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The Creation of Trusts by Means of Bank Deposits

By GEORGE GLEASON BOGERT¹

If A deposit his own money in a bank, and by his direction the deposit is entitled "A in trust for B," is a trust created? If any further acts on the part of A are necessary to the creation of a trust, what are such acts?

In order that a property owner may make himself a trustee of personal property, two elements must coexist. The property holder must have the intent to become a trustee, and he must express that intent by appropriate acts. The difficult question in all cases involving an inquiry as to whether a trust has been created is whether the acts performed by the supposed settlor have been sufficient to express clearly an intent to create a trust.

It is well established that the declarant of the trust need not notify the *cestui que trust*. Neither knowledge on the part of the beneficiary² nor acceptance of the trust by him³ is necessary to the complete creation of the trust. It follows naturally that it is not essential that the declarant should deliver to the beneficiary any writing indicating the existence of the trust. Since the trustee is required by the nature of his duties to remain in possession of the trust property, it is obvious that it is not a requirement of the completed trust that the declarant should deliver to the beneficiary the trust property.⁴ It is also established that a trust of personal property may be created without notice by the declarant to any third person.

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²Fowler v. Gowing, 152 Fed. 801; Johnson v. Amberson, 140 Ala. 342; Cahlan v. Bank, 11 Cal. App. 533; Security Co. v. Farrady, 82 Atl. (Del.) 24; Lewis v. Curnutt, 130 Ia. 423; City of Boston v. Turner, 201 Mass. 190; City of Marquette v. Wilkinson, 119 Mich. 413; Janes v. Falk, 50 N. J. Eq. 468; Neilson v. Blight, 1 Johns. Cas. 205; Smith's Estate, 144 Pa. 428; Williams v. Haskin's Estate, 66 Vt. 378.

³Brunson v. Henry, 140 Ind. 455; Devol v. Dye, 123 Ind. 321; Lewis v. Curnutt, 130 Ia. 423; Libby v. Frost, 98 Me. 288; Suydam v. Dequindre, Har. Ch. (Mich.) 347; Stone v. King, 7 R. I. 358; Cloud v. Calhoun, 10 Rich. Eq. 358; Furman v. Fisher, 4 Cold. (Tenn.) 626.

⁴Williamson v. Yager, 91 Ky. 282; Mize v. Bates Co. Bk., 60 Mo. App. 358; Martin v. Funk, 75 N. Y. 134; Robb v. Wash. & Jeff. College, 185 N. Y. 485.

With these elementary principles concerning the creation of trusts in mind, it might naturally be assumed that the mere deposit of money in a bank, under the circumstances mentioned in the question previously put, would lead to the establishment of a trust. The depositor calls himself a trustee of specific trust property, namely, the claim against the bank. His declaration is communicated to a third party, namely, the officer of the bank. The beneficiary is definite and clearly identified.

But the peculiarity with respect to these so-called "savings bank trusts" is that the courts require that the declarant shall express his intent to create a trust more clearly and by a larger number of acts than in the case of an ordinary trust. The deposit of money in a bank under a trust title is considered equivocal. Men frequently deposit money under a trust title from other motives than that of creating a trust. The attitude of the courts toward a deposit entitled "in trust" is well stated by Mr. Justice Andrews in *Beaver v. Beaver*.⁵ "The form of the account is the essential fact upon which the plaintiff relies. It may be justly said that a deposit in a savings bank by one person, of his own money to the credit of another, is consistent with an intent on the part of the depositor to give the money to the other. But it does not, we think, of itself, without more, authorize an affirmative finding that the deposit was made with that intent, when the deposit was to a new account, unaccompanied by any declaration of intention, and the depositor received at the time a pass-book, the possession and presentation of which, by the rules of the bank, known to the depositor, is made the evidence of the right to draw the deposit. We cannot close our eyes to the well-known practice of persons depositing in savings banks money to the credit of real or fictitious persons, with no intention of divesting themselves of ownership. It is attributable to various reasons; reasons connected with taxation; rules of the bank limiting the amount which any one individual may keep on deposit; the desire to obtain high rates of interest where there is a discrimination based on the amount of deposits, and the desire, on the part of many persons, to veil or conceal from others knowledge of their pecuniary condition. In most cases where a deposit of this character is made as a gift, there are contemporaneous facts or subsequent declarations by which the intention can be established, independently of the form of the deposit. We are inclined to think that to infer a gift from the form of the deposit alone would, in the great majority of cases, and especially where the deposit was of any considerable amount,

⁵117 N. Y. 421, 430, 431.

impute an intention which never existed and defeat the real purpose of the depositor."

The possibility that a depositor may be influenced by other motives than the trust motive has caused the courts very generally to hold that the bare deposit under a trust title does not result in the creation of a trust. The depositor must show by other acts than the mere deposit that his object is the creation of a true trust.⁶

The bare deposit must be supported by other facts indicative of trust intent. The sole problem with respect to savings bank trusts is the weighing of the effect to be given these collateral facts. It is a problem of evidence. Do the collateral facts, when considered with the deposit, bring out clearly the intent to create a trust, or do they establish that the form of the deposit is deceptive and was intended merely to accomplish an ulterior purpose, not a trust purpose?

The evidence bearing upon the intent of the depositor, aside from the deposit itself, may be divided into three classes, namely, (a) express statements of intent; (b) acts of the depositor with respect to the deposit or the supposed beneficiary, aside from express statements; (c) the circumstances of the depositor.

Express Statements of Intent

The most direct form of evidence as to the depositor's intent, aside from the deposit itself, is the express statement of the depositor concerning his intent. If the depositor stated, otherwise than by a direction as to the title of the deposit, at the time of the deposit that he actually intended a trust, such evidence will be admissible and ordinarily conclusive as showing a trust.⁷ So, too, evidence that the depositor stated at the time of the deposit that he intended no trust is receivable as a part of the *res gestae* and is of great force.⁸ Direct statements by the depositor that he intended a trust, made after the deposit, are given much weight,⁹ but they are not necessarily conclusive in showing the existence of a trust.¹⁰ On the other hand,

⁶*Powers v. Prov. Inst. for Savings*, 124 Mass. 377; *Parkman v. Suffolk Savings Bank*, 151 Mass. 218; *Cleveland v. Hampden Savings Bank*, 182 Mass. 110; *Matter of Totten*, 179 N. Y. 112; *Rambo v. Pile*, 220 Pa. 235, 238; *People's Savings Bank v. Webb*, 21 R. I. 218.

⁷*Booth v. Oakland Bank of Savings*, 122 Cal. 19; *Bath Savings Inst. v. Hathorn*, 88 Me. 122; *Littig v. Mt. Calvary Church*, 101 Md. 494; *Martin v. Martin*, 46 App. Div. (N. Y.) 445, appeal dismissed, 166 N. Y. 611; *Robinson v. Appleby*, 69 App. Div. (N. Y.) 509, aff'd, 173 N. Y. 626; *contra*, *Clark v. Clark*, 108 Mass. 522.

⁸*Merigan v. McGonigle*, 205 Pa. 321; *Connecticut River Savings Bank v. Albee's Estate*, 64 Vt. 571.

⁹*Alger v. North End Savings Bank*, 146 Mass. 418; *Peck v. Scofield*, 186 Mass. 108; *Mabie v. Bailey*, 95 N. Y. 206.

¹⁰*Macy v. Williams*, 83 Hun (N. Y.) 243, aff'd, 144 N. Y. 701.

statements by the depositor after the deposit to the effect that no trust was intended, if the depositor is dead, are inadmissible.¹¹ But if the depositor is alive, he may testify as to his intent in making the deposit, whether such testimony is favorable to a trust¹² or unfavorable.¹³

A statement by the supposed beneficiary that she had no property, made with knowledge of the deposit,¹⁴ or a statement by the beneficiary named that the deposit was made for the purpose of getting better interest rates and not as a trust,¹⁵ is receivable as strong evidence that the depositor intended no trust.

*Intent Implied from Acts of Depositor other than Express
Statements*

(a) *Giving notice of the deposit.* If the depositor notifies the beneficiary that the deposit has been made in a trust form, a strong presumption of a trust arises¹⁶, but this presumption may be overcome by other facts in the case.¹⁷

Notice of the existence of the deposit given by the depositor to the beneficiary is not absolutely essential to the existence of a trust.¹⁸ In several cases notice of the existence of a deposit in trust form given by the depositor to a third person has been given weight as tending to show an intent to create a trust.¹⁹ But in other instances, notwithstanding such notice to a third person, no trust has been found.²⁰ The Massachusetts courts have been inclined to give very

¹¹Tierney v. Fitzpatrick, 195 N. Y. 433; Merigan v. McGonigle, 205 Pa. 321; Ray v. Simmons, 11 R. I. 266; Connecticut River Savings Bank v. Albee's Estate, 64 Vt. 571.

¹²Sayre v. Weil, 94 Ala. 466.

¹³Cunningham v. Davenport, 147 N. Y. 43; In re Barefield, 177 N. Y. 387; People's Savings Bank v. Webb, 21 R. I. 218.

¹⁴In re Barefield, 177 N. Y. 387.

¹⁵Matter of Mueller, 15 App. Div. (N. Y.) 67.

¹⁶Alger v. North End Savings Bank, 146 Mass. 418; Peck v. Scofield, 186 Mass. 108; Grafing v. Heilmann, 1 App. Div. (N. Y.) 260, aff'd 153 N. Y. 673; Farleigh v. Cadman, 159 N. Y. 169; Decker v. Union Dime Savings Inst., 15 App. Div. (N. Y.) 553; Meislahn v. Meislahn, 56 App. Div. (N. Y.) 566; Matter of Pierce, 132 App. Div. (N. Y.) 465; Matter of Hewitt, 40 Misc. (N. Y.) 322; Matter of Halligan, 82 Misc. (N. Y.) 30; Matter of Brennan, 92 Misc. (N. Y.) 423; Ray v. Simmons, 11 R. I. 266; Petition of Atkinson, 16 R. I. 413; Connecticut River Savings Bank v. Albee's Estate, 64 Vt. 571.

¹⁷Nutt v. Morse, 142 Mass. 1; Kelley v. Snow, 185 Mass. 288; Smith v. Speer, 34 N. J. Eq. 336; Matthews v. Brooklyn Bank, 208 N. Y. 508; Devlin v. Hinman, 34 App. Div. (N. Y.) 107; Hessen v. McKinley, 155 App. Div. (N. Y.) 496; Weber v. Weber, 58 How. Pr. (N. Y.) 255; Weber v. Weber, 9 Daly (N. Y.) 211.

¹⁸In re Podhadjisky, 137 Ia. 742; Milholland v. Whalen, 89 Md. 212; Brabrook v. Boston Bank, 104 Mass. 228; Gerrish v. New Bedford Inst., 128 Mass. 159.

¹⁹Bath Savings Inst. v. Hathorn, 88 Me. 122; Merigan v. McGonigle, 205 Pa. 321; Mabie v. Bailey, 95 N. Y. 206; In re Biggars, 39 Misc. (N. Y.) 426; In re King's Will, 51 Misc. (N. Y.) 375.

²⁰Minor v. Rogers, 40 Conn. 512; Cleveland v. Hampden Savings Bank, 182 Mass. 110; People's Savings Bank v. Webb, 21 R. I. 218.

little weight to the bare deposit in trust form or to such deposit accompanied by notice to a third person unconnected with the beneficiary. The statement of Mr. Justice Holmes in *Cleveland v. Hampden Savings Bank*²¹ is characteristic: "An owner of property does not lose it by using words of gift or trust concerning it in solitude or with the knowledge of another not assuming to represent an adverse interest. He may amuse himself as he likes."

Naturally notice of the existence of the deposit obtained without the depositor's knowledge or consent has no effect in showing the depositor's intent.²²

(b) *Transactions respecting the bank book.* A trust may exist without delivery of the bank book by the depositor to another.²³ In fact, it is more natural that the trustee should retain possession of the evidence of the trust property than that he should deliver it to the beneficiary or to a third person.²⁴

But the delivery of the bank book by the depositor to the beneficiary constitutes strong evidence of intent to make a gift of the account by way of a trust.²⁵ A direction by the depositor to deliver the book to the bank for the beneficiary is also strong evidence of the trust intent.²⁶

But the delivery of the book to the beneficiary is not conclusive of a trust. The delivery may be so qualified as to show no intent to create a trust, but merely an intent to have the beneficiary hold the book as a bailee for the depositor.²⁷ The mere fact that the bank book is found in the possession of the beneficiary's sole heir and next of kin does not show conclusively that a trust exists.²⁸

When the book has been delivered by the depositor to the beneficiary, the presumption of a trust is strong, notwithstanding a redelivery to the depositor or his nominee,²⁹ but in a recent case the New York Court of Appeals has held that under some circumstances such redelivery shows that no trust exists.³⁰

²¹182 Mass. 110, 111.

²²Matter of U. S. Trust Co., 117 App. Div. (N. Y.) 178.

²³In re Gaffney's Estate, 146 Pa. 49.

²⁴Milholland v. Whalen, 89 Md. 212; Weaver v. Emigrant's Ind. Savings Bank, 17 Abb. N. C. (N. Y.) 82; Merigan v. McGonigle, 205 Pa. 321.

²⁵Decker v. Union Dime Savings Institution, 15 App. Div. (N. Y.) 553; Proseus v. Porter, 20 App. Div. (N. Y.) 44; Jennings v. Hennessy, 40 App. Div. (N. Y.) 633; Matter of Davis, 119 App. Div. (N. Y.) 35; Matter of Pierce, 132 App. Div. (N. Y.) 465; Matter of Rudolph, 92 Misc. (N. Y.) 347.

²⁶Board of Missions v. Mechanics' Bank, 40 App. Div. (N. Y.) 120.

²⁷Nutt v. Morse, 142 Mass. 1; Matter of Halligan, 82 Misc. (N. Y.) 30; Markey v. Markey, 13 N. Y. Supp. 925.

²⁸In re Duffy, 127 App. Div. (N. Y.) 74.

²⁹Scrivins v. North Easton Savings Bank, 166 Mass. 255; Macy v. Williams, 55 Hun (N. Y.) 489, aff'd, 125 N. Y. 767; Stockert v. Dry Dock Savings Institution, 155 App. Div. (N. Y.) 123; Ray v. Simmons, 11 R. I. 266.

³⁰Matthews v. Brooklyn Savings Bank, 208 N. Y. 508.

In other cases the delivery of the book by the depositor to a third person,³¹ or to the depositor's executor,³² or the leaving of the book with the bank,³³ has been considered in holding that a trust was established. But other facts may overcome the presumption of a trust raised by the delivery of the book to a third person.³⁴

The obliteration of the words of trust from the bank book by the depositor tends to show that no trust exists.³⁵

(c) *Additions to and withdrawals from account.* No presumption for or against a trust arises from the mere addition to the original account during the life of the supposed beneficiary. The additions become trust property or not, according to the status of the original deposit.³⁶

But a deposit made after the death of the supposed beneficiary tends to show that the trust is not real, but rather a mere form for the convenience of the depositor.³⁷

The use by the depositor of the interest accruing upon the deposit for his personal benefit has some tendency to show that no trust was intended, and in some cases, in connection with other facts, it has defeated a trust,³⁸ but neither the reservation by the depositor of the right to use the interest on the account during his life,³⁹ nor the actual use of such interest by the depositor,⁴⁰ is necessarily inconsistent with a trust as to the principal. The crediting of the interest to the trust account is an act of no significance.⁴¹

The reservation by the depositor of a right to withdraw any or all the principal fund for his own use has been viewed differently by the several courts which have considered the question. It has been held to militate against a trust,⁴² while other courts have regarded

³¹Peck v. Scofield, 186 Mass. 108.

³²Martin v. Martin, 46 App. Div. (N. Y.) 445, appeal dismissed, 166 N. Y. 611; Scallan v. Brooks, 54 App. Div. (N. Y.) 248.

³³Robinson v. Appleby, 69 App. Div. (N. Y.) 509, aff'd, 173 N. Y. 626.

³⁴Lattan v. Van Ness, 107 App. Div. (N. Y.) 393, aff'd, 184 N. Y. 601.

³⁵In re Bulwinkle, 107 App. Div. (N. Y.) 331.

³⁶Farleigh v. Cadman, 159 N. Y. 169; Proseus v. Porter, 20 App. Div. (N. Y.) 44; Hyde v. Kitchen, 69 Hun (N. Y.) 280; Ray v. Simmons, 11 R. I. 266; Connecticut River Savings Bank v. Albee's Estate, 64 Vt. 571.

³⁷In re Bulwinkle, 107 App. Div. (N. Y.) 331.

³⁸Macy v. Williams, 83 Hun (N. Y.) 243, aff'd, 144 N. Y. 701; Garvey v. Clifford, 114 App. Div. (N. Y.) 193; Thomas v. Newburgh Savings Bank, 73 Misc. (N. Y.) 308, aff'd, 147 App. Div. (N. Y.) 937.

³⁹Gerrish v. New Bedford Inst., 128 Mass. 159.

⁴⁰Gerrish v. New Bedford Inst., 128 Mass. 159; Martin v. Funk, 75 N. Y. 134; Willis v. Smyth, 91 N. Y. 297; Grafing v. Heilmann, 1 App. Div. (N. Y.) 260, aff'd, 153 N. Y. 673; Meislahn v. Meislahn, 56 App. Div. (N. Y.) 566; Witzel v. Chapin, 3 Bradford Surr. (N. Y.) 386; Ray v. Simmons, 11 R. I. 266.

⁴¹Hyde v. Kitchen, 69 Hun (N. Y.) 280.

⁴²Nutt v. Morse, 142 Mass. 1; Smith v. Spear, 34 N. J. Eq. 336.

it as not inconsistent with a trust,⁴³ but as indicating merely a power to revoke a trust which was fully created.⁴⁴ So, too, actual withdrawal of part or all of the principal deposit for the use of the depositor has been held in many instances to show the lack of trust intent,⁴⁵ and yet in other cases the withdrawals from the principal were regarded as consistent with the trust.⁴⁶

Formal notice to the bank of intent to withdraw has been held to be equivalent to actual withdrawal.⁴⁷ That the account has remained untouched as to principal and interest since the principal deposit has been held to indicate a trust intent.⁴⁸ Withdrawal of part of the principal by the depositor and application of it to the use of the beneficiary tends to show a trust.⁴⁹ That the account is used by the depositor as his sole active account for the transaction of business is strong evidence against the trust.⁵⁰ An offer by the depositor to lend the principal to a third party has been held not inconsistent with the trust.⁵¹ If the trust is complete, withdrawals from the fund for his own use will render the trustee liable to the beneficiary therefor,⁵² but if the trust is incomplete, the withdrawals by the depositor for his own benefit entail no responsibility.⁵³

⁴³*Carr v. Carr*, 115 Pac. (Cal.) 261; *Drinkhouse v. German Savings & Loan Society*, 118 Pac. (Cal.) 953; *Culver v. Lompoc Valley Savings Bank*, 134 Pac. (Cal.) 355; *Scrivens v. North Easton Savings Bank*, 166 Mass. 255; *Witzel v. Chapin*, 3 Bradford Surr. (N. Y.) 386.

⁴⁴*Littig v. Mt. Calvary Church*, 101 Md. 494.

⁴⁵*Jewett v. Shattuck*, 124 Mass. 590; *Macy v. Williams*, 83 Hun (N. Y.) 243, aff'd, 144 N. Y. 701; *Matter of Totten*, 179 N. Y. 112; *Lattan v. Van Ness*, 107 App. Div. (N. Y.) 393, aff'd, 184 N. Y. 601; *Matthews v. Brooklyn Savings Bank*, 208 N. Y. 508; *Devlin v. Hinman*, 34 App. Div. (N. Y.) 107; *Hessen v. McKinley*, 155 App. Div. (N. Y.) 496; *Lee v. Kennedy*, 54 N. Y. Supp. 155; *In re Barbey's Estate*, 114 N. Y. Supp. 725; *In re Biggars*, 39 Misc. (N. Y.) 426; *Weber v. Weber*, 58 How. Pr. (N. Y.) 255.

⁴⁶*Milholland v. Whalen*, 89 Md. 212; *Scott v. Harbeck*, 49 N. Y. 292; *Mabie v. Bailey*, 95 N. Y. 206; *Macy v. Williams*, 55 Hun (N. Y.) 489, aff'd, 125 N. Y. 767; *Farleigh v. Cadman*, 159 N. Y. 169; *Robinson v. Appleby*, 69 App. Div. (N. Y.) 509, aff'd, 173 N. Y. 626; *Decker v. Union Dime Savings Inst.*, 15 App. Div. (N. Y.) 553; *Robertson v. McCarthy*, 54 App. Div. (N. Y.) 103; *Jenkins v. Baker*, 77 App. Div. (N. Y.) 509; *Marsh v. Keogh*, 82 App. Div. (N. Y.) 503; *Connecticut River Savings Bank v. Albee's Estate*, 64 Vt. 571.

⁴⁷*Rush v. South Brooklyn Savings Institution*, 65 Misc. (N. Y.) 66.

⁴⁸*Harrison v. Totten*, 53 App. Div. (N. Y.) 178.

⁴⁹*Grafiug v. Heilmann*, 1 App. Div. (N. Y.) 260, aff'd, 153 N. Y. 673; *Farleigh v. Cadman*, 159 N. Y. 169.

⁵⁰*Rambo v. Pile*, 220 Pa. 235.

⁵¹*Willis v. Smyth*, 91 N. Y. 297.

⁵²*Mabie v. Bailey*, 95 N. Y. 206; *Macy v. Williams*, 55 Hun (N. Y.) 489, aff'd, 125 N. Y. 767; *Farleigh v. Cadman*, 159 N. Y. 169; *Robinson v. Appleby*, 69 App. Div. (N. Y.) 509, aff'd, 173 N. Y. 626; *Decker v. Union Dime Savings Inst.*, 15 App. Div. (N. Y.) 553; *Robertson v. McCarthy*, 54 App. Div. (N. Y.) 103; *Marsh v. Keogh*, 82 App. Div. (N. Y.) 503.

⁵³*Macy v. Williams*, 83 Hun (N. Y.) 243, aff'd, 144 N. Y. 701; *Cunningham v. Davenport*, 147 N. Y. 43; *Matter of Totten*, 179 N. Y. 112; *Lattan v. Van Ness*, 107 App. Div. (N. Y.) 395, aff'd, 184 N. Y. 601; *Matthews v. Brooklyn Savings Bank*, 208 N. Y. 508; *Hessen v. McKinley*, 155 App. Div. (N. Y.) 496; *In re Biggars*, 39 Misc. (N. Y.) 426.

(d) *Failure of depositor to withdraw money before his death.* The depositor's failure to act, as well as his actions, are of significance in ascertaining whether he intended a trust. Many courts have held the failure of the depositor to withdraw the deposit before his death to be strong evidence of his intent to create a trust.⁵⁴ The mere disappearance of the depositor is not equivalent to his death for this purpose.⁵⁵ But failure to remove the deposit before death is not conclusive evidence of the trust intent. Other facts may overpower it and cause an adjudication that no trust exists.⁵⁶ In a few cases it has been held that, where the only facts proved were the deposit in trust form and the failure to remove before the death of the depositor, there was not sufficient evidence to show the creation of a trust.⁵⁷

(e) *Attitude of depositor to the account before and after death of beneficiary.* It is quite generally recognized that failure to indicate the trust intent by notice, delivery of the book, or in some other way before the death of the supposed beneficiary, is very strong evidence that no trust was intended.⁵⁸ Allowing the account

⁵⁴*Bath Savings Institution v. Hathorn*, 88 Me. 122; *Littig v. Mt. Calvary Church*, 101 Md. 494; *In re Gaffney's Estate*, 146 Pa. 49; *Merigan v. McGonigle*, 205 Pa. 321; *Connecticut River Savings Bank v. Albee's Estate*, 64 Vt. 571; *Petition of Atkinson*, 16 R. I. 413; *Martin v. Funk*, 75 N. Y. 134; *Willis v. Smyth* 91, N. Y. 297; *Fowler v. Bowers Savings Bank*, 113 N. Y. 450; *Grafing v. Heilmann*, 1 App. Div. (N. Y.) 260, aff'd, 153 N. Y. 673; *Williams v. Brooklyn Savings Bank*, 51 App. Div. (N. Y.) 332, appeal dismissed, 165 N. Y. 676; *Martin v. Martin*, 46 App. Div. (N. Y.) 445, appeal dismissed, 166 N. Y. 611; *Board of Missions v. Bank*, 40 App. Div. (N. Y.) 120; *Harrison v. Totten*, 53 App. Div. (N. Y.) 178; *Scallan v. Brooks*, 54 App. Div. (N. Y.) 248; *Meislahn v. Meislahn*, 56 App. Div. (N. Y.) 566; *Marsh v. Keogh*, 82 App. Div. (N. Y.) 503; *O'Brien v. Williamsburgh Savings Bank*, 101 App. Div. (N. Y.) 108; *Beakes Dairy Co. v. Berns*, 128 App. Div. (N. Y.) 137; *Warburton Avenue Baptist Church v. Clark*, 158 App. Div. (N. Y.) 230; *In re Biggars*, 39 Misc. (N. Y.) 426; *Matter of Hewitt*, 40 Misc. (N. Y.) 322; *In re King's Will*, 51 Misc. (N. Y.) 375; *Wait v. Society*, 68 Misc. (N. Y.) 245; *Matter of Halligan*, 82 Misc. (N. Y.) 30; *Weaver v. Emigrant Industrial Savings Bank*, 17 Abb. N. C. (N. Y.) 82; *In re Barbey's Estate*, 114 N. Y. Supp. 725; *Witzel v. Chapin*, 3 Bradford Surr. (N. Y.) 386. See section 144 of the New York Banking Law, second paragraph: "When any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the deposit was made."

⁵⁵*Hemmerich v. Union Dime Savings Institution*, 205 N. Y. 366.

⁵⁶*Macy v. Williams*, 83 Hun (N. Y.) 243, aff'd, 144 N. Y. 701; *Matter of Muel-ler*, 15 App. Div. (N. Y.) 67; *Rush v. South Brooklyn Savings Bank*, 65 Misc. (N. Y.) 66; *Rambo v. Pile*, 220 Pa. 235.

⁵⁷*Stone v. Bishop*, 4 Cliff (U. S.) 593; *Brabrook v. Boston Bank*, 104 Mass. 228; *Clark v. Clark*, 108 Mass. 522; *Bartlett v. Remington*, 59 N. H. 364.

⁵⁸*Cuningham v. Davenport*, 147 N. Y. 43; *Haux v. Dry Dock Savings Institution*, 2 App. Div. (N. Y.) 165, aff'd, 154 N. Y. 736; *In re Bulwinkle*, 107 App. Div. (N. Y.) 331; *Garvey v. Clifford*, 114 App. Div. (N. Y.) 193; *Matter of U. S. Trust Co.*, 117 App. Div. (N. Y.) 178; *In re Duffy*, 127 App. Div. (N. Y.) 74; *In re Smyth's Estate*, 40 Misc. (N. Y.) 331; *In re Thompson's Estate*, 85 Misc. (N. Y.) 291; *Rambo v. Pile*, 220 Pa. 235. The case of *Bishop v. Seamen's Bank*, 33 App. Div. (N. Y.) 181, is out of accord with the better authorities.

to stand as a trust account after the death of the supposed beneficiary,⁵⁹ or adding to the account after his death⁶⁰ does not, if no act decisively indicative of trust intent has been done before the *cestui que trust's* death, indicate a trust intent. Nor does a withdrawal of the fund after the beneficiary's death render the depositor liable to the representative of the beneficiary, no acts irrevocably showing trust intent having occurred before the beneficiary's death.⁶¹

But if the depositor has decisively shown his trust intent before the beneficiary's death, as by an express statement in a formal application to the bank⁶² or by the delivery of the book to the beneficiary,⁶³ then the death of the beneficiary has no effect on the completed trust. The retention of the maiden name of a woman beneficiary in the trust account after the marriage of the beneficiary is not inconsistent with a trust intent.⁶⁴

(f) *The making of a will consistent or inconsistent with a trust.* That the depositor left a will clearly inconsistent with a trust is strong evidence that he had no trust intent,⁶⁵ but, if the trust was completely created by acts of the depositor before his death, an inconsistent will cannot destroy the trust⁶⁶. That a will is consistent with a trust intent is of some force in favor of a trust.⁶⁷

That the depositor had expressed his desire to provide for the beneficiary and made no provision for him in his will is evidence favorable to a trust as to the bank account,⁶⁸ but a gift in the will to the person named as a beneficiary in the bank account is not, under similar circumstances, inconsistent with a gift through the savings bank trust.⁶⁹

Intent Implied from Circumstances of the Depositor

(a) *His relationship to the beneficiary.* That the beneficiary occupies a close relationship to the depositor has often been considered

⁵⁹Garvey v. Clifford, 114 App. Div. (N. Y.) 193; Rambo v. Pile, 220 Pa. 235.

⁶⁰In re Bulwinkle, 107 App. Div. (N. Y.) 231.

⁶¹Cunningham v. Davenport, 149 N. Y. 43; In re Smith's Estate, 40 Misc. (N. Y.) 331.

⁶²Robinson v. Appleby, 69 App. Div. (N. Y.) 509, aff'd, 173 N. Y. 626.

⁶³Matter of Davis, 119 App. Div. (N. Y.) 35.

⁶⁴Willis v. Smyth, 91 N. Y. 297.

⁶⁵Thomas v. Newburgh Savings Bank, 73 Misc. (N. Y.) 308, aff'd, 147 App. Div. (N. Y.) 937.

⁶⁶Stockert v. Dry Dock Savings Institution, 158 App. Div. (N. Y.) 123; Weaver v. Emigrant Industrial Savings Bank, 17 Abb. N. C. (N. Y.) 82.

⁶⁷In re King's Will, 51 Misc. (N. Y.) 375.

⁶⁸In re Biggars, 39 Misc. (N. Y.) 426.

⁶⁹Marsh v. Keogh, 82 App. Div. (N. Y.) 503.

as having some evidentiary value in favor of a trust intent.⁷⁰ But other facts in the case may weigh so strongly against trust intent that the effect of the close relationship will be overcome and no trust will be found.⁷¹ That the party claiming to be a beneficiary was not related at all to the depositor, but merely occupied the business relationship of lessor toward him, is some evidence that no trust was intended by the depositor.⁷²

(b) *The depositor's financial condition.* The financial condition of the depositor may be such that he would be very unlikely to desire to make a gift of the moneys deposited. Thus, that the depositor is an aged man, having no money except that deposited in the account in question,⁷³ or that the depositor was not in business, but lived from the interest of his money and had a large part of his money in deposits entitled "in trust,"⁷⁴ is strong evidence that no trust was intended.

(c) *The depositor's other bank accounts.* That the depositor has twenty-seven bank accounts entitled "in trust," that he has \$80,000 on deposit in banks, that all but \$26,000 of it is in accounts entitled "in trust," and that the depositor made some deposits in trust and delivered the books to the beneficiaries, tends to show that no trust was intended by an account entitled "in trust for B" when the bank book was not delivered to B.⁷⁵ That the depositor had other bank accounts entitled "in trust" for certain letters of the alphabet and others merely "in trust" without the mention of the name of any beneficiary, tends to show that an account in trust for a step-daughter was intended to create legal rights in the step-daughter regarding the money so deposited.⁷⁶ That the depositor has no other bank ac-

⁷⁰Garrigus v. Burnett, 9 Ind. 528 (grand-daughter); Merigan v. McGonigle, 205 Pa. 321 (*in loco* daughter); Ray v. Simmons, 11 R. I. 266 (*in loco* daughter); Petition of Atkinson, 16 R. I. 413 (son); Mabie v. Bailey, 95 N. Y. 206 (step-daughter); Farleigh v. Cadman, 159 N. Y. 169 (adopted daughter); Williams v. Brooklyn Savings Bank, 51 App. Div. (N. Y.) 332, appeal dismissed, 165 N. Y. 676 (brother); Bishop v. Seaman's Bank, 33 App. Div. (N. Y.) 181 (husband); Harrison v. Totten, 53 App. Div. (N. Y.) 178 (grand-niece and nearest relative); Meislahn v. Meislahn, 56 App. Div. (N. Y.) 566 (child); Jenkins v. Baker, 77 App. Div. (N. Y.) 509 (husband); Marsh v. Keogh, 82 App. Div. (N. Y.) 503 (adopted child); Matter of Davis, 119 App. Div. (N. Y.) 35 (husband); Stockert v. Dry Dock Savings Institution, 155 App. Div. (N. Y.) 123 (niece); Miller v. Seaman's Bank, 33 Misc. (N. Y.) 708 (brother); In re Biggars, 39 Misc. (N. Y.) 426 (child).

⁷¹Peoples Savings Bank v. Webb, 21 R. I. 218 (son); Cunningham v. Davenport, 147 N. Y. 43 (brother); Haux v. Dry Docks Savings Institution, 2 App. Div. (N. Y.) 165, aff'd, 154 N. Y. 736 (child); Devlin v. Hinman, 34 App. Div. (N. Y.) 107 (child); In re Smith's Estate, 40 Misc. (N. Y.) 331; Weber v. Weber, 58 How. Pr. (N. Y.) 255 (daughter).

⁷²Rambo v. Pile, 220 Pa. 235.

⁷³Weber v. Weber, 58 How. Pr. (N. Y.) 255.

⁷⁴Macy v. Williams, 83 Hun (N. Y.) 243, aff'd, 144 N. Y. 701.

⁷⁵Macy v. Williams, 83 Hun (N. Y.) 243, aff'd, 144 N. Y. 701.

⁷⁶Mabie v. Bailey, 95 N. Y. 206.

count but the one in question and does an active business through it, militates against a trust.⁷⁷

(d) *Rules limiting the amount of savings bank deposits.* It is customary for legislatures to place a limit upon the amount which may be deposited under a single name in a savings bank.⁷⁸ Thus, in New York, natural persons may not deposit more than \$3,000 and societies and corporations more than \$5,000 in a savings bank,⁷⁹ under one name.

That there is such a limit and that the depositor in question had reached it in a deposit in his own name, shows a motive other than a trust motive for entitling another deposit "in trust." Such motive is the avoidance of the deposit limit rule. Such evidence is, therefore, relevant on the question of trust intent and may, with other facts, show the absence of trust intent.⁸⁰ But in some cases such evidence has not been considered conclusive against a trust, although it has been given weight.⁸¹ "Inasmuch as the interest limit of this bank was \$3,000 it is argued from these facts that these accounts were opened to gain interest. But the argument at best is speculation upon a possible motive. There were other savings banks open to him. We have seen that on the same day the depositor made a deposit in another savings bank, and this tends to refute inference of his ignorance of the existence of other banks or of his exclusion of them. Moreover, if he sought a scheme to gain interest, he could have deposited \$3,000, instead of \$2,700, in this particular account under discussion, out of the \$7,482 received by him on that day. The argument based upon a scheme for interest does not carry special force in any given case; for it is available in every case where the depositor's own funds in the same bank have reached the limit. It has not received much consideration where the depositor has named a beneficiary of the trust".⁸²

(e) *Rules giving greater interest rates on small deposits.* That the savings bank in question gave a higher rate of interest on deposits below a certain limit, and that the depositor already had an account in his own name equal to such limit, is of some evidentiary value

⁷⁷Rambo v. Pile, 220 Pa. 235.

⁷⁸26 and 27 Vict., Chap. 87, sec. 39: 56 and 57 Vict., Chap. 69, sec. 1, 2, 3.

⁷⁹New York Banking Law, sec. 143.

⁸⁰Brabrook v. Boston Bank, 104 Mass. 228 (no trust); Parkman v. Suffolk Savings Bank, 151 Mass. 218 (no trust); Thomas v. Newburgh Savings Bank, 73 Misc. (N. Y.) 308 aff'd, 147 App. Div. (N. Y.) 937, (no trust).

⁸¹Merigan v. McGonigle, 205 Pa. 321; Williams v. Brooklyn Savings Bank 51 App. Div. (N. Y.) 332, appeal dismissed, 165 N. Y. 676; Meislahn v. Meislahn, 56 App. Div. (N. Y.) 566.

⁸²Williams v. Brooklyn Savings Bank, 51 App. Div. (N. Y.) 332, 336, 337, appeal dismissed, 165 N. Y. 676.

as tending to show a motive for the deposit in trust form other than the trust motive,⁸³ but, notwithstanding such evidence, the existence of a trust motive may otherwise be shown.⁸⁴

(f) *Rules of taxation favoring small deposits.* If the laws of the state in question tax savings bank deposits only when larger than a certain sum, and the depositor's individual account has already reached that amount, those facts may be shown as some evidence that the depositor did not intend a trust by placing the account in a trust form, but merely intended to avoid taxation. But, notwithstanding such a motive, other facts may show a trust.⁸⁵

Summary

The evidence which has been considered by the courts as favorable or unfavorable to a trust in cases of deposits in banks in trust form may be classified as follows:

Evidence Favorable to a Trust

1. Deposit in trust form.
2. Express statement by the depositor that he intended to create a trust.
3. Death of depositor before withdrawal of deposit.
4. Notice of the deposit to the beneficiary.
5. Notice of the deposit to a third person.
6. Delivery of the bank book to the beneficiary.
7. Delivery of the bank book to a third person.
8. Direction to a third person to deliver the bank book to the bank for the beneficiary.
9. Depositor's will consistent with a trust.
10. The beneficiary a near relative of the depositor.
11. Payment of part of the deposit to the beneficiary.

Evidence Unfavorable to a Trust

1. The depositor's express statement that he did not intend to create a trust.
2. Death of the beneficiary before notice of the trust account.
3. The depositor leaves the account untouched after the beneficiary's death.
4. Reservation by the depositor of a right to withdraw all or part of the account.
5. The depositor dealt with the interest as his own property.
6. Withdrawals from the principal by the depositor for his own use.
7. The depositor obliterates the trust words on the bank book.
8. The depositor has created some trust accounts and delivered the books, but in this case made no delivery of the book.
9. The beneficiary has made admissions inconsistent with a trust.

⁸³Weber v. Weber, 58 How. Pr. (N. Y.) 255; Weber v. Weber, 9 Daly (N. Y.) 211.

⁸⁴Mabie v. Bailey, 95 N. Y. 206.

⁸⁵Connecticut River Savings Bank v. Albee's Estate, 64 Vt. 571.

10. The depositor's will is inconsistent with a trust.

11. The depositor's financial condition is such that he would not be likely to make a gift of the account.

12. This account is the depositor's only bank account and an active one.

13. The taxation laws favored small deposits.

14. The interest rules of the bank favored small deposits.

15. Statutory restrictions of the amount of savings bank deposits favored small deposits.

To consider the construction put upon all the many possible combinations of the facts named in the above outline is beyond the limits of this article. The previous discussion of the weight given to the various separate evidential factors will lead the student of a new case involving one of such factors to other similar cases. The points of similarity and dissimilarity between the new case and such other cases can then be ascertained and the case or cases nearest alike on the facts can be used as a guide.⁸⁶

⁸⁶In some instances the terms adopted by the courts in their discussions of savings bank trusts do not seem conducive to the most logical reasoning. For instance, in *Matter of Totten*, 179 N. Y. 112, 125-126, the New York Court of Appeals has expressed its theory of these trusts in the following words:

"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 during the lifetime of the depositor. It is a *tentative* trust merely, *revocable* at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary. In case the depositor dies before the beneficiary without *revocation*, or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor."

And in the recent case of *Matthews v. Brooklyn Savings Bank*, 208 N. Y. 598, the same court speaks of a "tentative trust" and of "revocation".

It is submitted that the theory of these trusts which is to be gathered from the cases heretofore cited makes undesirable the use of the phrases "tentative trust" and "revocation". The bare deposit creates no trust. When the deposit has been completed by the performance of such other acts, the transaction is irrevocable. Until such confirmatory acts have been performed, there is no trust at all and it is unfortunate to call the transaction a "tentative trust."

To speak of the depositor as a tentative trustee when he has done nothing but make the deposit is like calling a man who signs a deed, but does not acknowledge or deliver it, a tentative grantor. And to speak of revoking the trust at any time before it has been confirmed is like discussing the revocation of a deed which has been only partially executed. The trust cannot be revoked except on the theory that it is complete. Until the trust has been completed by confirmatory acts, it is no trust at all. No question of revoking it can arise. The question is whether the settlor will complete it or not.