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JOINT TENANCY IN CORPORATE STOCK

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WITH the present-day widespread ownership of corporate stock there is a growing tendency on the part of shareholders to have stock registered in the names of joint tenants with right of survivorship.

This is not an article upon the nature, advantages or disadvantages of that method of ownership. It is limited to a brief consideration of some of the common law characteristics or essentials of such a tenancy and of the possibility that in some jurisdictions the intention of the parties may be defeated in the attempt to create the estate.

It not infrequently happens that a sole owner of stock assigns the certificate to himself and another, reciting a joint tenancy. The question then arises—

Can A, sole owner of the stock, without the intervention of a third party, by assignment to A and B as joint tenants with right of survivorship and not as tenants in common create in A and B a good estate in joint tenancy?

It is questionable whether in many of the states which recognize joint tenancy the estate could be created in the manner indicated, in the absence of enabling statutes.

It is said that in order to have a joint tenancy there must *coexist four unities,* namely, unity of title, unity of time, unity of interest and unity of possession, that is, each of the owners must have one and the same interest, conveyed by *the same act or instrument,* to vest at *one and the same time.* 2 Blackstone Comm. 179, 180; 33 C. J. 907. If any one of these elements is lacking the estate will not be one in joint tenancy. 7 Rul. Cas. Law, p. 811. Joint tenants cannot acquire under different titles. 2 Blackstone Comm. 181; Thompson on Real Property, Sec. 1711. "Unity of title" has been defined to mean that the interests must accrue by one and the same conveyance, and "unity of time" to mean that the interests must commence at one and the same time. *Staples v. Berry,* 85 Atl. (Me.) 303. (Accurately, there are some exceptions to the rule that joint tenants must acquire their estates at one and the same time. Freeman, Cotenancy & Partition (2d ed.) Sec. 11. Freeman continues: "But there seems to be

no exception to the rule that the title of joint tenants must arise from *one* act, deed or devise." See Thompson on Real Property, Sec. 1711; Edwards' Property in Lands, 155). Personalty may be held in joint tenancy. *Miller v. American Bank & Trust Co.,* 71 Colo. 346; *Erwin v. Felter,* 119 N. E. (Ill.) 926; *Burns v. Nolette,* 144 *Atl.* (N.H.) 848. It may be stated as a general rule that shares of stock in an incorporated company are personal property. Fletcher's Cyc. Corporations, Sec. 3429; Anderson, Limitations of the Corporate Entity, Sec. 491a, and note.

While strictly speaking, a tenancy by the entirety is not a joint tenancy (*Stelz v. Shreck,* 128 N. Y. 263), the unities of title, time, interest and possession are common to both estates. 13 Rul. Cas. Law, p. 1098. It therefore seems that the cases hereinafter mentioned dealing with the creation of estates of entirety, insofar as the unities of title and of time are concerned, are applicable to joint tenancies.

The question was before the Court in *Breitenbach v. Schoen,* 198 N. W. (Wis.) 622, where a mother owning certain certificates of stock assigned them to herself and her son indicating an intention to create a joint tenancy. A controversy arose between the executrix of the mother's estate and the son as to the ownership of the shares. It was held that a joint tenancy was not created, the Court saying:

> "Manifestly, the deceased could not convey an interest in the certificates to herself, and it is quite clear that she did not intend to convey the entire interest in the certificates to her son. Not being able to make a conveyance to herself there was neither unity of title nor unity of time and under such circumstances a tenancy in common was created rather than a joint tenancy. There was therefore no right of survivorship as to the four certificates assigned."

The Court in *Staples v. Berry, supra,* in referring to the four unities of joint tenancy, said:

> "This would seem to contemplate conveyance or devise by A., the sole owner, to B. and C. as joint tenants, not as splitting up of A's ownership so that B. becomes a joint tenant with A."

In *Wright v. Knapp,* 150 N. W. (Mich.) 315, a husband attempted to convey his homestead to himself and his wife by a deed containing the following:

"Between William Wright, of the township of North Plains in Ionia County, and State of Michigan, of the first part, and William Wright and Elizabeth Wright, jointly, the survivor to have full ownership of the same place, of the second part",

The Court held that upon the death of the husband the wife took the entire estate, basing its decision upon the ground that a grantor cannot convey directly to himself, and applying the rule that where one of several grantees, for any reason, is incapable of taking, the other grantees capable of taking shall take the whole. The grantor named as grantee was considered surplusage. The Court said that the *intention* of the husband to create an estate in himself and wife by the entireties could not be questioned but that it was unnecessary to determine whether such an estate could be created by the instrument under consideration. It is significant to note that in the dissenting opinion of Bird, J., five judges concurring, on the ground that the deed created a tenancy in common, it was said that an attempt was undoubtedly made to create an estate in entirety but it failed "because the formalities of the law were not observed in its creation", and also that an estate in joint tenancy was not created.

In *Deslauriers v. Senesac,* 163 N. E. (Ill.) 327, 62 ALR 511, Ida Deslauriers in 1903 acquired title to certain real estate. Subsequently she married Homer Deslauriers. In 1911 the husband and wife executed a warranty deed purporting to convey the property to themselves as joint tenants and not as tenants in common. The description was followed by the statement: "Said grantors intend and declare that their title shall and does hereby pass to grantees not in tenancy in common but in joint tenancy." The Court held that a person cannot convey or deliver to himself that which he already possesses; that he cannot by deed convey an estate to himself or take an estate from himself, and that joint tenancy requires that the tenants have one and the same interest accruing by one and the same conveyance, commencing at one and the same time, and that the interests of the wife and her husband were neither acquired by one and the same conveyance nor did they vest at one and the same time. The Court said:

"Two of the essential properties of a joint estate—the unity of title and the unity of time—were therefore lacking. Where two or more persons ac-

quire individual interests in a parcel of property by different conveyances and at different times, there is neither unity of title nor unity of time, and in such a situation a tenancy in common, and not a joint tenancy is created." (Citing *Breitenbach v. Schoen, supra; Green v. Cannady,* 57 S. E. (S.C.) 832; 7 Rul. Cas. Law, p. 811).

It was contended in this case that effect should be given to the *intention* of the grantors to create a joint tenancy as expressed in the deed, and on this point the Court said:

"It was clearly the intention of the grantors to convey an estate in joint tenancy. The intention of the parties to a deed will be given effect, if it can be done consistently with the rules of law. * * * It was not for failure to ascertain the intention of the grantors that the grantees did not take title in a joint tenancy, but because, under the law a joint tenancy could not be created in the manner which was here attempted. * * * Ida Deslauriers failed to convey any interest to herself as a joint tenant, and for that reason she also failed to convey to her husband in joint tenancy."

In *Michigan State Bank v. Kern,* 155 N. W. (Mich.) 502, Kern conveyed land to himself and wife. This was held to be a tenancy in common and not one by the entirety.

The law now appears to be settled in New York that a husband may by conveyance to himself and wife create a tenancy by entirety, reserving the same rights he would have under deed from another. *Boehringer v. Schmid,* 133 Misc. 236, 232 N. Y. Supp. 360, affirmed by the Court of Appeals in 173 N. E. 220. The same view appears to be held in Oregon. In *Dutton v. Buckley,* 242 Pac. (Ore.) 626, 62 ALR 514, note, it was held that where a husband who was the sole owner of land conveyed it to himself and wife, the wife joining in the conveyance, and it appeared that the *intention* of the parties to the deed was to create such an estate in the land that the survivor would take the whole estate in fee, effect would be given to the intent of the parties. In *Burns v. Nolette, supra,* it is said: "A conveyance of personal property should be given the effect intended by the parties."

In *In Re Horler's Estate,* 168 N. Y. Supp. 221, a wife by deed granted and released to her husband an undivided half interest in certain land and immediately after the description recited:

"It being the intention of the party of the first part to transfer and convey to the party of the second part an undivided one-half interest and estate

in the aforesaid parcel of land and the improvements thereon, but so that the party of the first part and the party of the second part shall hold and own the same as joint tenants and not as tenants in common, and so that the survivor shall have and take the absolute title and ownership in and to the same in fee simple absolute."

The Court after stating that unity of title means that the estate of joint tenancy must be created by the same act or instrument, said:

"The comptroller asserts that the wife derived her title from her grantor, and the husband derived his from his wife, and therefore there was no unity of title. But it is the unity of title in the joint tenancy with which we are concerned. Therefore, if the wife, as holder of the fee to the entire property, could by a deed to her husband, without the intervention of a third party, create in her husband and heirs a joint estate, there would be unity of title and of time, for the estate would be created at one and the same time by one instrument. * * * It is commonly recognized that as to personalty a joint tenancy may be created in husband and wife by assignment executed by the one having the entire interest to husband and wife jointly, and that in such case the four unities are present. In re Dalsimer Estate, 167 App. Div. 365, 153 N. Y. Supp. 58. So far, therefore, as concerns unity of title and time, both exist where the joint estate is created by the deed of husband or wife, owner of the fee, to the other directly."

In *In re Klatzl's Estate,* 110 N. E. (N.Y.) 180, Chief Justice Bartlett said, concerning the effect of a deed by husband to wife which in his opinion and that of three other judges created a tenancy by the entirety:

"I see no reason why the husband could not convey to his wife such an estate as she would get by a similar deed to them from a third person, and at the same time reserve for himself the same rights he would have under such a deed. Even if the deed created a mere joint tenancy it would be good."

In the *Boehringer* case, supra, as reported in 232 N. Y. Supp. 360, and affirmed, in answering the contention that the deed of Schmid to himself and wife created a tenancy in common because lacking the necessary elements of a joint tenancy, the Court said:

"This contention rests upon the erroneous premise that the original title or interest of the husband remained in him after the giving of his own deed, while the wife's title, coming to her by that deed, created an estate in which there did not exist a unity of title and time at least. On the contrary, the ownership, title, and interest devolved upon both husband and wife as one person at the same time by virtue of his deed. Each was seized of a whole and not a separate part and there was, therefore, unity of title, interest, time, and possession."

A surviving joint tenant always takes by purchase, never by descent, and holds the whole property under and by virtue of the *original grant* or *conveyance to* the joint tenants. *Babbitt v. Babbitt,* 41 N. J. Eq. 392. The cases are in agreement as to the necessity of the four unities and that joint tenants must take at one and the same time and by the same act or instrument, but appear to differ upon the question as to what constitutes unity of title. Observe the different views held in the *Breitenbach* case and *In re Horler's Estate.* The former apparently proceeds on the theory that the conveyance by the sole owner to herself and another with the expressed intention of creating the estate did not change the nature of the ownership theretofore held, notwithstanding the intention to initiate in the grantor a new kind of title. In the latter, the wife's deed constituted the original grant or conveyance to the joint tenants, transforming the wife's sole ownership into a new kind of estate, so that she thereafter held in a different capacity and in that sense the transaction might be distinguishable from the case of one conveying to oneself. The difference seems to result from the application of different rules of construction and greater readiness on the part of some courts to give effect to the expressed intention of the parties. Compare the *Deslauriers* and *Dutton* cases.

That joint tenancy with its right of survivorship is held in high disfavor in many states, see *Simons v. McLain,* 32 Pac. (Kan.) 919. The possibilities of injustice inherent in the estate have illustration in the case of *Fleming v. Fleming,* 174 N. W. (Ia.) 946.

It would seem that one contemplating the creation of such an estate, in a jurisdiction where recognized and unmodified by statute, would do well to reflect that its characteristic principles, feudalistic in origin, remain.

Bad laws are the worst sort of tyranny.—*Edmund Burke.*

Government is a contrivance of human wisdom.—*Edmund Burke.*

Then too in law there are a thousand causes of disgust, a thousand delays to be endured.—*Juvenal.*