises the most important issue in *Munns*, which the court did not address, the extent to which the Bank was a participant, if at all, in the conversion of Mrs. Munns' money in the joint savings account. If the Bank persuaded Robert to close out his

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payable to decedent or another raises rebuttable presumption of joint tenancy with right of survivorship) (overruled in *In re* Estate of LaGarce, 487 S.W.2d 493, 500 (Mo. En Banc 1972)).

36. *See, e.g.*, Skidmore v. Back, 512 S.W.2d 223, 226 (Mo. App., Spr. 1974).

37. "A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent." UNIFORM PROBATE CODE § 6-103(a).

38. *Id.* § 6-103, Comment.

39. Transcript on Appeal at 38.

mother's account, it would seem fair to deny the Bank the funds that Robert converted at its behest.

On the issue of the Totten trust, Mrs. Munns argued that none was created by Robert's deposit into the trust account because he did not deposit his own funds.[40] The court, relying on Missouri Revised Statutes section 369.174,[41] disagreed with the contention that Robert did not own the funds, but conceded that no Totten trust arises where the Totten trustor does not own the funds deposited.[42] In other words, the court conceded Mrs. Munns' point of law, but held that it was inapplicable to the facts.

An argument could have been made that no Totten trust arose because a written trust agreement had been executed.[43] The court in *In re Totten* found that "[a] deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust."[44] Robert's deposit arguably was not "standing alone," *i.e.*, was not simply in the form "*A* in trust for *B*," but rather was accompanied by written terms such as would accompany an express trust. The *Totten* court appears to have anticipated the expansion of its holding to include express trusts and suggested that Totten trusts arise only when the trust has no terms.[45] The few courts which have considered this argument have found it persuasive.[46]

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40. 602 S.W.2d at 912.

41. (1978).

42. 602 S.W.2d at 913.

43. In *Totten*, no written trust agreement was executed. *In re* Totten, 179 N.Y. 112, 117, 71 N.E. 748, 749 (1904).

44. *Id.* at 125-26, 71 N.E. at 752.

45. The *Totten* court discussed the case of Robinson v. Appleby, 69 A.D. 509, 75 N.Y.S. 1 (1902). The *Robinson* bank account was in the form "Helen C. Pratt in trust for Freddie H. Robinson. 'Note'—Not to be paid to F.H.R. until he is 30 years of age" and was accompanied by a note stating that Helen desired to pay the balance in the account to him after her death when he was 30. *Id.* at 510, 75 N.Y.S. at 2. The *Totten* court observed:

> In . . . [*Robinson*], the written declaration was so full and explicit that we had no difficulty in sustaining the trust as irrevocably established when that paper was signed and delivered to the bank as custodian of the trust fund. There was much more than a mere deposit in the name of one person in trust for another, for an independent instrument was executed which not only declared the intention of the depositor, but directed when the account was to be paid to the beneficiary.

179 N.Y. at 125, 71 N.E. at 752.

46. For example, in May v. Safer, 46 Mich. App. 668, 208 N.W.2d 619 (1973), the trust instrument contained all the provisions of that in the *Munns* trust plus several others. The court held that when there is a written trust agreement, the terms of that agreement control the disposition of the trust corpus. *Id.* at 675, 208 N.W.2d at 623.

Since no Totten trust was created, Mrs. Munns argued at trial, the account was but a normal bank deposit trust to which the law of trusts applied.[47] She argued that the trust could be revoked effectively only by the two methods for revocation stated in the trust instrument, *i.e.*, by actual withdrawal or by written notice of revocation from Robert to Citizens, neither of which occurred.[48] The opinion states that Robert told the Bank's vice-president that he, Robert, would withdraw the funds to pay the loan in event of default and that the Bank notified Citizens of the assignment.[49] The court found that written notice of the assignment given by the Bank to Citizens constituted a revocation and thereby expanded the scope of express, exclusive revocatory methods.[50] Such an expansion does not enjoy universal support. For example, the Restatement (Second) of Trusts seems to support Mrs. Munns' approach: "If the settlor reserves a power to revoke the trust only in a particular manner or under particular circumstances, he can revoke the trust only in that manner or under those circumstances."[51]

In addition to denying the validity of the revocation, Mrs. Munns denied Robert's ability to assign the trust account.[52] In effect, the Bank allowed a known trustee to secure a personal debt with trust property. The authorities are in agreement that a trustee cannot pledge trust property to secure his personal debt,[53] that a transferee of a trustee takes subject to the rights of the beneficiaries when the transferee is not a bona fide purchaser without notice,[54] and that the pledgee of a trustee must use due diligence

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In *In re* Estate of Anderson, 69 Ill. App. 2d 352, 217 N.E.2d 444 (1966), an agreement again very similar to that in *Munns*, plus a few more terms, was held not to create a Totten trust, but an express inter vivos trust. *Id.* at 363, 217 N.E.2d at 449. *See generally* Annot., 64 A.L.R.3d 221, 223 (1975) (Totten trust arises only when no intended character of such trust except the deposit itself).

47. Transcript on Appeal at 14. *See* 602 S.W.2d at 912.

48. 602 S.W.2d at 915.

49. *Id.* at 912.

50. *Id.* at 915.

51. RESTATEMENT (SECOND) OF TRUSTS § 330, Comment j (1959).

52. 602 S.W.2d at 912.

53. Turner v. Hoyle, 95 Mo. 337, 344, 8 S.W. 157, 159 (1888) (pledgee of trust property with notice that it is trust property for personal debt of previous trustee cannot assert title against present trustee).

54. "If the trustee in breach of trust transfers trust property to a person who takes with notice of the breach of trust, the transferee does not hold the property free of the trust, although he paid value for the transfer." RESTATEMENT (SECOND) OF TRUSTS § 288 (1959). In Schneider v. Schneider, 347 Mo. 102, 110, 146 S.W.2d 584, 589 (1940), the court cited with approval the RESTATEMENT OF TRUSTS § 288 (1935), which contained language identical to the RESTATEMENT (SECOND) OF TRUSTS § 288 (1959).

"The third person [transferee] holds the interest he acquires by the transfer

to determine whether a trustee has violated the trust.[55] Ordinarily, a trustee cannot pledge trust property unless the trust instrument grants him that power.[56] *Munns*, therefore, raises the question whether, in a case such as this, the assignee should be protected merely because the grantor reserved a power of revocation.[57] The question never is answered directly by the *Munns* court. The court does cite Missouri Revised Statutes section 369.179[58] for the proposition that Robert could withdraw the money held in trust and Missouri Revised Statutes section 369.154.2[59] for the proposition that Robert could pledge the trust account without notice to the beneficiaries.

The court did not consider several analytical obstacles to its conclusion that Robert could pledge the trust account. It did not consider the problem that even if notice to the beneficiaries is not required, nothing in the statute allows a trustee's pledgee to take free of the beneficiaries' rights. More importantly, simply because the statute sanctions the pledge of a savings account, it does not follow inevitably that the entire account may be pledged for any reason whatsoever by any joint tenant. Section 369.154.2 deals only with the general proposition that a savings account can be pledged. It does not purport to sanction the pledge of a joint savings account or of a trust account. The statute allows "the owner" of the account to pledge it. The *Munns* court failed to discern that while Robert may have been *an* owner of the account, he may not have been *the* owner; he may not have been capable of pledging the entire account. The court,

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upon a constructive trust for the beneficiary of the trust." *Id.* § 288, Comment a. *See id* § 297 & Comment a.

55. Turner v. Edmonston, 210 Mo. 411, 422, 109 S.W. 33, 36 (1908) (circumstances surrounding purchase should have put purchaser on notice for further inquiry). One commentator has stated:

> Where the transferee has notice of the existence of a trust, he is bound to make inquiry as to the authority of the trustee to make the transfer. One who purchases or lends money on the security of property which he knows or has reason to know is trust property should inquire as to the authority of the trustee to sell or mortgage or pledge it.

IV A. SCOTT, THE LAW OF TRUSTS § 297.4, at 2413 (3d ed. 1967) (footnote omitted).

56. "[T]he trustee cannot properly mortgage or pledge trust property, unless a power to mortgage or pledge is conferred by the terms of the trust." RESTATEMENT (SECOND) OF TRUSTS § 191 (1959).

57. Creditors cannot force the exercise of power of revocation. "Unless it is otherwise provided by statute a power of revocation reserved by the settlor cannot be reached by his creditors. If he revokes the trust and recovers the trust property, the creditors can reach the property; but they cannot compel him to revoke the trust for their benefit." RESTATEMENT (SECOND) OF TRUSTS § 330, Comment o (1959).

58. (1978).

59. (1978).

however, construed this section to allow the pledge of trust and joint savings accounts.

To substantiate further Robert's power to pledge the trust account, the court noted the portion of Missouri Revised Statutes section 369.154.2 which states that if the depository association is notified of the pledge of one of its accounts, "the pledgee shall be protected."[60] In other words, since Citizens was notified of the pledge of the trust account, the Bank is protected against Mrs. Munns' claim. This portion of the statute, however, is preceded by a clause dealing with the rights of the association with respect to the account.[61] One possible inference from this ordering of the statutory provisions is that the statute protects the pledgee against claims on the account by the association, but not against claims on the account by other joint tenants. Mrs. Munns also might have argued that this section was not intended to protect an association regardless of the association's knowledge of the wrongfulness of the pledge. If Citizens knew that Robert's withdrawal from the joint savings account and subsequent pledge of the trust account constituted a conversion, the law ought not to protect Citizens from liability to Mrs. Munns. Since the assignment was held valid, the effect of an invalid assignment on Mrs. Munns' rights is left unclear.

Munns signals Missouri practitioners that the joint savings account is not risk-free.[62] The problems might have been avoided in the instant case by requiring Mrs. Munns or her guardian to cosign all withdrawals. Absent any precautions, however, Missouri Revised Statutes section 369.174.1[63] exposes the depositor to the risk of judicially enforced largess. It is regrettable that a widow's savings must be the immolation that announces a clarification or change in policy. That policy, however, appears to be a workable one. With adequate protection against misappropriation by a fellow joint tenant, the joint savings account can continue to be a practical will substitute.

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60. RSMo § 369.154.2 (1978).

61. *Id.*

62. A previous Casenote suggested that "a depositor may now safely create a joint tenancy [in a savings account], control the funds for life, and pass them to the survivor." *Joint Bank Accounts—Right of Survivorship*, *supra* note 28, at 276. The joint savings account may still be characterized as "safe" in the sense that it will not be declared void as a testamentary disposition, but should not be thought of as "safe" against misappropriation by a nondepositing joint tenant.

63. (1978).