Charlottetown 1965 May 31, June 1 Ottawa June 16

BETWEEN:

ETHEL BLANCH CONWAY, KATHLEEN CONWAY, HENRY JOSEPH CONWAY and EASTERN & CHARTERED TRUST COMPANY, Executors of the Last Will and Testament of MICHAEL J. CONWAY, Deceased ... APPELLANTS;

AND

THE MINISTER OF NATIONAL REVENUE, ... RESPONDENT.

Estate tax—Appeal from assessment—Joint bank account set up by husband for wife's future benefit—Account used solely by husband for business—Death of husband—Whether widow had beneficial interest in account—Onus of proof—Estate Tax Act, ss. 3(1)(a), (c), (f), 3(2)(a).

Evidence—Appeal from tax assessment—Onus on appellant to rebut assumption underlying assessment—Onus where new basis for tax asserted after assessment appealed.

1965

CONWAY *et al.* v. MINISTER OF NATIONAL REVENUE

M.C. set up a joint bank account in 1944 or earlier in the names of himself and his wife and told her that he did so to ensure that she would get the moneys therein on his death. M.C. used the account for purposes of his business and no deposits or withdrawals were made by his wife. He had other bank accounts for other purposes in his own name. When M.C. died on 7 June 1961 the account contained $26,705, and sums of that amount had been deposited in the account in 1960 and 1961. The Minister assessed the estate in respect of the whole $26,705 on the ground that M.C. was competent to dispose of the property immediately prior to his death (*Estate Tax Act*, s. 3(1)(*a*)), and that the widow had no beneficial interest in the account prior to M.C.'s death (s. 3(1)(*e*)). After the assessment had been appealed the Minister contended alternatively that if the widow did have a one-half undivided interest in the account prior to M.C.'s death it arose from deposits made by M.C. within three years of his death and was therefore chargeable under s. 3(1)(*c*).

Held, the assessment could not stand.

1. Where a husband transfers property to his wife, whether jointly with himself or otherwise, a gift of the property from the time of the transfer is presumed, subject to rebuttal [*In re Mailman* [1941] S.C.R. 368, per Crocket J. at p. 375; *Niles v. Lake* [1947] S.C.R. 291, per Kellock J. at p. 311]. Such presumption is not to be taken lightly [*Shephard v. Cartwright* [1954] 3 All E.R. 649, per Lord Simonds at p. 652]. The presumption was not rebutted in this case by evidence as to the use of the account by M.C. for purposes of his business: that evidence did not warrant the inference that his object in establishing the account was to provide a convenient means of transacting his business [*Marshall v. Crutwell* (1875) L.R. 20 Eq. 328; *Southby v. Southby* (1917) 40 O.L.R. 429; *Maclean v. Vessey* [1935] 4 D.L.R. 170 distinguished on the facts], or that his object in establishing the account was to benefit his wife only after his death but not during his life [*Laurendeau v. Laurendeau* [1954] O.W.N. 722, *Hill v. Hill* (1904) 8 O.L.R. 710, distinguished].

2. *Semble,* the presumption in favour of a gift by a husband to his wife applies to the income from joint property as well as to the capital thereof [*Re Hood* [1923] 1 Ir. R. 109; *Dummer v. Pitcher* (1833) 2 My. & K. 262, per Brougham L.C. at p. 273; *Fowkes v. Pascoe* (1875) L.R. 10 Ch. App. 343 explained], but even if the presumption with respect to the income were otherwise such presumption was rebutted by the fact that interest credited to the joint account was not withdrawn but left there as part of the whole.

3. The onus of supporting the assessment under the Minister's alternative plea, *viz* that the wife's undivided interest in the account resulted from gifts made by the deceased within three years of his death, was not on appellants but on the Minister and had not been met. There was no proof that the deposits made by the deceased in 1960 and 1961 represented gifts rather than replacements of jointly owned moneys withdrawn by the deceased [*Johnson v. M.N.R.* [1948] S.C.R. 486, distinguished].

4. The fact that the deceased could have withdrawn the whole balance in the account whenever he wished did not render the whole balance in the account property of which he was competent to dispose within the meaning of s. 3(1)(*a*) and s. 3(2)(*a*). If withdrawn by him the property would still have remained joint property in his hands and he

1965

CONWAY *et al.* v. MINISTER OF NATIONAL REVENUE

Thurlow J.

would have been accountable to his wife for her interest therein [*Re Daly; Daly v. Brown* (1907) 39 S.C.R. 122, per MacLennan J. at p. 148 applied].

APPEAL from judgment of Income Tax Appeal Board dismissing an appeal from an estate tax assessment.

K. M. Martin, Q.C. and *A. K. Scales* for appellants.

G. W. Ainslie and L. M. Little for respondent.

THURLOW J.:—This is an appeal by the executors of the Estate of Michael J. Conway, deceased, from a judgment of the Tax Appeal Board[1] dismissing their appeal from an assessment of estate tax. On June 7, 1961 when Michael J. Conway died there was a balance of $26,705.84 in an account at The Royal Bank of Canada in Charlottetown in the joint names of the deceased and his wife, Helen Conway and the matter in issue is whether estate tax is payable in respect of the whole or of only one half of such balance.

The deceased, who died at an advanced age, left an estate valued in excess of $100,000. He had been engaged for many years in a sand and gravel business carried on at Charlottetown at first on his own and from January 1, 1946 to the time of his death in partnership with one of his sons. Among other assets standing in his name when he died were savings accounts at The Bank of Nova Scotia and at The Provincial Bank with balances of $17,597.24 and $11,-449.48 respectively and a personal chequing account at The Royal Bank of Canada showing a balance of $204.36. The account at The Bank of Nova Scotia had been used mainly, if not entirely, to deposit receipts and pay expenses of an apartment building which he had acquired and the account at The Provincial Bank had been similarly used in connection with a dwelling house which he had let to a tenant.

The account in question in the appeal was also a savings account. It is admitted that it had been in existence for upwards of thirty years and it seems not unlikely that it may have been carried on for more than forty years. The Minister does not admit, however, that the account was a joint account for the whole period. There is in evidence a bank joint deposit form of the kind considered in *Niles v. Lake*[2] which bears the signatures of the deceased and Helen Conway and is dated March 15, 1944 but there is no

[1] 34 Tax A.B.C. 390. [2] [1947] S.C.R. 291.

document showing what the arrangement with the bank was prior to that. From the fact that the pass book (Exhibit 4, No. 5) shows no alteration in the account at that time and in particular no change in the numbering of it it seems to me to be more probable that this was a joint account even before the signing of the particular bank form in evidence than that it was in the name of the deceased alone prior to that time.

On May 2, 1929, the earliest date shown in the pass books in evidence, the balance in this account stood at $7,901.87. Thereafter in general it increased from year to year and on March 15, 1944 it stood at $22,564.85. On June 7, 1958, that is to say, three years before the deceased died, the balance was $28,228.62. Between 1930 and 1936 there were substantial deposits and minor withdrawals each year. From 1936 onward the number of entries increased and it is common ground that about that time the deceased began depositing receipts from his sand and gravel business in the account and paying therefrom expenses of the business. This practice continued even after the commencement of the partnership and up to the time of his death. It is in evidence, however, that the deceased was wont to do business in cash and it seems unlikely that all of the transactions of the business are reflected in the entries in the account.

Helen Conway made neither deposits in nor withdrawals from this account. In a statutory declaration dated March 29, 1962, which was admitted in evidence by consent, she stated *inter alia* that her husband "explained to [her] that his purpose [in establishing the account] was to make certain that whatever happened at his death [she] would get whatever moneys he had, and over the subsequent years he frequently reminded [her] that whatever was there when he was gone would be [hers]".

The deceased left a will dated April 15, 1959 in which he appointed as his executors three of his children and The Eastern Trust Company and these are the appellants in the present appeal. The will contains provisions for his widow, children and grandchildren but does not specifically mention any of the bank accounts. In an Estate Tax return completed by the corporate appellant the account in question was disclosed as a joint account and half of its balance

1965

CONWAY *et al.* v. MINISTER OF NATIONAL REVENUE

Thurlow J.

was included in the executors' computation of the value of the deceased's estate. The Minister, however, in making the assessment added the other half of the balance as well and following a notice of objection confirmed the assessment as having been made in accordance with the provisions of the Act and "in particular on the ground that the bank account No. 339 at The Royal Bank of Canada was not a true joint account; that the beneficial interest arising by survivorship on the death of the taxpayer was for the entire amount on deposit and therefore upon application of paragraph (*f*) of subsection (1) of section 3 of the *Estate Tax Act* the entire amount on deposit in said bank account is to be included in computing the aggregate net value of the estate of the taxpayer".

In his reply to the appellant's notice of appeal to this Court the Minister expanded the grounds so relied on. He pleaded that on assessing he assumed that:

(*a*) the deceased, immediately prior to his death was the beneficial owner of the savings account with The Royal Bank of Canada at Charlottetown, which, on his death, had a balance of $26,705.84;

(*b*) Mrs. Helen Conway, immediately prior to the death of the deceased, had no beneficial interest in the said account; and

(*c*) on the death of the deceased, the beneficial interest in the debt of $26,705.84, owing by The Royal Bank of Canada to the deceased, as evidenced by the said savings account, arose or accrued by survivorship to Mrs. Helen Conway.

and he went on to submit that the whole of the $26,705.84 representing the balance in the account was property

(*a*) which passed on the death of the deceased within the meaning of s.s. (1) of sec. 3 of the Estate Tax Act, 7 Eliz. II, c. 29;

(*b*) which the deceased was, immediately prior to his death, competent to dispose of within the meaning of para. (*a*) of s.s.(1) of sec. 3 of the Estate Tax Act;

(*c*) in respect of which the deceased had such an estate or interest therein, or such general power as would have enabled him to dispose of it within the meaning of para. (*a*) of s.s.(2) of sec. 3 of the Estate Tax Act; and

(*d*) which was held jointly and in respect of which the whole beneficial interest therein arose or accrued on the death of the deceased within the meaning of para. (*f*) of s.s.(1) of sec. 3 of the Estate Tax Act.

As an alternative the Minister also pleaded that if immediately prior to the death of the deceased Mrs. Helen Conway had a one-half undivided interest in the debt of $26,705.84 owing by the bank, the interest of Mrs. Conway arose in respect of deposits made by the deceased within three years

immediately prior to his death and that the said deposits were dispositions operating as immediate gifts *inter vivos* and he sought to support the assessments under ss. 3(1)(*a*), 3(2)(*a*) and 3(1)(*c*) of the Act.

I have set out this summary of the Minister's various pleas because it appears to me that the onus of proof is not the same for all of them. The effect of the judgment of the Supreme Court in *Johnson v. M.N.R.*[1] is that in order to succeed in their appeal the appellants had the onus of demolishing the basic facts assumed by the Minister in making the assessment. There is, however, nothing in the judgment in that case which suggests that the onus is upon a taxpayer to disprove every other basis upon which an assessment could conceivably be justified, and I do not think any such onus rested on the appellants in the present case. In particular I do not think it was for the appellants to disprove the facts alleged in the Minister's alternative plea. If the assumptions upon which the assessment was based have been demolished it appears to me that the appellants are entitled to succeed unless the facts necessary to justify the taxation under the alternative plea have also been established by the evidence. The onus of supporting the assessment under the alternative plea was accordingly not on the appellants but on the Minister. *Vide Pillsbury Holdings Ltd. v. M.N.R.*[2]

On the hearing of the appeal the main submission put forward on behalf of the Minister was that Mrs. Conway, though a joint holder with her husband of the legal title to the debt owing by the bank in respect of the balance from time to time of the account, had no beneficial interest in the property during her husband's lifetime and that on his death Mrs. Conway either

(*a*) acquired no beneficial interest therein by survivorship, in which event the amount on deposit fell to be included in the aggregate net value of his estate for estate tax purposes simply as part of his estate; or

(*b*) alternatively, became entitled to the whole beneficial interest by survivorship in which event the whole balance on deposit fell to be included in the aggregate net value of his estate for tax purposes under s. 3(1)(*f*) of the Act.

[1] [1948] S.C.R. 486. [2] [1964] C.T.C. 294 at 302.

1965

CONWAY *et al.* v. MINISTER OF NATIONAL REVENUE

Thurlow J.

In support of his contention that Mrs. Conway had no beneficial interest in the money in the account during the life of the deceased counsel first submitted that while a presumption of advancement arises where property belonging to a husband is transferred by him into the joint names of himself and his wife, in the case of pure personalty, as opposed to realty, there arises a rebuttable presumption that the husband intended to enjoy the whole income therefrom during their joint lives and that the extent of the benefit conferred on the wife is only a contingent right to the capital should she survive. For this proposition he cited a statement to that effect in Dymond's Death Duties, 12th Edition at page 196 which in turn cites *Fowkes v. Pascoe*[1], *Standing v. Bowring*[2], *In re Eykyn's Trusts*[3] *and Re Hood*[4].

As I understand it the principle upon which the beneficial ownership of property held jointly by two or more persons is determined, where the property has been contributed by one of them alone, is that while at law the title is vested in the joint holders, if valuable consideration has not been given therefor by the other or others, they, in equity, hold on a resulting trust for the contributor of the property, except in cases in which the contributor intended to make a gift of some interest in the property to the other joint holder or holders. Where a gift is intended (or perhaps as some cases indicate, to the extent to which a gift is intended) such other joint holders are not trustees and the equitable title follows the legal title. The intention to make such a gift may appear either from express declaration by the contributor to that effect or from circumstances but where a transfer is made by a husband to his wife or by a father to his child whether jointly with himself or otherwise a gift is presumed until the contrary is shown. Thus in *In re Estate of Hannah Mailman*[4], Crocket, J. speaking for the majority of the Supreme Court said at page 374:

> That both law and equity interpose such a presumption against an intention to create a joint tenancy, except where a father makes an investment or bank deposit in the names of himself and a natural or adopted child or a husband does so in the names of himself and his wife, is now too firmly settled to admit of any controversy. This presumption, of course, is a rebuttable presumption, which may always be overborne by the

[1] (1875) 10 Ch. App. 343.
[2] (1885) 31 Ch. D. 282.
[3] (1877) 6 Ch. D. 115.
[4] [1923] 1 Ir. R. 109.
[5] [1941] S.C.R. 368.

owners previous or contemporaneous oral statements or any other relevant facts or circumstances from which his or her real purpose in making the investment or opening the account in that form may reasonably be inferred to have been otherwise. In the absence, however, of any such evidence to the contrary the presumption of law must prevail. That is the clear result of such leading English cases as *Dyer v. Dyer* (1785) 2 W. & T.'s Leading Cases, 8th ed. 820; *Fowkes v. Pascoe* (1875) 10 Ch. App. 343; *Marshall v. Crutwell* (1875) L.R. 20 Eq 328; *In re Eykyn's Trusts* (1877) 6 Ch.D. 115; *Bennet v. Bennet* (1879) 10 Ch.D. 474, and *Standing v. Bowring* (1885) 31 Ch.D. 282. This principle has been uniformly recognized in Canada wherever the courts have been required to adjudicate upon claims depending upon the creation of a joint tenancy or gift of a joint interest when the owner of the money involved has made investments or bank deposits in his own and another's names.

It will be observed that in this passage Crocket, J. also referred to *Fowkes v. Pascoe, In re Eykyn's Trusts* and *Standing v. Bowring* and in my opinion these cases are not inconsistent with the view that when the transfer is a gift a joint ownership by the husband and the wife of the capital at least, even if not, in all cases, of the income as well, exists during the joint lives. That such a joint ownership exists from the time of the transfer is I think implicit in the following statement of Crocket J. which follows at page 375 the passage already quoted:

> There have been many such cases, particularly in Ontario and New Brunswick. Some of these involved disputes between the executor or administrator of a deceased father and a surviving son or daughter, and others disputes between the executor or administrator of a deceased husband and his surviving widow, where the presumption is in favour of a joint tenancy or a gift of a joint interest for the benefit of the child or of the wife, as the case may be.

The same appears from the statement of Kellock J. in *Niles v. Lake*[1] at page 311:

> The mere transfer into the joint names or purchase in joint names is sufficient to constitute joint ownership with its attendant right of survivorship. As put in Williams on Personal Property, 18th Ed., p. 518:
>
> > "If personal property, whether in possession or in action, be given to A and B simply, they will be joint owners ***. As a further consequence of the unity of joint ownership, the important right of survivorship, which distinguishes a joint tenancy of real estate, belongs also to a joint ownership of personal property."

So far as the capital is concerned, I therefore reject the submission that in a case of this kind the wife is presumed to have no interest in the joint property during the joint lives.

Moreover, while the basis for the decision in *Re Hood*[2] that the husband was entitled to the income of the joint

[1] [1947] S.C.R. 291.

[2] [1923] 1 Ir. R. 109.

1965

CONWAY et al. v. MINISTER OF NATIONAL REVENUE

Thurlow J.

property during the joint lives does not appear from the judgment, a possible explanation, which would not I think apply today, is suggested in the judgment of the Lord Chancellor Brougham in *Dummer v. Pitcher*[1] where at page 273 he said:

> It was further contended that the circumstance of the testator's power over this *chose in action* continuing after the transfer and up to his death differs this from the case of advancement to a child. But there is a great fallacy here, as it seems to me. The testator's power may have continued, but in what capacity? As husband, and in the exercise of his marital right.

On the other hand in decisions on gifts of joint interests other than by a husband to his wife the right of the donor to the income during the joint lives appears to have rested on what was presumed in the circumstances to be the intention of the donor at the time of the making of the gift (*vide Fowkes v. Pascoe*[2] at page 351). No doubt circumstances may be conceived in which such an inference might also be drawn in the case of a gift of a joint interest by a husband to his wife. Under present day law relating to the legal capacities and rights of married women in the absence of either direct or circumstantial evidence of what the intention was I can see no sufficient reason for raising with respect to income any different presumption from that applicable in respect to the capital but whether there is a different presumption or not it is clear that it is rebuttable and must yield to the proper inference to be drawn from the circumstances of the particular case. As will appear the intention in the present case in my opinion appears from the facts in evidence.

The respondent's second submission was that even if it is to be presumed that Mrs. Conway had a beneficial interest in the property during the lifetime of her husband, the proper inference from the facts in evidence is that it was not intended that she should have such an interest while her husband lived. Two arguments to this effect were put forward. It was said first that the deceased's intention in establishing the joint account was merely to provide a convenient means of transacting his business and in this connection reference was made to *Marshall v. Crutwell*[3], *Southby v. Southby*[4] and *Maclean v. Vessey*[5] in each of which it appeared from the evidence that the object of the

[1] (1833) 2 My. & K. 262; 39 E.R. 944. [2] (1875) L.R. 10 Ch. App. 343.
[3] (1875) L.R. 20 Eq. 328. [4] (1917) 40 O.L.R. 429.
[5] [1935] 4 D.L.R. 170.

husband in establishing the joint bank account was to provide a convenient way of handling his own affairs. In my view there is no similarity on this point between these cases and the present case and such an inference as to the deceased's intention is not in my opinion warranted on the facts in evidence. There is nothing to suggest any need for any such arrangement at the time of the establishment of the joint account, whether that event occurred in 1944 or earlier, either on the ground of absence or illness of the deceased or inability to attend to his own affairs and Mrs. Conway apparently never did transact her husband's business for him. In addition there is evidence that his purpose was to confer a benefit on her and there is also the fact that in connection with his apartment building and rented house he kept the bank accounts in his own name. What convenience in carrying on his affairs was served by having this account in the joint names of himself and his wife I am unable to see. This contention accordingly fails.

Secondly, it was said that even if the deceased, when establishing the account intended to benefit his wife the evidence showed that he did not intend her to benefit during his life and that such an intention was either ineffective because it was an attempt to make a testamentary disposition otherwise than by a properly executed will with the result that the property passed on the death of her husband, or, if effective, such benefit arose or accrued to her by survivorship on his death. In support of this contention counsel referred to a number of features of the case appearing from the evidence, most of which in my view indicate nothing one way or the other as to the deceased's intention when the joint account was established, and he relied particularly on the statement, to which I have already referred, in the statutory declaration of Mrs. Conway coupled with the conduct of the deceased in using the account to deposit receipts from and pay the expenses of his business and in keeping the pass book with his personal belongings in his dwelling rather than in that portion of the dwelling used for the purposes of his business.

The question is whether these and the other facts referred to in the light of such other circumstances as have been established rebut the presumption that an immediate gift of an undivided interest in the balance in the account was

1965

CONWAY *et al.* v. MINISTER OF NATIONAL REVENUE

Thurlow J.

intended. That the presumption is not to be taken lightly appears from *Shephard v. Cartwright*[1] where Lord Simonds said at page 652:

> Equally it is clear that the presumption may be rebutted, but should not, as Lord Eldon said, give way to slight circumstances.

Here the facts urged are I think equivocal at best and in my view they do not lead to the conclusion that Mrs. Conway was to have no interest during the joint lives. As I read it the statement in the statutory declaration of Mrs. Conway as to the deceased's purpose in establishing the account does not indicate an attempt on his part to confer a benefit on his wife to take effect only upon his death but on the contrary shows an intention to make certain that she would have the money in this account if she survived him by making a present gift to her of a joint interest in it so that her right to it would be unaffected "whatever happened at his death" with respect to the remainder of his property. It does not seem unlikely to me that when establishing the account as a joint account the deceased may have intended to deposit in it from time to time for their joint benefit moneys which he had been able to save, whether from his business or from other sources and the payment into the account of receipts from his business and the payment out of it of business expenses whether adopted as a practice before or after the account was established in their joint names may have been his way of carrying that intention into effect. It is not to be forgotten that the relationship was that of husband and wife and that the deceased was apparently the spouse who transacted the family's business and it does not seem improbable to me that Mrs. Conway should have left the management of her interest in the account to him in view of the fact that the balance in the account tended to grow rather than decrease as time went by. On the whole I can see nothing in the facts before me which is inconsistent with an intention on the part of the deceased at any material time to confer on his wife a joint interest in the moneys in the account. Moreover there is in this case no proof that Mrs. Conway was prohibited from exercising rights in respect of the account during the deceased's lifetime, as was the case in *Laurendeau v. Laurendeau*[2] or that

[1] [1954] 3 All E.R. 649.

[2] [1954] O.W.N. 722.

there was an understanding between Mrs. Conway and the deceased that the deceased alone should have the right to control and dispose of the property so long as he lived as was the case in *Hill v. Hill*[1]. And whle it was said that the deceased kept the pass books with his personal belongings in the home rather than in the part of the house used for the purposes of his business, it is not shown that they were kept in a place to which Mrs. Conway did not have free access or that she was ever denied access to them. The case is thus in my opinion not one of an intended testamentary disposition which is ineffective because of failure to comply with the formalities involved in making such a disposition and I am further of the opinion that there is nothing in the material before me which rebuts the presumption insofar as the capital is concerned. Moreover as any interest income on the account appears to have been added to the balance when credited and not to have been withdrawn but to have been left there and subsequently treated as part of the whole I am of the opinion that the result is the same with respect to the ownership during the joint lives of such interest as well. It follows in my opinion that Mrs. Conway was entitled to an undivided half interest in the balance standing in account at the time of the death of the deceased and that the extent of any beneficial interest in the account which arose or accrued to her by survivorship or otherwise on the death of the deceased amounted to no more than the other undivided half of the said balance that is to say the undivided half thereof held by the deceased at the time of his death.

I turn now to the further ground upon which it was sought to support the assessment, that is to say, that the undivided interest of Mrs. Conway in the joint account immediately prior to the death of the deceased was property disposed of by the deceased under dispositions operating as immediate gifts *inter vivos* made within three years prior to his death. The facts upon which this ground was urged were that the withdrawals from the account after June 7, 1958 had exhausted the $28,288.62 which was in the account at that date and that the balance of $26,705.84 in the account on June 7, 1961, when the deceased died, was made up entirely of sums which he had deposited in the

[1] (1904) 8 O.L.R. 710.

1965

CONWAY *et al.* v. MINISTER OF NATIONAL REVENUE

Thurlow J.

account in 1960 and 1961. These deposits, it was urged, represented gifts *inter vivos* by the deceased to his wife within three years prior to his death of an undivided half interest in the amounts deposited and fell to be included under s. 3(1)(*c*) of the Act. The short answer to this is that there is no proof that such deposits represented gifts rather than replacements of jointly owned moneys withdrawn by the deceased from the joint account whether pursuant to some arrangement between himself and his wife or otherwise. The onus of proving that these deposits were gifts, in my opinion, rested on the respondent if the assessment was to be sustained on this ground and in my view the necessary facts have not been established.

The remaining argument put forward in support of the assessment was that since the deceased could have withdrawn the whole balance of the account whenever he saw fit the whole balance was property of which he was competent to dispose and fell to be included under ss. 3(1)(*a*) and 3(2)(*a*) of the Act. Granting that he could have withdrawn the money from the bank that alone would not in my opinion have changed the ownership of the amount. Having been joint property of him and his wife while on deposit, when withdrawn it would have been nonetheless joint property in his hands, (*vide* MacLennan J. in *Re Daly; Daly v. Brown*[1] at page 148) and he would have been accountable to his wife for her interest therein. On the facts before me the deceased had no right on withdrawing the balance either to make it his own or to dispose of it without his wife's consent and in my opinion her interest in the money in the account was accordingly not property of which he was competent to dispose within the meaning of the statutory provisions.

The appeal accordingly succeeds and it will be allowed with costs and the assessment will be referred back to the Minister to be varied by decreasing the aggregate net value of the estate by $13,352.92 and by reducing the tax and interest, as assessed, accordingly.

Appeal allowed.

[1] (1907) 39 S.C.R. 122.