[VASSILIADES P., TRIANTAFYLLIDES AND JOSEPHIDES JJ.]

OLYMBIA M. IACOVIDES,

Appellant,

v.

KATINA G. SCHIZA AND OTHERS,

Respondents.

(*Civil Appeal No.* 4622).

Joint accounts—Joint Bank Accounts—Husband and wife—Survivor—Balance standing to the credit of the joint account at the death of one of the spouses—Title to such balance on the death of the husband—The question is one of intention to be concluded from the circumstances of each case—In the absence of some circumstance or some evidence of intention that the joint account was to have a limited operation or set up and kept for some special purpose, the balance at the death of one of the parties belongs to the survivor—In the present case, regard being had to the surrounding circumstances in relation to the joint accounts in issue, it was clearly the intention of the deceased husband to provide for his wife—And there is nothing to indicate that the accounts in question were to have a limited operation or set up for a special purpose—It follows, as a matter of law, that on the husband's death the balance standing to the credit of these joint accounts accrued beneficially to the wife—And that there is no resulting trust in favour of the estate—On the other hand, considering that the deceased's intention in opening the said joint accounts and lodging all the moneys was to benefit his wife, it follows that the said gifts were effective and complete gifts inter vivos *from the time of the making—Notwithstanding that the deceased husband retained the right to draw on the joint accounts at will during his lifetime (a right also possessed by the wife during the deceased's lifetime)—Consequently it was not necessary to make such gifts in testamentary form* i.e. *in conformity with the provisions of the Wills and Succession Law, Cap.* 195*—In the result, there is no equity, in the present case, to disturb the survivor wife's legal ownership of the relevant balances.*

Gift—Gift inter vivos*—Joint bank accounts—Husband and wife—Trust—Ownership of balances on survivorship—Intention of the deceased husband to make a gift to his wife—Balance on death of the husband—Ownership—Wife's ownership—No*

resulting trust in favour of the estate—Such gift being an effective and complete gift from the time of the making—Not a gift of testamentary nature—Need not, therefore, to be made in conformity with the Wills and Succession Law, Cap. 195—See, also, above under Joint Accounts.

Husband and Wife—Joint accounts—See above.

Bank Accounts—Joint accounts—Husband and Wife—Survivorship—Ownership of balance—See above.

Trust—Resulting trust—Joint accounts—Balance—Survivorship—No resulting trust in favour of the estate—See above.

Resulting trust—See above.

Gift—Gift in its nature testamentary—See above.

Evidence—Corroboration—Claim upon deceased's estate based on allegation either of debt or gift—Need for corroboration of the claimant's testimony—Unless circumstances appear or are proved making the claim antecedently probable—The Evidence Law, Cap. 9, section 7.

Corroboration—Corroboration in civil cases—See above under Evidence.

Estate—Claim against estate—Evidence—Corroboration—See above under Evidence.

This is an appeal against the judgment of the District Court of Limassol whereby it was declared that the appellant surviving wife held as trustee for the estate of her deceased husband money on deposit in certain banking accounts in the joint names of herself and her deceased husband.

The trial Court reached its conclusion for the following three reasons : (*a*) the deceased husband by opening the joint accounts never intended to make a gift to his wife; (*b*) the evidence of the surviving wife to the contrary could not be acted upon as it was not corroborated by any other evidence as required under the provisions of section 7 of the Evidence Law, Cap. 9; and (*c*) even if the wife's evidence were accepted, the conclusion to be drawn was that the purpose of the deceased husband in opening the joint accounts was to make a gift to his wife in its nature testamentary, and as such it could only be made by virtue of a will in conformity with the Wills and Succession Law, Cap. 195.

The deceased died on the 21st March, 1966. The subject matter of the dispute in this case are two joint accounts (a claim as to a third account was abandoned) opened by the deceased on the 8th December, 1959 and the 26th February, 1966, respectively as follows :

(*a*) On the 8th December, 1959, the deceased husband opened a deposit account with Lombard Banking Ltd., London, in the joint names of himself and his wife and they both signed an authority to the bank "to pay any moneys now or hereafter standing to the credit of the deposit account in our joint names including all interest thereon to, or to the order of, any of us, or to, or to the order of, the survivors or survivor of us or the executors or administrators of such survivor". On the date of the husband's death this account had a credit balance of £1,347.785 mils. It is common ground that only the deceased lodged money into this account, and that neither of them withdrew any money from it.

(*b*) On the 28th February, 1966 (*i.e.* three weeks before his death) the deceased opened a deposit account with the Bank Populaire de Limassol Ltd., in the joint names of himself and his wife and they both signed the usual authority to the Bank authorising payment to any one of them or to the survivor. He transferred the sum of £1,500 to the credit of this account which on the date of his death had a credit balance of £1,504.165. The sum of £1,500 lodged into this account by the deceased came from the proceeds of the sale of a house which belonged to him.

Considering the evidence of the wife and the surrounding circumstances in relation to the two said joint accounts, the Supreme Court found that it was clearly the intention of the deceased to provide for his wife and that there was nothing to indicate that the accounts in question were to have a limited operation or that they were set up for some special purpose.

Section 7 of the Evidence Law, Cap. 9 reads as follows :

"7. A claim upon the estate of a deceased person, whether founded upon an allegation of debt or gift, shall not be maintained upon the uncorroborated testimony of the claimant, unless circumstances appear or are proved which make the claim antecedently probable or throw the burden of disproving it on the representatives of the deceased".

The Court in allowing the appeal and making a declaration accordingly :

Held, I. As to the question whether the deceased in opening the said two joint accounts intended to make a gift to his wife (appellant) :

(1) We think that the law is well settled on this point and it is to be conveniently found summarised in the case *Re Bishop (deceased). National Provincial Bank Ltd.* v. *Bishop and Others* [1965] 1 All E.R. 249, Ch. D. The learned Judge in that case (Stamp J.), following *Re Young* [1885] 28 Ch. D. 705, said that the established principle was that where spouses opened a joint account on terms that cheques may be drawn by either, "in the absence of some circumstance or some evidence of intention that the joint account was to have a limited operation or was set up and kept for some special purpose, each spouse has power to draw on the joint account not only for the benefit of both spouses but also for his or her own benefit. In the absence of some circumstance from which one infers an agreement to the contrary, one must treat the joint account as truly a joint account, a joint account on which each party has power to draw to take the money out of the ambit of the joint account and to employ as he or she thinks fit either for his own purposes or not and if he does draw money out and invests it in his own name I see no room for any inference that he holds that investment on trust for himself and his wife either in equal shares or in any other shares" (at p.p. 253I–254A).

(2) It will thus be seen that it is a question of intention to be concluded from the circumstances of each case. The circumstances in relation to the joint account have to be considered to ascertain the reason for its existence and whether it existed for some *specific or limited purpose*. In the case of *Marshal* v. *Crutwell* [1875] L.R. 20 Eq. 328, the husband was failing in health at the time of the opening of the joint account and it was held by Jessel M.R. that the intention was not to make provision for the wife, but merely to manage the husband's affairs conveniently and, therefore, she had no claim to the balance of the joint account when he died. On the contrary, on the facts in the *Bishop* case (*supra*) it was held that there was nothing to indicate that the joint account had been opened for a *limited or specific purpose* and, accordingly, any investments purchased, with money drawn from the account, in the name of either spouse, belonged beneficially to that spouse, and, further, on the husband's death the balance standing to the credit of the joint account accrued beneficially to the wife (p.p. 249 and 257 of the report *supra*).

(3) (*a*) Considering the surrounding circumstances in the present case in relation to the two joint accounts, we are of the view that it was clearly the intention of the deceased to provide for his wife and that there is nothing to indicate that the accounts in question were to have a limited operation or that they were set up for some special purpose.

(*b*) It, therefore, follows, as a matter of law, that on the husband's death the moneys standing to the credit of these two joint accounts accrued beneficially to the wife, and that there is no resulting trust in favour of the estate.

Held, II. Regarding the question whether the trial Court was right in holding that the widow's evidence could not be accepted as it was not corroborated by other evidence as required by section 7 of the Evidence Law, Cap. 9 :

(1) Assuming, without deciding, that this was a claim upon the estate of a deceased person, the trial Court does not seem to have considered the exception expressly provided in section 7 of Cap. 9 (*supra*), that is to say, that corroboration of the claimant's testimony is not necessary if "circumstances appear or are proved which make the claim antecedently probable".

(2) And in this case the proved facts and surrounding circumstances undoubtedly make the claim antecedently probable within section 7 (*supra*).

Held, III. Regarding the question whether by the opening of the joint accounts the deceased made a gift to his wife in its nature testamentary :

(1) (*a*) Having given the matter our best consideration we have reached the conclusion that the English case of *Young* v. *Sealey*, [1949] 1 All E.R. 92, is applicable to the present case. It was held in that case that there being a general intention on the deceased lady's part to benefit the defendant—her nephew—, the defendant had not only a legal, but also a beneficial, title to the moneys standing to the credit of their joint account, and none the less so because the deceased (as between herself and the defendant) retained control and dominion over the deposit accounts during her own lifetime.

(b) So, the fact that the transferor retains control during his lifetime over the property transferred into the joint names does not prevent the gift, although appearing to be of a testamentary nature and not in conformity with the Wills and

Succession Law, from being an effective and complete gift *inter vivos* from the time of making, so as to vest the legal title to the property in the donee by survivorship on the death of the transferor (cf. 18 Halsbury's Laws of England, 3rd ed. p. 385, paragraph 733).

(2) Applying these principles to the present case, and considering the deceased's intention to benefit the wife, we hold that, although the deceased retained the right to draw on the joint accounts at will during his lifetime (a right also possessed by the wife during the deceased's lifetime), this did not prevent the gifts from being effective and complete gifts *inter vivos* from the time of the making and that, consequently it was not necessary to make such gifts in conformity with the Wills and Succession Law, Cap. 195.

Held, IV. In the result :

For these reasons we conclude (following the cases *Re Bishop* and *Young* v. *Sealey, supra*) that on the death of the husband the moneys standing to the credit of the joint accounts, accrued beneficially to the wife aforesaid (appellant.). And, to use the words of Stamp J. in *Re Bishop, supra,* (at p. 257G of the report) there is, in our judgment, no equity to disturb her legal ownership.

In the result the appeal is allowed. The Judgment of the trial Court set aside and declaration made in the above terms. Costs out of the estate.

Appeal allowed. Judgment of the trial Court set aside. Declaration as made in the above terms. Costs to be paid out of the estate.

Cases referred to :

Re Bishop (deceased). *National Provincial Bank Ltd.* v. *Bishop and Others* [1965] 1 All E.R. 249, *followed*;

Re Young. Trye v. *Sullivan* [1885] 28 Ch.D. 705, *followed;*

Marshal v. *Crutwell* [1875] L.R. 20 Eq. 328, *distinguished;*

Young and Another v. *Sealey* [1949] 1 All E.R. 92, *followed;*

Re Reid [1921] 50 Ontario L.R. 595, considered;

Owens v. *Green* (1932) I.R. 225, *not followed.*

Appeal.

Appeal against the judgment of the District Court of Limassol (Malachtos P.D.C. and Loris D.J.) dated the 28th February, 1967 (Application No. 68/66) whereby it was declared that the appellant surviving wife held as trustee for the estate of her deceased husband money on deposit in certain banking accounts in the joint names of herself and her deceased husband.

G. Cacoyiannis, for the appellant.

P. Schizas, for respondent 1.

J. Potamitis, for respondent 2.

J. Eliades, for respondents 3 (executors).

Cur. adv. vult.

VASSILIADES, P. : The Judgment of the Court will be delivered by my brother Josephides, J.

JOSEPHIDES, J. : This is an appeal against the Judgment of the District Court of Limassol whereby it was declared that the appellant surviving wife held as trustee for the estate of her deceased husband money on deposit in certain banking accounts in the joint names of herself and her deceased husband.

The reasons for which the trial Court reached this conclusion were (*a*) that the deceased husband by opening the joint accounts never intended to make a gift to his wife; (*b*) that the evidence of the surviving wife to the contrary could not be accepted as it was not corroborated by any other evidence as required under the provisions of section 7 of the Evidence Law, Cap.9; and (*c*) that, even if the wife's evidence were accepted, the conclusion to be drawn was that the purpose of the deceased husband in opening the joint accounts was to make a gift to his wife in its nature testamentary, and as such it could only be made by virtue of a will in conformity with the Wills and Succession Law, Cap. 195.

The facts, which were not actually in dispute, were as follows : The deceased died of cancer on the 21st March, 1966, in Limassol. He had minor trouble for the first time in January, 1965, and in February, 1965, when he fell ill, cancer was diagnosed, but he did not know of his illness until his death although at times he realised that it was something serious.

In February 1965, he went to England for treatment accompanied by his wife and he returned to Cyprus where he died about a year later The deceased was a sentimental person very attached to his wife, to whom he was married for 35 years until his death On the whole it was a very happy marriage but there were no children

The subject matter of the dispute in this case are three joint accounts opened by the deceased between December, 1959 and the 28th February, 1966 as follows

(*a*) On the 8th December, 1959, the deceased husband opened a deposit account with Lombard Banking Ltd , Curzon Street, London, W 1 , in the joint names of himself and his wife and they both signed an authority to the bank "to pay any monies now or hereafter standing to the credit of (the) deposit account in our joint names including all interest thereon to, or to the order of, any one of us, or to, or to the order of, the survivors or survivor of us or the executors or administrators of such survivor". Two days later the deceased transferred the sum of £800 to the credit of this account and apparently he subsequently transferred other sums of money as this account had on the date of his death a credit balance of £1,347 785 mils At the time of the opening it was agreed with the bank that the account would carry interest at the rate of 5% per annum and that it would be subject to 6 months' notice of withdrawal It is common ground that only the deceased lodged money into this account, and that neither of them withdrew any money from it.

(*b*) On the 18th February, 1965, when the deceased was in England for treatment accompanied by his wife, he opened an account in the joint names of himself and his wife with the Westminster Bank, Ltd , 53, Thread-needle Street, London, E C 2 , and he had the sum of £1,000 (One thousand pounds) transferred from his sole deposit account to the joint account This account was operated by the wife during the illness of the deceased in England for the payment of his medical treatment and their living expenses while in England. When they returned to Cyprus the deceased remitted another £200 to the credit of this account which at the time of his death had a

credit balance of £350. In the course of the argument of this appeal learned counsel for the wife conceded that this was an account of "convenience" to enable the wife while in London to pay for the deceased's treatment and current expenses and he abandoned the wife's claim on this account;

(c) On the 28th February, 1966, the deceased opened a deposit account with the Bank Populaire De Limassol Ltd., in the joint names of himself and his wife and they both signed the authority to the bank authorising payment to any one of them or to the survivor in case of death. He transferred the sum of £1,500 to the credit of this account which on the date of his death, some three weeks later, had a credit balance of £1,504.165 mils. This was a fixed deposit for 13 months and it had not been operated at all after it was opened. The sum of £1,500 lodged into this account by the deceased came from the proceeds of the sale of a house which belonged to him and which had been sold for £3,000. The balance was otherwise disposed of by the deceased.

It is an undisputed fact that all the amounts deposited with the said banks in the joint names of the deceased and his wife were lodged by the deceased out of his own moneys. The deceased had a shop in Limassol and during his illness his partner in whom he had great confidence used to take charge of the business.

The wife's evidence, which was uncontradicted, was to the following effect : When the deceased opened the first deposit account with the Lombard Bank in London in 1959, he told his wife that he lodged the money in a joint account as he was a merchant, otherwise he would have deposited it in the wife's name exclusively. Subsequently, in February 1965, when the couple went to London for the medical treatment of the deceased, he opened the second joint account for the sum of £1,000 and when the wife enquired why was it necessary to open a new joint account since there was the Lombard Bank deposit account, the deceased replied that the money in the Lombard Bank, London, was not to be touched as it belonged to her (the wife). When they returned to Cyprus after the medical treatment in February 1965 and the deceased noticed that a sum of money was kept in his personal deposit account with the Westminster Bank, instead of being transferred to the joint account, he

said to her : "Why did you do it, I want the money to be yours and when we go to England I shall transfer the money to you and whatever saving I have in the meantime I shall send it to the Westminster Bank joint account".

With regard to the third joint deposit account with the Bank Populaire in Limassol the deceased wanted to lodge the sum of £2,500 in the joint account but the wife refused and she only accepted that he should deposit the sum of £1,500 in it. On that occasion the deceased told his wife again that the whole sum deposited with the Bank Populaire was hers, that in case of his death it would all go to her, and he repeated that he would have deposited the whole amount in her name had he not been a merchant. After lodgement of the amount with the Bank Populaire the deceased gave the deposit bond to the wife. Finally, the wife stated that her husband's intention was always to secure her, and that he told her that he wanted her to have everything to the exclusion of everybody else.

One of the executors, Thesseas Metaxas, was his accountant and friend. In giving evidence he was asked whether the deceased had expressed to him (Metaxas) his intention and he answered, "he did not express any particular wish to me about these joint accounts, no". The deceased expressed his wish to this witness to protect the widow's interests as much as he could "in law".

The first question which falls to be determined is whether the deceased in opening the joint accounts intended to make a gift to his wife. We think that the law is well settled on this point and it is to be conveniently found summarised in the case of *Re Bishop* (deceased). *National Provincial Bank, Ltd.* v. *Bishop and Others* [1965] 1 All E.R. 249, Ch. D. The learned Judge in that case (Stamp J.) following *Re Young* [1885] 28 Ch. D. 705, said that the established principle was that where spouses opened a joint account on terms that cheques might be drawn by either, "in the absence of some circumstances or some evidence of intention that the joint account was to have a limited operation or was set up and kept up for some special purpose, each spouse has power to draw on the joint account not only for the benefit of both spouses but also for his or her own benefit. In the absence of some circumstances from which one infers an agreement to the contrary, one must treat the joint account as truly a joint account, a joint account on which each party has power to draw to take the money out of the ambit of the joint account and to employ as he or she

thinks fit either for his own purposes or not and if he does draw money out and invests it in his own name I see no room for any inference that he holds that investment on trust for himself and his wife either in equal shares or in any other shares" (at pages 253 I–254 A of the Report).

The facts in *Re Bishop* were that in 1946 a husband and wife opened a joint bank account to which they transferred the amounts to the credit of their separate accounts, which were then closed. The joint account was fed by dividends on shares and sales of investments owned by the spouses separately. They both drew on the account at will to pay expenses and the husband drew cheques to pay for investments either in his name or in that of his wife. Altogether the sum of £270,000 was paid into the account during its operation : some £88,000 came from the husband, some £13,000 from the wife, and the balance of about £168,000 was untraceable : At the date of the husband's death in 1959 about £2,200 stood to the account's credit. The question arose who was the beneficial owner of the investments made from moneys withdrawn from the joint account. It was held that there was nothing to indicate that the joint account had been opened for a limited or specific purpose and, accordingly, any investments purchased, with money drawn from the account, in the name of either spouse, belonged beneficially to that spouse, and, further, on the husband's death the balance standing to the credit of the joint account accrued beneficially to the wife (pages 249 and 257 of the Report).

It will thus be seen that it is a question of intention to be concluded from the circumstances of each case. The circumstances in relation to the joint account have to be considered to ascertain the reason for its existence and whether it existed for some specific or limited purpose. In the case of *Marshal* v. *Crutwell* [1875], L.R. 20 Eq. 328, the husband was failing in health at the time of the opening of the joint account and it was held by Jessel M.R. that the intention was not to make provision for the wife, but merely to manage the husband's affairs conveniently and, therefore, she had no claim to the balance of the joint account when he died.

Considering the surrounding circumstances in the present case in relation to the two joint accounts, that is, the accounts with the Lombard Banking, London, and the Bank Populaire, Limassol, we are of the view that it was clearly the intention of the deceased to provide for his wife and that there is nothing

to indicate that the accounts were to have a limited operation or that they were set up for some special purpose. It, therefore, follows, as a matter of law, that on the husband's death the moneys standing to the credit of these joint accounts accrued beneficially to the wife, and that there is no resulting trust in favour of the estate.

The second question for determination is whether the trial Court was right in holding that the widow's evidence could not be accepted as it was not corroborated by other evidence. The trial Court in their Judgment said, "this case being in substance a dispute between the wife and the other heirs of the deceased and a claim upon the estate of a deceased person founded upon an allegation of gift her evidence should be corroborated according to section 7 of the Evidence Law, Cap. 9". Section 7 reads as follows :

> "A claim upon the estate of a deceased person, whether founded upon an allegation of debt or of gift, shall not be maintained upon the uncorroborated testimony of the claimant, unless circumstances appear or are proved which make the claim antecedently probable, or throw the burden of disproving it on the representatives of the deceased".

Assuming, without deciding, that this was a claim upon the estate of a deceased person, the trial Court does not seem to have considered the exception expressly provided in section 7, that is to say, that corroboration of the claimant's testimony is not necessary if "circumstances appear or are proved which make the claim antecedently probable"; and in this case the proved facts and surrounding circumstances undoubtedly make the claim antecedently probable.

The third and final question for determination is whether by the opening of the joint accounts the deceased made a gift to his wife in its nature testamentary. In addressing us on this point counsel for both sides relied on the case of *Young and Another* v. *Sealey* [1949] 1 All E.R. 92. This case was decided by Romer J. in the Chancery Division in 1948 and it does not seem to have been appealed against nor overruled in any other case over the past 19 years. The learned Judge in reaching his conclusion refered to several English cases and he also considered Canadian and Irish cases. In particular, he considered the Canadian case of *Re Reid* (1921), 50 Ontario L.R. 595, and followed the majority decision, but he declined to apply the Irish case of *Owens* v. *Green* (1932) I.R. 225.

Counsel for the wife submitted that we should follow the Judgment in *Young* v. *Sealey*, while counsel for the respondents invited us to follow the Irish case of *Owens* v. *Green* and the dissenting Judgment of Hodgins J. in the Canadian case of *Re Reid*. Having given the matter our best consideration we have reached the conclusion that the English case of *Young* v. *Sealey* is applicable to the present case. The headnote in that case is as follows ([1949] 1 All E.R. 92) :

"On Jan. 6, 1927, Miss J. transferred certain balances standing to her credit at the L. bank to a new deposit account at the same bank in the joint names of herself and the defendant, her nephew, and they both signed an authority to the bank (i) to pay the money in the joint account to or to the order of both or any one of them, or to or to the order of the survivor or the executors or administrators of such survivor, and (ii) to accept the indorsement of them or any one of them to cheques, etc., placed to the credit of the joint account. On Jan. 31, 1927, Miss J. and the defendant signed an authority to the S. Bank, where Miss J. has two deposit accounts, the effect of which was that both accounts were to be transferred to the joint names of the signatories and that all money then deposited or thereafter to be deposited should 'be repayable to either of us or to the written order of either of us, and in the case of death to the survivor of us'. Miss J. also from time to time made certain investments in building societies in the joint names of herself and her nephews and nieces, including, on Jan. 11, 1935, £500 fully paid shares in the W. building society in the joint names of herself and the defendant. At no time did the defendant make any withdrawals from the bank accounts or pay anything into them. Miss J., on the other hand, retained possession or control of the pass books and made both withdrawals and deposits. On Mar. 10, 1941, Miss J. died intestate, and her personal representatives brought this action claiming a declaration that the defendant was a trustee for Miss J.'s estate of the sums remaining to the credit of the joint accounts. It appeared from the evidence that Miss J. was always very fond of the defendant, although he visited her infrequently. The defendant said that Miss J. told him that the sums in the joint account were to be for his benefit, but he knew nothing about the building society investment. He said that he understood from Miss J. that her intention in putting the money in

joint account was that her solicitors would know nothing of the transactions and that death duties would not be payable. He was to have anything that was left in the joint accounts at the date of Miss J.'s death, and he did not understand from anything Miss J. said that he had any right to any of the money during Miss J.'s lifetime".

It was held that

"(i) there being a general intention on Miss J.'s part to benefit the defendant, the defendant had not only a legal, but also a beneficial, title to the moneys and shares, and none the less so because Miss J. (as between herself and the defendant) retained control and dominion over the deposit accounts during her own lifetime.

Beecher v. *Major*, (1865) (2 Drew. & Sm. 431; 13 L.T. 54), observations of SIR GEORGE JESSEL, M.R., in *Marshal* v. *Crutwell*, [1875] L.R. 20 Eq. 330, and *Re Harrison*, (1920) 90 L.J.Ch. 186, applied.

(ii) although the only possible view of the transactions, having regard to the evidence, was that the gifts were intended to be postponed until the death of Miss J., and that the gifts, therefore, appeared to be of a testamentary nature not made in conformity with the Wills Act, 1837, it would not be right, having regard to previous English decisions in which the circumstances had been similar, but in which it was not clear that the point had been argued, to defeat the defendant by applying that reasoning.

Re Reid, (1921), (50 Ontario L.R. 595), considered; *Owens* v. *Green*, ((1932) I.R. 225), not applied".

It will be observed that in that case Miss J. retained possession or control of the passbooks of the joint accounts and made both withdrawals and deposits and that at no time her nephew made any withdrawals from the bank accounts or paid anything into them.

It was contended on behalf of the respondent in this case that the deceased intended to retain control over the money in the joint accounts in order to be able to withdraw if need be and be able to use it in his business until the time of his death. It is a fact, however, that in the case of the Lombard Bank deposit there is no evidence that he withdrew any money from that account for the whole period, exceeding six years, which elapsed from the opening of the account until his death. It was further contended that it was the intention of the deceased

that the wife should not withdraw any money during his lifetime and that, consequently, this was not an immediate gift *inter vivos* but that it was a testamentary gift to take effect after death. Finally, it was contended that, as the deceased retained control to withdraw both capital and interest, the presumption of advancement was rebutted, as there was no present intention to benefit, and that it was also rebutted by the contemporaneous declarations by the husband. In support of that proposition respondents referred to the statement of the law in Halsbury's Laws, third edition, volume 18, page 388, paragraph 738 and the cases quoted in support.

We are of the view, however, that, on the authority of *Young* v. *Sealey*, the fact that the transferor retains control during his lifetime over the property transferred into the joint names does not prevent the gift, although appearing to be of a testamentary nature and not in conformity with the Wills and Succession Law, from being an effective and complete gift *inter vivos* from the time of making, so as to vest the legal title to the property in the donee by survivorship on the death of the transferor (cf. 18 Halsbury's Laws, third edition, page 385, paragraph 733).

Applying these principles to the present case, and considering the deceased's intention to benefit the wife, we hold that, although the deceased retained the right to draw on the joint accounts at will during his lifetime (a right also possessed by the wife during the deceased's lifetime), this did not prevent the gifts from being effective and complete gifts *inter vivos* from the time of making and, that, consequently, it was not necessary to make such gifts in conformity with the Wills and Succession Law, Cap. 195.

For these reasons we conclude (following *Re Bishop* and *Young* v. *Sealey*) that on the death of the husband the moneys standing to the credit of the joint accounts with the Lombard Banking Ltd., London, and the Bank Populaire, Ltd., Limassol accrued beneficially to the wife (appellant). And, to use the words of Stamp J. in *Re Bishop* (at page 257G), there is, in our Judgment, no equity to disturb her legal ownership.

In the result the appeal is allowed. The Judgment of the District Court set aside and declaration made in the above terms. Costs out of the estate.

Order accordingly.

Appeal allowed. Judgment of the District Court set aside. Costs out of the estate.