

NEW JERSEY
Court of Errors and Appeals.

WRIT OF CERTIORARI AND RETURN.

(Filed July 31, 1924)

In obedience to the command of this writ to me directed, I, EDWIN ROBERT WALKER, Ordinary or Surrogate General and Judge of the Prerogative Court of the State of New Jersey, *Do Hereby Certify* and send to the Honorable Justices of the Supreme Court within mentioned, the order or decree made by me on the ninth day of June, 1924, by virtue of the powers conferred upon me by an act entitled "An act to tax the transfer 10
of property of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases," approved April 20, 1909, and the supplements and amendments thereto, in a certain proceeding before me on appeal from the assessment theretofore made by the Comptroller of the Treasury of the State of New Jersey, entitled "In the matter of the Inheritance Tax of the Estate of LOUIS HUGGINS, deceased;" together also with the petition of appeal theretofore presented to me by J. O'Neill 20
Fairleigh and Joseph Morton, of the City of Saint Joseph, in the State of Missouri, Executors of the Estate of William Huggins, deceased, and the answer of the Comptroller of the Treasury of the State of New Jersey to said petition of appeal, and all other proceedings and matters touching and concerning said petition of appeal and the proceedings thereunder, as fully as the same remain before me or under my control, as by the transcript of the same under my hand and seal of the Prerogative Court certified and annexed more fully 30
appears.

E. R. WALKER,
Ordinary.

Dated: July 28th, 1924.

NEW JERSEY, ss.

[l. s.] The State of New Jersey to Edwin Robert Walker, Ordinary or Surrogate General and Judge of the Prerogative Court of the State of New Jersey,
GREETING:

We being willing for certain reasons to be certified of a certain order or decree made by you, the said Edwin Robert Walker, Ordinary or Surrogate

10 General and Judge of the Prerogative Court of the State of New Jersey, on the tenth day of June, A. D. nineteen hundred and twenty-four, affirming an assessment of transfer inheritance taxes against the Estate of Louis Huggins, deceased, late of St. Joseph, Missouri, theretofore made by Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, under and by virtue of an Act of the Legislature of the State of New Jersey, entitled "An act to tax the transfer of property of resident and non-resident decedents by devise, bequest,

20 descent, distribution by Statute, gift, deed, grant, bargain and sale in certain cases." Approved April 20, 1909, and the various acts amendatory thereof and supplemental thereto, in a certain proceeding before you, on appeal from said assessment, do command you that the said order, or decree made by you, as aforesaid, on the tenth day of June, A. D. nineteen hundred and twenty-four, together with the petition of appeal theretofore presented to you by J. O'Neill Fairleigh and Joseph Morton, Executors of the last Will and Testament of William Huggins, deceased, the answer of the said Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey to said petition of appeal and all other proceedings, documents and matters touching and concerning said appeal and the proceedings thereunder, as fully as the same remain before you, or under your control,

30 you do certify and send to the Justices of our Supreme Court at Trenton, on the twenty-eighth day of July inst., together with this writ, that we may cause to be done

thereon what of right and according to law should be done.

WITNESS, the Honorable William S. Gummere, Chief Justice of our Supreme Court at Trenton, this seventh day of July, A. D. nineteen hundred and twenty-four.

EDWARD J. KELLEHER,
Clerk.

SCAMMELL & BESORE,
Attorneys of Prosecutors.

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NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE }
INHERITANCE TAX OF }
THE ESTATE OF LOUIS }
HUGGINS, DECEASED. }

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PETITION OF APPEAL FROM ASSESS-
MENT OF THE COMPTROLLER OF
THE TREASURY.

(Filed May 5, 1923)

To the Honorable Edwin Robert Walker, Ordinary or Surrogate General and Judge of the Prerogative Court of the State of New Jersey.

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The Petition of J. O'Neill Fairleigh and Joseph Morton of the City of St. Joseph in the State of Missouri, Executors of the Estate of William Huggins, deceased, respectfully shows that:

1. Louis Huggins died on January 8, 1918, a resident of said City of St. Joseph in the State of Missouri, leaving no estate except such as was held in joint tenancy with William Huggins, your petitioners' testator;

2. The said William Huggins died on February 19,

1920, a resident of said City of St. Joseph in the State of Missouri, first having made his last will and testament wherein and whereby he did appoint your petitioners as executors thereof, which said last will and testament was duly admitted to probate in the State of Missouri and letters testamentary duly issued thereon to your petitioners;

10 3. The said William Huggins at the time of his death was possessed of certain shares of the capital stock of corporations of the State of New Jersey, which prior to the death of the said Louis Huggins had been held in joint tenancy by the said William Huggins and Louis Huggins, and of which the said William Huggins became sole owner by operation of law, upon the death of the said Louis Huggins;

20 4. The property of which the said Louis Huggins was possessed and seized at the time of his death was held wholly in joint tenancy with the said William Huggins, and the said William Huggins became possessed and seized of a whole and undivided interest in said property by operation of law, upon the death of the said Louis Huggins;

30 5. The said shares of the capital stock of the corporations of this State have come into the hands of your petitioners as executors of the last will and testament of the said William Huggins, deceased, and the Comptroller of the Treasury of the State of New Jersey has refused to permit said shares of capital stock to be transferred or disposed of, except upon the filing of a schedule thereof and of all other property of which the said Louis Huggins and William Huggins were seized and possessed as joint tenants, at the time of the death of the said Louis Huggins, and pursuant to the demand of the Comptroller of the Treasury of the State of New Jersey your petitioners have filed with the Comptroller of the Treasury of the State of New Jersey a full and complete schedule or inventory, under oath, of all of the property held by the said Louis Huggins and the said William Huggins

as joint tenants at the time of the death of the said Louis Huggins, including a full and complete schedule or inventory of said shares of the capital stock of said corporations of this State, and have deposited with said Comptroller the sum of \$3,552.75;

6. Thereafter, to wit, on March 20, 1923, the Comptroller of the Treasury of the State of New Jersey did assess a transfer inheritance tax upon the alleged transfer from the said Louis Huggins of such shares of the capital stock of corporations of this State to the said William Huggins, upon the death of the said Louis Huggins aforesaid, at the sum of \$1,758.18 with interest at 10% per annum from January 8, 1919, to February 18, 1921, amounting to \$370.88, a total of \$2,129.06; **10**

7. Your petitioners claim that said alleged transfer was not taxable under the laws of the State of New Jersey, and that said assessment of said tax is illegal and void.

Your petitioners therefore pray that the action of the Comptroller of the Treasury of the State of New Jersey be declared to be illegal and void in so far as said tax has been assessed in manner aforesaid, and that said alleged transfer be declared not to be taxable under the laws of the State of New Jersey. **20**

And your petitioner will as in duty bound, ever pray.

J. O'NEILL FAIRLEIGH,
JOSEPH MORTON,

*Executors of the last will and
testament of William Huggins,
deceased, Petitioners.* **30**

STATE OF MISSOURI, }
 COUNTY OF BUCHANAN, } ss.

J. O'Neill Fairleigh and Joseph Morton, being duly sworn on their separate oaths according to law say that they are the executors of the last will and testament of William Huggins, deceased, and the petitioners named in and who executed the foregoing petition; that said petition is made by them because no administration has
 10 ever been had of the estate of Louis Huggins, deceased, and the shares of capital stock of the corporations of the State of New Jersey upon which the Comptroller of the Treasury of the State of New Jersey has levied a transfer inheritance tax have come into their hands, as executors as aforesaid; that they have read the foregoing petition and know the contents thereof, and that the matters and things therein set forth are true to the best of their knowledge and belief.

Sworn and subscribed before me, this 16th day of
 20 April, 1923.

J. O'NEILL FAIRLEIGH,
 JOSEPH MORTON.

My commission expires February 28, 1927.

WILLIAM M. MORTON,
Notary Public.

(SEAL)

30 STATE OF MISSOURI, }
 COUNTY OF BUCHANAN, } ss.

I, Artemas Ferril, Clerk of the County Court, the officer authorized by the laws of the State of Missouri to make the following certificate, *Do Hereby Certify* that William M. Morton, whose name is subscribed to the annexed instrument and thereon written, and before whom the annexed oath or affidavit was taken, was at

the time of taking such affidavit, a Notary Public in and for the said County of Buchanan, residing in said County, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deed to be recorded in said State. And further that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County Court at St. Joseph, Mo., this 16th day of April, 1923. **10**

ARTEMAS FERRIL,

County Clerk.

By.....*Deputy.*

(SEAL)

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NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE INHERITANCE TAX OF THE ESTATE OF LOUIS HUGGINS, DECEASED.	}	On Appeal from Appraisal and Assess- ment by the Comptroller of the Treasury.
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ANSWER.

The Respondent answering says:

1. Paragraphs 1, 2, 3, 5 and 6 of the Petition are admitted.

20 2. Paragraph 4 of the Petition is admitted as to so much thereof which alleges that the property of which the said Louis Huggins was possessed and seized at the time of his death was held wholly in joint tenancy with the said William Huggins, but Respondent denies that the said William Huggins became seized and possessed of a whole and undivided interest in said property by operation of law upon the death of the said Louis Huggins.

30 3. As a further defense, the Respondent as to its denial of that part of paragraph 4 of the petition as above set forth alleges that by reason of the instrument creating joint tenancies and providing for the vesting of the entire interests in the survivor entered into between the said Louis Huggins, deceased, in his lifetime, and the said William Huggins, the said William Huggins became possessed and seized of such property under such instruments, the effect and purport of which operate to give the said William Huggins such interest as is alleged in paragraph 4 of said petition by such instruments, the effect of which was that such possession and beneficial enjoyment of one-half of the property was to take effect at death, and is, therefore, taxable, and that such trans-

fers are, therefore, taxable under the statute as transfers made to take effect at death.

THOMAS F. McCRAN,
Attorney-General.

ENDORSED:

"Filed October 30, 1923.

THOMAS F. MARTIN,
Register."

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NEW JERSEY PREROGATIVE COURT.

<p>IN THE MATTER OF THE INHERITANCE TAX OF THE ESTATE OF LOUIS HUGGINS, DECEASED.</p>	}	<p>On Appeal from Transfer Tax Assessment.</p>
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JOINDER OF ISSUE.

The petitioners, J. O'Neill Fairleigh and Joseph Morton, Executors, etc., joins issue on the answer of the defendant, the Comptroller of the State of New Jersey.

SCAMMELL & BESORE,
Proctors of the Petitioners.

ENDORSED:

"Filed January 11, 1924,

THOMAS F. MARTIN,
Secretary of State."

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NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE
 INHERITANCE TAX OF
 THE ESTATE OF LOUIS
 HUGGINS, DECEASED. } On Appeal from Assess-
 ment of the Comp-
 troller of the Treasury.

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STIPULATION.

(Filed April 8, 1924)

It is hereby stipulated and agreed between the parties hereto that the State Comptroller, instead of making a full return of all the papers in the above case, as it appears from the records in his office, shall only submit the following as a return:

20

1. Copy of bill covering the taxes assessed.
2. Copy of analysis showing the basis of tax.
3. Copy of refund voucher.

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4. Transfer Inheritance Tax affidavit and attached schedules ("A", "B", "C", "D", "E" and "F") with copy of agreement between Louis Huggins, the decedent, and William Huggins, the surviving brother, dated March 22, 1917, and supplemental affidavits of Mrs. Virginia Weakley (sworn to as a true copy by J. O. Fairleigh and Joseph Morton), Joseph S. Logan, Jr., L. O. Weakley, J. O'Neill Fairleigh and Joseph Morton, Joseph Morton and statement of facts sworn to by J. O. Fairleigh and Joseph Morton, all attached to the Transfer Inheritance Tax schedules.

It is further agreed between the parties hereto that any

other papers constituting a part of the records in the office of the Comptroller of the Treasury will be submitted to the Court upon demand.

We hereby agree to the above stipulation.

SCAMMELL & BESORE,

Attorney for Appellant.

EDWARD L. KATZENBACH,

Attorney-General of New Jersey,

Attorney for Defendant.

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THE STATE OF NEW JERSEY.

Transfer Inheritance Tax Bureau.

To Scammell and Besore, representatives of the estate of Louis Huggins, deceased, late of St. Joseph, Mo.

March 20th, 1923. For amount of Transfer Inheritance Tax erroneously paid and refunded, pursuant to

Section 15, Chap. 228, P. L. 1919, as amended. 20

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STATEMENT.

	Amt. paid on account Feb. 18, 1921	\$3552.75
	Tax assessed	\$1758.18
	Int. at 10% per annum from Jan. 8, 1919, to Feb. 18, 1921,	370.88
		2129.06
10	Amount to be refunded	\$1423.69

STATE OF NEW JERSEY

Department of Comptroller of the Treasury Transfer
Inheritance Tax Bureau, Trenton

	LOUIS HUGGINS,	} Assessment.
	Late of St. Joseph, Mo.	
20	Date of Death, January 8, 1918.	
	Billed to Scammell and Besore. Dated March 20, 1923	
	Appraised value of New Jersey property	\$68,781.81
	Appraised value of estate	\$256,217.33
	Deductions	8,373.04
	Entire or net estate...	\$247,844.29
30		\$68,781.81 .27752

Interests Taxable.

Interests of brother:

\$247,844.29

Statutory exemption 5,000.00

\$242,844.29

\$45,000.00 2% \$900.00

100,000.00 2½% 2,500.00

97,844.29 3% 2,935.33 **10**

\$6,335.33

.27752

\$1,758.18—Tax

STATE OF NEW JERSEY

Department of Comptroller of the Treasury Transfer
Inheritance Tax Bureau, Trenton **20**

In the Matter of the Estate of }
LOUIS HUGGINS, } Notice of
Late of St. Joseph, Mo. } Assessment.

Representatives— Scammell and Besore.

Attorney—Scammell and Besore, Mechanics Bank
Bldg., Trenton, N. J.

March 20, 1923.

You are hereby notified that under the Transfer In-
heritance Tax Laws of this State the Tax due on the **30**
transfer of Real and Personal property belonging to the
above-named decedent and subject to the jurisdiction of
the State of New Jersey amounts to.....\$1,758.18

Interest 370.88

2,129.06

Amount refunded 1,423.69

Amt. pd. Feb. 18, 1921.....\$3,552.75

Decedent died January 8, 1918.

If paid subsequent to January 8, 1919, add interest at rate of 10% per annum from said date to date of payment.

N. A. K. BUGBEE, *Comptroller.*

10 STATE OF MISSOURI, }
 COUNTY OF BUCHANAN, } ss.

20 J. O'Neill Fairleigh and Joseph Morton, being sworn each for himself says, we reside in St. Joseph, Missouri, and were acquainted with Louis Huggins, deceased, for more than twenty-five years before his death, which occurred on January 8, 1918, and we were acquainted with his brother, William Huggins, deceased, for more than twenty-five years before his death, which occurred on February 19, 1920.

Affiant Fairleigh's grandmother was a sister of the mother of the said Louis and William Huggins, and affiant Morton was the attorney for the said Louis Huggins for many years before his death, and also the attorney for the said William Huggins for many years before his death, and both affiants are the Executors of the last will of the said William Huggins.

The matters and things set out in this affidavit are within the personal knowledge of both affiants.

30 The said Louis Huggins and William Huggins were brothers. They were both beyond the age of seventy years when they died. Neither was ever married. They lived for many years in St. Joseph, Missouri, with their mother Mary Huggins, who was a widow for many years before her death, which occurred some time prior to the death of the said Louis Huggins, as stated above. The father of the two men died about the year 1868. There were no other children.

There has rarely been an instance in which such intimacy existed between two individuals as that which marked the relations between these two men. They were wealthy and were not engaged in any active business for a number of years before their death. They, however, maintained an office together down town in order to enable them more easily to look after their own property and investments. They were both members of the Presbyterian Church, members of the same clubs, and were rarely separated from each other for as much as one day at a time. They together made a trip around the world a few years ago and on their minor excursions, whether to the mountains in summer or to the Springs for short trips, they were practically inseparable. 10

These intimate facts in their lives are stated as an explanation for their course in holding all of their property, real and personal, in common by joint tenancy, and this they did for many years before the death of Louis Huggins. An investment attractive to one was made by him and he took care of it. An investment attractive to the other was made by him and he took care of it. The joint right of both in all their property was recognized by both and understood by their business associates and members of their family connection. They were charitable and gave large sums of money to educational and charitable and religious uses. These contributions were always discussed and decided upon by both and were made in the joint names of both. 20

All of their real estate was held by deed in joint tenancy and all certificates for stock held by them in corporations were held in the name of both jointly and to the survivor of them. Twelve hundred shares of the preferred stock of the National Biscuit Company was so held, thirteen shares of the common stock of the American Radiator Company, sixty-two shares of the preferred stock of this latter company was so held. Their bank account was so kept. There was no administration upon the state of Louis Huggins, because by virtue of the ten- 30

ancy under which all property of the two brothers was held upon his death, his rights therein terminated and his brother, William Huggins, became the sole owner. The right of William Huggins to succeed to all of the joint property has not been questioned by anyone, and at the time of his death he was in possession of all such property, and upon his death all such property, real and personal, passed to these affiants as his executors.

- 10** Drafts for dividends declared upon the above-named stocks, including the stocks in the American Radiator Company and the National Biscuit Company were payable to the two men jointly and to the survivor of them, and dividends received during the lives of both were collected by both. After the death of Louis Huggins, all such drafts were received by the said William Huggins, and were paid upon his endorsement as survivor. Since his death such drafts have been issued in the same form and paid upon like endorsement of his Executors. Their securities were kept during the joint lives of the two men
- 20** in safe deposit vault boxes, to which both had access, and after the death of the said Louis Huggins, such securities, including the stocks above mentioned, remained in the possession of William Huggins till his death, and were then delivered to these affiants as his Executors.

- These affiants are not advised as to how the above-mentioned stocks in the American Radiator Company and the National Biscuit Company were voted. They are inclined to the opinion, however, that these stocks may not have been voted at any stockholder's meeting by
- 30** either of these men for some considerable time last past.

(Signed) J. O'NEILL FAIRLEIGH,

(Signed) JOSEPH MORTON.

Subscribed and sworn to before me this 28th day of December, 1920.

My commission expires February 21, 1923.

(Signed)) WILLIAM M. MORTON,

(SEAL)

Notary Public.

STATE OF NEW JERSEY

Department of Comptroller of the Treasury Transfer
Inheritance Tax Bureau, Trenton

In the Matter of the Estate of
LOUIS HUGGINS, DECEASED, } Affidavit of
Late of St. Josephs, } Executors.
State of Missouri

J. O'Neill Fairleigh and Joseph Morton, Executors of 10
the estate of William Huggins, deceased, being duly
sworn, depose and say:

Decedent died intestate January eighth, 1918, leav-
ing no estate except such as was held in joint tenancy
with William Huggins. No administrator was ever ap-
pointed, this return being made by the personal repre-
sentatives of said William Huggins, deceased.

Name and address of attorney or representative to
whom all correspondence should be mailed—Scammell &
Besore, Mechanics Bank Building, Trenton, New Jer- 20
sey.

Total amount of real estate wherever situate (less
mortgages), as per schedule "A"Nothing

Total amount of personal estate wherever situate, as
per schedule "B"Nothing

Total amount of estate wherever situate.....Nothing

Total amount of debts (exclusive of mortgages on
real estate), including funeral, administration and
other expenses, detailed in schedule "C"Nothing

Net estate wherever situateNothing 30

(Signed) J. O'NEILL FAIRLEIGH,

(Signed) JOSEPH MORTON,

*Executors of the Estate of William
Huggins, deceased.*

Sworn and subscribed before me this 27th day of Feb-
ruary, 1923.

RUE FULLER, *Notary Public.*

My com. exp. April 13, 1924.

SCHEDULE A.

	<i>Real Estate Taxable.</i>	Nothing	Nothing	Nothing
	Real Estate owned jointly by Louis Huggins and William Huggins at the time of the death of Louis Huggins.	½ value	½ value	½ value
1	Lots 1 to 5, Block 5, Eastern Extension addition to St. Joseph, Mo.	\$1,405.00	\$2,750.00	\$2,750.00
2	70.515 acres in the northeast quarter of section 22, township 57, range 35, Buchanan County, Mo., known as the Denckla Farm	4,305.00	15,030.00	15,030.00
3	Undivided 2-3 of 46.77 acres in northeast corner of northwest quarter of section 22, township 57, range 35, Buchanan County, Mo., known as the Burnes land	2,800.00	6,646.00	6,646.00
4	Lots 13 and 14 in Block 7 Patee's addition to St. Joseph, Mo.	1,600.00	3,000.00	3,000.00
5	Lots 9 and 10, Block 7, Oakland Park	10.00	50.00	50.00
6	Lots 1 and 2, Block 8, Villa Rosa Addition to St. Joseph, Mo.	150.00	200.00	200.00
7	North 20 feet of Lot 11, Block 32, Original Town of St. Joseph, Mo.	1,375.00	1,500.00	1,500.00
8	Lot 6, Block 13, Smith's Addition to St. Joseph, Mo.	3,525.00	10,500.00	10,500.00

9	Lots 1, 2, 3, Bush Addition to St. Joseph and 216-1000 acres in northeast quarter of section 8, township 57, range 35, Buchanan County, Mo., across the street from the Huggins Home property	8,885.00	15,000.00	15,000.00
10	45-57 acres in northwest quarter of section 10, township 57, range 35, Buchanan County, Mo., known as Green Hills Golf Club Links	5,690.00	21,250.00	21,250.00
11	The south half of the southeast quarter of Section 11. The south half of the southwest quarter and the south half of the southeast quarter of Section 12. The southwest quarter of the southwest quarter; the northwest quarter of the northwest quarter; the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter of section 13. The southeast quarter, the northwest quarter, the northeast quarter of the northeast quarter and the west half of the northeast quarter of section 14. The south half of the northeast quarter of section 15. All in township 23, range 18, Taney County, Missouri, containing 920 acres, more or less	1,160.00	1,500.00	1,500.00

12	The west half of section 2. The south half of the southeast quarter of section 2. The north half of section 11. The north half of section 12. The east half of the southwest quarter of section 12. The north half of the southeast quarter of section 12, and the southeast quarter of the southeast quarter of section 12, all in township 26, of range 11, Douglas County, Missouri, containing in all 1244 acres, more or less	2,250.00	3,250.00	3,250.00
13	35 acres in Woodford County, Kentucky, known as the Hawkins Farm, joining the land of John S. Mayse on the east, and lying back to the east from McCracken's Mill Pike	425.00	<u>520.00</u>	<u>520.00</u>
	Total		<u>\$81,196.00</u>	<u>\$81,196.00</u>

The foregoing statement of joint property is included in this Return for information purposes only, but shall not, by reason of the inclusion thereof, be construed as any admission that the property therein described is taxable.

SCHEDULE B.

	<i>Personal Property Taxable.</i>	Nothing
	Stocks and Bonds owned jointly by Louis Huggins and William Huggins at the time of the death of Louis Huggins.	$\frac{1}{2}$ value
1	25 shares Installment Stock Buchanan Building & Loan Association, St. Joseph, Mo., par \$200.00, at cash surrender value, not listed	\$1,954.80 10
2	62 shares American Radiator Company, preferred, par \$100.00, at \$133.00 Chicago Stock Exchange	4,123.00
3	13 shares American Radiator Company, common, par \$100.00, at \$250.00, Chicago Stock Exchange	1,657.50
4	50 shares Brown & Bigelow Incorporated, St. Paul, Minn., preferred, par \$100.00, at \$100.00, not listed	2,500.00
5	5 shares Bank of Buchanan County, St. Joseph, Mo., common, par \$100.00, at \$115.00, not listed . . .	287.50
6	1200 shares National Biscuit Company, preferred, par value \$100.00, at \$108 $\frac{7}{8}$, New York Stock Exchange	65,325.00
7	50 shares Bartlett Trust Company, St. Joseph, Mo., common, par \$100.00, at \$215.00, not listed	5,387.50
8	5 $\frac{1}{2}$ shares Green Valley Investment Co., St. Joseph, Mo., common, in liquidation, par \$100.00, at \$140.90, not listed	387.50
9	10 shares Midland Life Insurance Company, Kansas City, Mo., common, par \$10.00, at \$15.00, not listed	75.00
10	55 shares Buchanan Hotel Company,	

		St. Joseph, Mo., common, par \$100.00, at \$81.82, not listed. . . .	2,250.00
11	50	shares Mueller Keller Candy Company, St. Joseph, Mo., common, par \$100.00, at \$139.50, not listed. . .	3,487.50
12	5	shares Kansas City, Clay County & St. Joseph Railroad Company, Kansas City, Mo., preferred, par \$100.00, at \$80.00, not listed. . . .	200.00
10	13	10 shares Kansas City, Clay County & St. Joseph Railroad Company, Kansas City, Mo., common, par \$100.00, at \$17.50, not listed. . . .	87.50
	14	5 shares Morris Plan Company (Bank), St. Joseph, Mo., common, par \$100.00, at \$110.00, not listed	275.00
	15	2 shares St. Joseph Country Club, St. Joseph, Mo., common, par \$100.00, at \$100.00, not listed	100.00
20	16	58 shares Missouri Cemetery Improvement Company, St. Joseph, Mo., common, par \$50.00, at \$32.50. .	942.50
	17	14 \$500.00 City of Stillwater, Oklahoma, 6% Street Improvement Bonds, 5 due September 15, 1919, 5 due September 15, 1920, 4 due September 15, 1921, at face.	3,500.00
	18	4 \$500.00 Muscatine, Burlington & Southern Railroad Company, Muscatine, Ia., 6% second mortgage debenture bonds, due July 1, 1926, at \$24.00	240.00
30	19	2 \$5000.00 United States of America 1st Issue 4% Liberty Loan Bonds, due June 15, 1947, at \$98.81. . . .	4,940.50
	20	1 \$10,000 and 10 \$500.00 United States of America 2d Issue 4% Liberty Loan Bonds, due November 15, 1942, at \$96.46.	7,234.50

21	1	\$5.00 United States of America War Savings Stamp, series of 1918, due January 1, 1923, at \$4.12...	2.06
Total.....			<u>\$104,957.36</u>

Mortgages, notes, cash and insurance jointly held by Louis Huggins and William Huggins, at the time of the death of Louis Huggins.

			$\frac{1}{2}$ value	10
22		Note and mortgage for \$6,500.00, dated January 3, 1916, Scott K. Snively, on lands in Sheridan County, Wyoming, interest payable at 8 per cent. per annum January 3d; interest paid to January 3 1917, with credit of \$2.41 on interest to January 3, 1918.....	3,250.00	
23		Note \$500.00, dated June 6, 1912, John M. Austin and wife, secured by deed of trust on 80 acres in DeKalb County, Mo., interest payable at 6 per cent. per annum June 6th; interest paid to June 6, 1917.....	250.00	20
24		Note \$7,000.00, dated November 5, 1903, John A. Duncan and wife, not secured, interest payable at 8 per cent. per annum May 5th and November 5th; interest paid to November 5, 1917.....	3,500.00	30
25		Note \$2,500.00, dated December 15, 1900, John A. Duncan and wife, not secured, interest payable at 8 per cent. per annum June 15th and December 15th; interest paid to June 15, 1917	1,250.00	
26		Note \$7,000.00, dated September 27, 1905, John A. Duncan and wife,		

	not secured, interest payable at 7 per cent. per annum on March 27th and September 27th; interest paid to March 27, 1917	3,500.00
27	Note \$1,000.00, dated October 31, 1910, C. V. Duncan, secured by deed of trust on lands in Taney County, Missouri, interest payable at 7 per cent. per annum on October 31; interest paid to October 31st, 1917	500.00
10		
28	Two notes, \$1,200.00 each, dated February 10, 1911, First Presbyterian Church of St. Joseph, interest payable at 5 per cent. per annum on February 10th and August 10th; interest paid to August 10, 1917..	1,200.00
29	Note \$1,175.00, dated March 5th, 1915, Fred E. Halsey and wife, secured by deed of trust on 168x200 feet of vacant ground in St. Joseph, Mo., interest payable at 8 per cent. per annum March 5th and September 5th; interest paid to September 5, 1915 with credit of \$13.00 on interest to March 5, 1916.....	587.50
20		
30	Note \$6,000.00, dated April 28th, 1915, W. K. James and wife, secured by \$6,000.00 real estate loan as collateral, interest payable at 7 per cent. per annum on (note does not state); interest paid to April 28, 1917	3,000.00
30		
31	Note \$1,600.00, unpaid balance \$1,100.00, dated August 1, 1917, Harry W. Manning and wife, secured by deed of trust on land in Douglas County, Mo., interest pay-	

- able at 7 per cent. per annum February 1st and August 1st; interest paid to August 1, 1917..... 550.00
- 32 Note \$1,400.00, dated August 1st, 1912, Harry W. Manning and wife, secured by deed of trust on land in Douglas County, Mo., interest payable at 7 per cent. February 1st and August 1st; interest paid to August 1, 1917.. 700.00 10
- 33 Note \$1,600.00, dated February 20, 1911, George W. Farris and wife, secured by deed of trust on premises No. 3001 Sylvania Street, St. Joseph, Mo., interest payable at 6 per cent. per annum February 20th and August 20th; interest paid to August 20, 1917..... 800.00
- 34 Note \$1,200.00, unpaid balance \$852.00, dated July 23, 1915, Wm. I. Utterbach and wife, secured by second deed of trust on premises No. 3001 Sylvania Street, St. Joseph, Mo., interest payable at 7 per cent. per annum on 23d of each month; interest paid to December 23, 1917..... 426.00 20
- 35 Note \$3,000.00, dated April 1, 1916, H. H. Powell, secured by 30 shares H. R. McMurtrie Agency Co., stock; interest payable quarter yearly at 7 per cent. per annum; interest paid to December 31, 1917..... 1,500.00 30
- 36 Note \$150.00, dated October 15th, 1913, St. Joseph Country Club, secured with other notes by deed of trust on St. Joseph Country Club property; interest payable at 6 per

	cent. per annum from maturity of note October 15, 1923 on April 15th and October 15th.....	50.00
37	Note \$50.00, unpaid balance \$36.00, dated March 31, 1915, Laurence O. Weakley, Jr., not secured, no interest	18.00
38	Amount on deposit with Missouri Valley Trust Company, St. Joseph, Mo.:—	
10	\$2,067.18—Savings Account	1,033.59
	1,913.45—Checking Account ..	956.73
39	Amount on deposit with Bartlett Trust Company, St. Joseph, Mo.:—	
	\$15,972.87—Savings Account ...	7,986.44
	31,915.05—"Special" Checking Account	15,957.52
	110.65—Checking Account .	55.33
40	Amount on deposit with Bank of Buchanan County, St. Joseph, Mo.:—\$0.93—Checking Account	.46
20		
41	Connecticut Mutual Life Insurance Policy No. , payable to William Huggins, full amount received	5,043.35
		<hr/>
	Less amount of insurance payable to beneficiaries other than the executor not in excess of \$40,000	5,043.35
30		<hr/>
	Total	<u>\$47,071.57</u>

Other miscellaneous property owned jointly by Louis Huggins and William Huggins, at the time of the death of Louis Huggins

42 Undivided two-thirds interest in sundry contracts between Louis Huggins 1/2 value

	and William Huggins, and John S. Logan, Jr., by which the Messrs. Huggins supplied capital to buy real estate which was sub-divided, improved, and sold out in small tracts by Mr. Logan. The interest of the decedent at the time of his death being represented by real estate unsold and notes and contracts taken for improved and unimproved real estate that had been sold.....	16,382.00	10
43	Contract of L. L. Scott, for purchase of machinery and tools	300.00	
44	Special tax bills issued against Court House property in City of St. Joseph, Mo., for paving Farson Street, abutting the Court House..	349.14	
45	Claim against Bankrupt Estate of Rackliffe Gibson Construction Company, Guy C. Barr, Trustee..	1,154.30	20
46	Judgment of Circuit Court of Buchanan County, Mo., rendered June 11, 1915, against the City of St. Joseph, Mo., for \$553.86, with interest at 8 per cent. per annum from that date at 90c.	249.24	
47	Sundry small special tax bills issued for Street Improvement, in hands of Missouri Valley Trust Company for collection	199.12	30
48	Sundry small special tax bills issued for Street Improvement, in hands of Wm. M. Morton for collection...	121.58	
49	Policy No. 12289, of the Manhattan Life Insurance Company on the life of William C. Sipple, paid up, face value, \$2,500.00, value of policy at death of decedent, \$1,965.00	982.50	

50	Transfer value of fire and liability insurance under sundry policies outstanding on properties	46.27
51	1 Franklin Automobile, Model "Series H," year 1913"	500.00
52	2 Roll top office desks	37.50

Household goods as follows:

10	53	Oriental Rugs appraised by H. J. Pape of the Brady Furniture and Carpet Company:	
		1 Mosoul Rug .....3' 5" by 8' 9"	25.00
		1 Kashmir Rug ....4' 0" by 5' 9"	33.00
		1 Bokhara Rug ....3' 8" by 4' 5"	25.00
		1 Lilahan Rug .....3' 0" by 4' 0"	8.50
		1 Kashmir Rug ....3' 8" by 5' 2"	50.00
		1 Beluchestan Rug ..3' 5" by 5' 6"	34.00
		1 Saraband Rug, damaged	
20		.....4' 0" by 4' 9"	25.00
		1 Kurdistan Rug ...4' 0" by 5' 7"	34.00
		1 Chinese Rug .....2' 9" by 4' 5"	22.50
		1 Beluchestan Rug ..3' 1" by 5' 4"	22.50
		1 Mosoul Rug, old and worn	2' 9" by 6' 6" 22.50
		1 Bokhara Rug ...7' 4" by 11' 8"	117.50
		1 Anatolian Mat Rug	
	.....1' 4" by 2' 1"	5.00	
30	54	Marbles and paintings, appraised by Mrs. Deborah Greenfield, art dealer:	
		1 Marble figure, Greek Dancing Girl and pedestal, by O. Andreoni, Rome	62.50
		1 Original Oil Painting, Flower Girl, 24 by 40, by Prof. O. Costa, Florence	250.00
		1 Marble Figure, Venus of the Bath, and pedestal, by Clerici, Rome ..	62.50

	2 Original Oil Paintings, Game, 34 by 48, by Prof. O. Costa, Florence	400.00	
55	Bronzes and Vases appraised by Grover C. Hopkins of the J. R. Hopkins Importing House:		
	2 Bronze Vases "Dragon"	300.00	
	2 Large Bronze Vases	350.00	
	2 Silver Bronze Vases (small)	62.50	
	2 Japanese Vases "Wise Men"	75.00	
	1 Bronze Figure "Hermes"	25.00	10
	1 Bronze Figure "Narcisus"	12.00	
	2 Small Bronze Vases on Writing Desk	2.50	
	2 Small Bronze Figures on Mantel..	5.00	
	1 Bronze Bust on corner book case..	5.00	
	4 Satsuma Vases	50.00	
	2 Small Bronze Figures on book case, south side	3.00	
	3 Small Cloisonne Vases	20.00	
	1 Bronze Head "Dante"	2.50	20
	Miscellaneous Household Goods:		
56	1 Small Oriental Rug, badly worn..	5.00	
	1 Upholstered Chair	1.00	
	1 Phonograph Victor and stand, and about 100 records	25.00	
	1 Fire Screen	2.50	
	1 Water color "Light House"	5.00	
	4 Vases, small	5.00	30
	1 Small Rug .....	.50	
	1 Carpet and Stair Carpet	7.50	
	1 Stand table	2.50	
	2 Chairs, belong to dining room set..	1.00	
	1 Portiers .....	.50	
	1 Large Rug	2.50	
	Carpet, red filling	10.00	
	1 Green couch, bed couch	5.00	
	1 Center table, mahogany	7.00	

	1 Small writing desk, mahogany . . .	2.00
	1 Book case, mahogany	6.00
	5 Rocking chairs	7.50
	2 Chairs, belong to dining room set..	1.00
	1 Picture—Flirtation, on Porcelain .	25.00
	1 Oil painting, small, Old Fisherman	2.50
	1 Oil painting, small, Wife of Fisher- man	2.50
	2 Water colors	10.00
10	1 Small porcelain Madonna and Child	5.00
	6 Prints and small pictures	7.50
	1 Marble Bust "Innocence"	17.50
	1 Marble Bust, small	5.00
	1 Rug, worn	2.50
	6 Dining room chairs	3.00
	2 Dining room chairs, arm	1.50
	1 Dining table	12.50
	1 Side board	12.50
20	1 Serving table	3.50
	1 Corner china cabinet	6.00
	1 Mirror	2.50
	2 Pictures Japanese on cloth	5.00
	1 Silver Syrup Pitcher (plated) . . . .	.50
	1 Dozen Silver Soup Spoons	15.00
	2 Dozen Plated Knives	1.50
	½ Dozen Silver Table Spoons	10.00
	1 Dozen Silver Tea Spoons	10.00
	1 Dozen Silver Forks	15.00
30	1 Marble Bust "Diana"	7.50
	1 Brass Candelabra	2.50
	1 Cabinet of Glassware and China..	50.00
	1 Lot Miscellaneous China	2.50
	1 Gas Stove	2.50
	1 Kitchen Cabinet	1.00
	1 Kitchen Table . . . . .	.50
	1 Old Clock . . . . .	.50
	Linoleum on kitchen floor	2.50

3	Chairs .....	.75	
	Carpet, green	5.00	
1	Brass Bed and Bedding	10.00	
1	Chiffonier	5.00	
1	Dresser	7.50	
4	Chairs	4.00	
	Rug	2.50	
1	Dressing Table	5.00	
1	Chiffonier	4.00	
1	Wash Stand	1.00	10
2	Chairs	1.00	
1	Wash-bowl and Pitcher .....	.50	
1	Rug	5.00	
1	Bed and Bedding	5.00	
1	Dresser, maple	5.00	
1	Chiffonier, maple	5.00	
1	Table, maple	1.50	
2	Chairs, maple	1.00	
1	Electric Lamp .....	.50	
1	Small rug in bath room .....	.50	20
	Bed and Bedding	1.00	
	Wash stand .....	.50	
	Table .....	.50	
	Chair .....	.50	
2	Bags Golf Clubs	5.00	
2	Shot Guns	25.00	
1	Rifle	2.50	
1	Sleeping bag, etc.	2.50	
	Fishing Tackle	12.50	
2	Gold Watches	40.00	30
1	Gold Ring	5.00	
57	Balance due from Wm. Weakley on account of personal loan	50.00	
	Total	\$22,992.40	

The foregoing statement of joint property is included in this Return for information purposes only, but shall

not, by reason of the inclusion thereof, be construed as any admission that the property therein described is taxable.

SCHEDULE C.

None.

10

SCHEDULE D.

Property in New Jersey Taxable

Nothing

Stocks of New Jersey corporations owned jointly by Louis Huggins and William Huggins, at the time of the death of Louis Huggins

1/2 value

62 shares American Radiator Company, preferred stock, par \$100.00, at \$133.00, Chicago Stock Exchange

\$4,123.00

13 shares American Radiator Company, common stock, par \$100.00, at \$255.00, Chicago Stock Exchange

1,657.50

1200 shares National Biscuit Company, preferred stock, par value \$100.00, at \$108-7/8, New York Stock Exchange

65,325.00

30

Total.....\$71,105.50

The foregoing statement of joint property is included in this Return for information purposes only, but shall not, by reason of the inclusion thereof, be construed as any admission that the property therein described is taxable.

SCHEDULE E.

Annexed hereto will be found a true copy of an agreement entered into between Louis Huggins and William Huggins, under date of March 22, 1917, evidencing their joint ownership of the property hereinbefore described.

This contract made and entered into this 22d day of March, 1917, by and between Louis Huggins, of the city of St. Joseph, Missouri, of the one part and William Huggins, of the city of St. Joseph, Missouri, of the other part. 10

Witnesseth, that whereas the legal title to sundry tracts of real estate and sundry articles of personal property, accounts, stocks, notes, bonds, choses in action and securities is vested in the said Louis Huggins in which the said William Huggins has a beneficial and equitable interest as joint owner thereof with the said Louis Huggins, and whereas the title to sundry tracts of real estate and sundry articles of personal property accounts, stocks, notes, bonds, choses in action and securities is vested in the said William Huggins, in which the said Louis Huggins has a beneficial and equitable interest as joint owner thereof, with the said William Huggins, and whereas it is desired by the said Louis Huggins and the said William Huggins to settle, adjust, fix and determine the rights of property of each of them in and to all of said property, real and personal, so held as aforesaid by said Louis Huggins and said William Huggins, and 20 30

Whereas, considering the situation and character of said property, real and personal, so held by said Louis Huggins and said William Huggins, they deem it not best to their interests to partition and divide the same in two parcels to held in severalty by them but they deem it wise and prudent, as being for the best interest of both of them, and as being a fair and just settlement of the rights of each of them therein, that the title to all of said prop-

erty, real and personal, be vested in both of them, the said Louis Huggins and the said William Huggins, to be held by them jointly with the right of survivorship in the survivor of them and

Whereas the said Louis Huggins and the said William Huggins are each possessed of an individual estate which they deem advisable for the best interests of both of them to own and hold like their joint estate by joint title with the right of survivorship in the survivor of them.

- 10** Now, therefore, the said Louis Huggins and the said William Huggins, in consideration of the premises above recited and of the covenants entered into by each with the other herein, do covenant and agree with each other that from and after the execution hereof the legal title to all said property, real and personal, wherever situate, including all accounts, stocks, bonds, notes, securities and choses in action held by either of them in which the other has an interest and all such property, real and personal, held by either of them individually and all such property, real and personal, held by any other person or corporation in which they or either of them have an interest, legal or equitable, shall vest in both of them, the said Louis Huggins and the said William Huggins jointly to have and to hold the same unto them the said Louis Huggins and the said William Huggins jointly and unto the survivor of them forever.

- 20** real and personal, held by them jointly and all such property, real and personal, held by any other person or corporation in which they or either of them have an interest, legal or equitable, shall vest in both of them, the said Louis Huggins and the said William Huggins jointly to have and to hold the same unto them the said Louis Huggins and the said William Huggins jointly and unto the survivor of them forever.
- 30** And the said Louis Huggins and the said William Huggins do further covenant with each other that all necessary and proper assignments, transfers, deeds and conveyances of said property, real and personal, will be made as speedily as practicable to vest the full and complete title, legal and equitable, of, in and to all of such property, real and personal, in the said Louis Huggins and the said William Huggins jointly and in the survivor of them as above provided.

In Witness Whereof the said Louis Huggins and the said William Huggins have hereto set their hands to two

copies hereof, one to be retained by each of them, the day and year above written

LOUIS HUGGINS,
WILLIAM HUGGINS.

STATE OF MISSOURI, }
COUNTY OF BUCHANAN, }

10

On this 22d day of March, 1917, before me, a Notary Public, acting under commission which will expire on the 26th day of November, 1918, personally appeared Louis Huggins and William Huggins, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed. In witness whereof I have hereunto set my hand and my official seal.

[SEAL]

WILLIAM M. MORTON,
Notary Public. 20

STATE OF MISSOURI, }
COUNTY OF BUCHANAN, } ss.

Mrs. Virginia Weakley being duly sworn on her oath says:

I have lived in St. Joseph, Missouri, since 1857, and was acquainted with Louis Huggins and William Huggins from about the year 1859 to the death of these men. Their mother, Mary Huggins was my mother's sister. The two Huggins boys were therefore cousins to me. I have read the statement of facts to which this affidavit is attached and state from personal knowledge as to part and from recognized family history and tradition as to part, that the facts therein stated are true. I lived a near neighbor to my Aunt Mary Huggins for many years be-

30

fore her death and was at her house and saw her every few days during all those years. I was intimately familiar with the family life of her family consisting of herself and my two cousins, and shortly after her death which occurred about 1898, my own children, except my daughter, having grown up and married off, she and I became members of the family and we all lived together till my daughter married and left us and then Louis died and then Will died and the family ties were dissolved. The brothers were as one in everything. They held everything together, advised with each other about everything. One exercised as much freedom in dealing with the common property as the other. Neither had anything that the other was not free to treat as his own. I always understood that what was Will's was Louis' and what was Louis' was Will's.

10 They were neither ever married and from childhood they were the only children of their parents. Two persons have rarely been more intimate than these two and their intercourse with each other was fluid almost in its freedom from restraint.

20 I well remember when my Aunt Mary Huggins received her money from my Uncle Louis Sublette's estate. As I remember, it amounted to about twenty thousand dollars. My mother received a like amount being remembered in Uncle Louis Sublette's will along with my Aunt Mary Huggins. My Aunt Mary's part was managed by the two Huggins boys and was the foundation of the estate they left.

30

VIRGINIA WEAKLEY.

Subscribed and sworn to before me this 2d day of April, 1921.

My commission will expire on the 26th day of August, 1922.

[SEAL]

LAURENCE O. WEAKLEY,
Notary Public.

STATE OF MISSOURI, }
 COUNTY OF BUCHANAN, } ss.

J. O. Fairleigh and Joseph Morton, being sworn on oath, say that the foregoing is a true and complete copy of an original affidavit made by Virginia Weakley and attached to the return made by affiants for the Federal Estate tax against the estate of Louis Huggins, deceased, and filed by affiants with the Collector of Internal Revenue; that an affidavit to the same effect cannot now be procured from Virginia Weakley for the reason that she has died since making the foregoing affidavit. 10

(Signed) J. O. FAIRLEIGH,

(Signed) JOSEPH MORTON.

Subscribed and sworn to before me this 26th day of February, 1923. My commission will expire April 13, 1924.

(Signed) RUE FULLER,
Notary Public. 20

[SEAL]

STATE OF MISSOURI, }
 COUNTY OF BUCHANAN, } ss.

L. O. Weakley being sworn on his oath says: I am 54 years old and have been acquainted with Louis Huggins and William Huggins all my life and until the death of these men. Mrs. Mary Huggins, their mother, was the sister of my mother's mother. I have for years been engaged in the business of life, fire, casualty, and indemnity insurance in St. Joseph, Missouri. Louis and William Huggins kept a desk in my office since about the year 1898 till the death of Louis Huggins in 1918, and thereafter, William Huggins kept his desk there till his death in 1920. One or the other of them were in my office every day or so when they were in town during all these years. They had but one desk which they used 30

in common each having a key to it. They held all of their property jointly, consulted together, acted together, and owned everything together. Their business transactions were always conducted for their joint benefit and both were interested in everything that was done. My office force and I assisted them upon request from time to time in their affairs. We always recognized each as having full authority to act for both and their dealings with the public was understood in this way. Some
 10 matters Louis Huggins would give his personal attention to and some William would give his attention to but both recognized the community of interest. Their income, profits and savings went into the common funds which were drawn on for all their expenditures and investments. I have read the statement of facts to which this affidavit is attached and from personal knowledge as to part and accepted family history and current understanding as to part I state the facts therein set out are true to the best of my information and belief.

20 (Signed) LAURENCE O. WEAKLEY.

Subscribed and sworn to before me this 26th day of February, 1923. My commission will expire November 13, 1923.

(Signed) WILLIAM P. BLUM,
Notary Public.

[SEAL]

30 STATE OF MISSOURI, }
 COUNTY OF BUCHANAN, } ss.

John S. Logan, Jr., being sworn on his oath says:

I am fifty-three years of age. I was acquainted with Louis Huggins and with William Huggins from my earliest recollection, till the death of these men. Their mother, Mrs. Mary Huggins was a sister of my father's mother, so that my father and these two men were cousins.

I have read the statement of facts to which this affidavit

is attached. Some of the facts therein stated, I know to be true of my own personal knowledge, and other facts not within my personal knowledge are recognized family history. From my best knowledge, information and belief, I state that all the facts contained in said statement of facts are true. I have been interested at different times in business ventures with Louis Huggins and William Huggins, and in these transactions I have always understood that they were jointly interested, and that the funds supplied by them were the common funds of both. 10

Tracts of land were bought at different times with funds supplied by them, which I developed and put upon the market and sold, profits of each transaction being divided between me and them. The titles were taken to the tracts when bought, sometimes to Louis, sometimes to William, but they were both jointly interested, and my dealings were had with them with the understanding that they together, were the joint owners of the interest they represented. The first of these transactions was in December, 1899. These men were very intimate, and for more than twenty years past were practically inseparable. 20

They lived together in the same house, made trips together for pleasure and recreation, were members of the same clubs, belonged to the same church and were understood by the family connection and by their friends generally, to own everything in common. I know it to be true that they consulted and advised with each other about all their business affairs. That during the last twenty years of the life of these men, they were not engaged in active business, that they both gave their attention to the investment and management of their joint affairs. It has always been understood in the family and among their acquaintances that the estate left by them was built upon property received by them through their mother and from her estate and from the earnings and savings of both of the men, which were contributed from time to time for many years to the common funds. 30

(Signed) JOHN S. LOGAN, JR.

Subscribed and sworn to before me this 26th day of February, 1923. My commission will expire April 2, 1923.

(Signed) MARGARET F. MCALEER,
[SEAL] *Notary Public*

STATEMENT OF FACTS

10

Louis Huggins died on the 8th day of January, 1918, in the seventy-sixth year of his age.

William Huggins died on the 19th day of February, 1920, in the seventy-seventh year of his age.

These two men were brothers.

There was no other brother and no sister and no descendant of any such. Other children were born to their parents, but all such died in infancy many years ago.

Neither of these men was ever married.

20

Their father died more than fifty years ago. Their mother was Mary Huggins. She had a brother Louis Sublette who died in the summer of 1878, a resident of Woodford County, Kentucky, and leaving a will by which one-third of his residuary estate passed to his sister Mary Huggins. Mrs. Huggins realized some twenty thousand dollars from her brother's estate. In the Spring of 1879 she bought for fifteen hundred dollars a small house and lot on 8th Street in St. Joseph, Missouri, and the balance of the funds derived through her brother's will were turned over to the two sons Louis and William for investment.

30

A home for the mother and two sons was established in the house bought in 1879 and the home was maintained in the original house and in another in the immediate vicinity uninterruptedly by the two brothers till the death of Louis in 1918 and thereafter by William till his death in 1920.

The mother died some twenty years ago and after her

death her place in the family was taken by Mrs. Virginia Weakley, a daughter of a sister of the mother. Mrs. Weakley continued a member of the family till its dissolution by the death of William in February, 1920.

The funds derived by Mary Huggins from her brother's estate constituted the foundation of the estate left by the two men Louis and William. The mother died intestate and all her property passed to the two sons. There was never any partition between them.

These two brothers were bound to each other by a strong bond of affection and temperamentally as well as in matters pertaining to personal inclination and preference were most congenial. They were both members of the First Presbyterian Church of St. Joseph, always taking an eager part in its activities. They belong to the same clubs. The friends and associates of the one were the friends and associates of the other. For the twenty years preceding the death of Louis, one was rarely separated from the other for longer than a day or two at a time. When they were young men, it was agreed between them that William should take employment which would permit him to look after the welfare of the mother and give his personal attention to the home and household affairs. He accordingly engaged in business in St. Joseph, which did not require him to leave the city, while Louis, free by the arrangement to go, accepted employment that took him away from St. Joseph from time to time for periods of varying duration.

Some twenty years before the death of Louis, and about the time of the death of the mother, both men withdrew from active business, established a personal office in the business district of St. Joseph and devoted their time to looking after their own properties and investments.

Their earnings and savings, as well as the funds turned over to them by their mother as above narrated, and the property derived by them from the mother's estate upon her death were owned in common by the two men, and out of these were paid all of their expenditures, including

the moneys paid out for properties bought and investments made, the expenses of the family and their personal expenses, and their contributions to religious, charitable and public purposes. An investment that seemed attractive to Louis was made out of the common funds and Louis gave his personal attention to it. An investment that was pleasing to William was made out of the common funds and William personally looked after that investment.

10 This course of dealing resulted as time went by in the titles to some properties appearing in the name of William and the title to other properties appearing in the name of Louis and the title to still other properties appearing in the names of both.

20 In the Spring of 1917 the brothers took a survey of their holdings and titles and decided to make their muniments of title express the understanding and agreement that had thus long time existed between the two men. Accordingly deeds were made for all of the real estate vesting the titles in the two brothers as joint tenants with the right of survivorship and their stocks and securities and all other personal property were placed under like title.

30 Louis left no debts and no administration has been had. Upon his death in January, 1918, William took over all the joint property in the right of survivorship, held, enjoyed and dealt with the same as his property during the rest of his life, and upon his death in February, 1920, all of the property then remaining passed to J. O'Neill Fairleigh and Joseph Morton, his executors.

STATE OF MISSOURI, }
 COUNTY OF BUCHANAN, } ss.

J. O. Fairleigh and Joseph Morton, being sworn upon oath say:

That they have prepared the foregoing statement of facts, partly from information within their own personal knowledge, partly from information obtained from relatives and acquaintances of Louis Huggins and William Huggins, partly from written documents and public records, and they say that the facts therein stated are true according to their best information, knowledge and belief. 10

J. O. FAIRLEIGH,
 JOSEPH MORTON.

Subscribed and sworn to before me this 5th day of April, 1921. My commission will expire on the 21st day of February, 1923.

[SEAL]

WILLIAM M. MORTON, 20
Notary Public

STATE OF MISSOURI, }
 COUNTY OF BUCHANAN, } ss.

J. O. Fairleigh and Joseph Morton, being sworn on oath, say that the foregoing is a true and complete copy of the statement of facts attached to the return made by affiants for the Federal Estate Tax against the estate of Louis Huggins, deceased, and filed by the affiants with the Collector of Internal Revenue and referred to in the affidavit of Virginia Weakley, attached to said statement of facts, and also referred to in the affidavits of John S. Logan, Jr., and L. O. Weakley, hereto attached. 30

(Signed) J. O. FAIRLEIGH,

(Signed) JOSEPH MORTON,

Subscribed and sworn to before me this 26th day of

February, 1923. My commission will expire April 13, 1924.

(Signed) RUE FULLER,
Notary Public.

[SEAL]

STATE OF MISSOURI, }
10 COUNTY OF BUCHANAN, } ss.

J. O'Neill Fairleigh and Joseph Morton, of lawful age, being sworn on their oaths, say:

We are both residents of the City of St. Joseph, Missouri; we are the Executors of William Huggins, deceased; we were appointed such Executors by the Probate Court of Buchanan County, Missouri, on the 5th day of March, 1920.

20 William Huggins died a resident of the City of St. Joseph, Missouri, at his place of residence in this city on the 19th day of February, 1920. Louis Huggins was a resident of the City of St. Joseph, Missouri, and died at his place of residence in this City, on the 8th day of January, 1918. Louis Huggins was in the seventy-sixth year of his age when he died. William Huggins was in the seventy-seventh year of his age when he died. These two men were brothers, neither of them was ever married, they lived together for a great many years preceding their death in their common home in the City of St. Joseph, where both died. They owned everything in common as
30 joint tenants, and at the time of the death of Louis Huggins, above stated, all of their real estate was held by Louis Huggins and William Huggins in joint tenancy. All of their stocks, bonds and other securities and investments were held in the name of "Louis Huggins and William Huggins jointly, and the survivor of them."

Louis Huggins had no property that was not held under this joint title, and William Huggins had no property that was not held under this joint title. Upon the

death of Louis Huggins, William Huggins took over all of the joint property in the right of survivorship, held, enjoyed and dealt with the same as his property during the rest of his life, and upon his death in February, 1920, all of the property then remaining passed to these affiants as his executors.

Louis Huggins left no debts unpaid at the time of his death except expenses of his last illness and funeral, and these were promptly paid by his brother. No administration was ever had upon his estate, and no property was ever regarded as detached from the joint tenancy, and as constituting property belonging to the estate of Louis, but all such property passed to William Huggins as above stated. 10

When these affiants entered into the possession of said property, real and personal, they did so under appointment as executors of William Huggins. These affiants took possession in the right of their title as Executors of William Huggins. They took the oath of office and gave bond to administer the property as the property of the estate of William Huggins. Soon after entering upon their duties as such executors they inventoried and appraised the property as the property of the estate and upon the filing of their inventory in the Probate Court appointing them they became liable on their bond for the full value of the property as such executors. They learned in making the inventory that nearly all of the property had come through the joint title to William Huggins on the death of Louis Huggins. They were advised that the title of the two brothers being held in joint tenancy, that upon the death of Louis on January 8, 1918, his interest in the property became extinct for all purposes, and that thereafter the property belonged solely to William Huggins, and that upon the death of William Huggins, and upon their qualification as his executors, the property passed into their hands to be dealt with solely and exclusively as the property of William Huggins for all purposes. 20 30

As stated above these two men were brothers.

There was no other brother and no sister and no descendant of any such. Other children were born to their parents, but all such died in infancy many years ago.

Neither of these men was ever married.

Their father died more than fifty years ago. Their mother was Mary Huggins. She had a brother Louis Sublette who died in the Summer of 1878, a resident of Woodford County, Kentucky, and leaving a will by which one-third of his residuary estate passed to his sister **10** Mary Huggins. Mrs. Huggins realized some twenty thousand dollars from her brother's estate. In the Spring of 1879 she bought for fifteen hundred dollars a small house and lot on 8th Street, in St. Joseph, Missouri, and the balance of the funds derived through her brother's will were turned over to the two sons Louis and William for investment.

A home for the mother and two sons was established in the house bought in 1879, and the home was maintained in the original house and in another in the immediate vicinity uninterruptedly by the two brothers till the death of Louis in 1918 and thereafter by William till his death in 1920. **20**

The mother died some twenty years ago and after her death her place in the family was taken by Mrs. Virginia Weakley, a daughter of a sister of the mother. Mrs. Weakley continued a member of the family till its dissolution by the death of William in February, 1920.

The funds derived by Mary Huggins from her brother's estate constituted the foundation of the estate left by the two men Louis and William. The mother died **30** intestate and all her property passed to the two sons. There was never any partition between them.

These two brothers were bound to each other by a strong bond of affection and temperamentally as well as in matters pertaining to personal inclination and preference were most congenial. They were both members of the First Presbyterian Church of St. Joseph, always tak-

ing an eager part in its activities. They belonged to the same clubs. The friends and associates of the one were the friends and associates of the other. For the twenty years preceding the death of Louis, one was rarely separated from the other for longer than a day or two at a time. When they were young men, it was agreed between them that William should take employment which would permit him to look after the welfare of the mother and give his personal attention to the home and household affairs. He accordingly engaged in business in St. Joseph, which did not require him to leave the city, while Louis, free by the arrangement to go, accepted employment that took him away from St. Joseph from time to time for periods of varying duration. 10

Some twenty years before the death of Louis, and about the time of the death of the mother, both men withdrew from active business, established a personal office in the business district of St. Joseph and devoted their time to looking after their own properties and investments. 20

Their earnings and savings, as well as the funds turned over to them by their mother, as above narrated, and the property derived by them from the mother's estate upon her death were owned in common by the two men, and out of these were paid all of their expenditures, including the moneys paid out for properties bought and investments made, the expenses of the family and their personal expenses, and their contributions to religious, charitable and public purposes. An investment that seemed attractive to Louis was made out of the common funds and Louis gave his personal attention to it. An investment that was pleasing to William was made out of the common funds and William personally looked after that investment. 30

This course of dealing resulted as time went by in the titles to some properties appearing in the name of William and the title to other properties appearing in the name of Louis and the title to still other properties appearing in the names of both.

In the Spring of 1917 the brothers took a survey of their holdings and titles and decided to make their muniments of title express the understanding and agreement that had thus long time existed between the two men. Accordingly deeds were made for all of the real estate vesting the titles in the two brothers as joint tenants with the right of survivorship, and their stocks and securities and all other personal property were placed under like title.

10 Louis left no debts, and no administration has been had. Upon his death in January, 1918, William took over all the joint property in the right of survivorship, held, enjoyed and dealt with the same as his property during the rest of his life, and upon his death in February, 1920, all of the property then remaining passed to J. O'Neill Fairleigh and Joseph Morton, his executors.

20 Affiants further say that the foregoing affidavit is based upon information partly within their own personal knowledge, and partly upon information obtained from relatives and acquaintances of Louis Huggins and William Huggins, partly from written documents and public records, and that the facts stated bearing upon the mode of life and business association of the two men is established and admitted as family history among the relatives of Louis Huggins and William Huggins, who constitute a large family connection in this community; that the facts stated within their knowledge they state to be true, and that the facts based upon other information have been carefully considered and verified and they believe them

30 to be true.

(Signed) J. O'NEILL FAIRLEIGH,

(Signed) JOSEPH MORTON.

Subscribed and sworn to before me this 26th day of February, 1923. My commission will expire April 13, 1924.

(Signed) RUE FULLER,

Notary Public.

[SEAL]

STATE OF MISSOURI, }
 COUNTY OF BUCHANAN, } ss.

Joseph Morton, of lawful age, being duly sworn on his oath, says: I was well acquainted with Louis Huggins, who died a resident of St. Joseph, Missouri, on January 8, 1918, and with William Huggins, his brother. I was the attorney and legal counsel of Louis Huggins and of William Huggins, his brother, for more than twenty years before the death of Louis Huggins, and was acquainted during all that time with their business and financial transactions. I represented these two men in the preparation and execution of the contract between them bearing date March 22, 1917, under which all of their muniments of title to real and personal property were made to express and establish a title in joint tenancy in these two men to all their property. 10

At the time of the execution of this joint tenancy contract, both Louis Huggins and William Huggins were in their usual state of health. They were both elderly gentlemen, but were attending to business every day at their office in the usual way. This contract was not made by either of the parties to it in contemplation of death nor in the nature of a testamentary disposition of their property affected by it. The execution of it was the result of a purpose on the part of the parties to it to establish in proper legal manner the arrangement long time theretofore had between the two men respecting the title to their properties. Immediately upon the execution of this contract deeds were made for all of the real estate owned by the two men which established in them a title in joint tenancy to all such real estate, and the evidence of title to all of their personal property such as stocks, notes, securities of all kinds, were made to show the title thereto in the two men to be a title in joint tenancy. This was all done as above stated conformably to the agreement and understanding long time had between the two brothers. 20 30

(Signed) JOSEPH MORTON.

Subscribed and sworn to before me this 27th day of February, 1923. My commission will expire April 13, 1924.

[SEAL]

(Signed) RUE FULLER,
Notary Public.

SCHEDULE F.

- 10 William Huggins, joint tenant with Louis Huggins.

NEW JERSEY PREROGATIVE COURT.

IN RE. ESTATE OF LOUIS }
HUGGIN, DECEASED. } Conclusions.

20

TRANSFER TAX APPEAL.
ON FINAL HEARING.

MESSRS. SCAMMELL & BESORE, *for Appellants.*
MR. EDWARD L. KATZENBACH, *Attorney-General, for Respondent.*

- 30 1. Prior to the amendment *P. L. 1922, c. 174*, the "succession" of a surviving joint-tenant was not taxable under *P. L. 1909, c. 228*, as a transfer by or from the deceased joint-tenant if the latter did not participate in the creation of the estate in joint tenancy.
2. Such "succession" is or may be, so taxable, however, where the deceased joint-tenant created, or participated in creating the joint tenancy.
3. Where two brothers, owning property of substan-

tially equal value, created a joint tenancy in the whole thereof between themselves, the "succession" of the survivor as to one-half the total property, is taxable under *P. L. 1909, c. 228*, as a transfer by or from the deceased joint-tenant.

BUCHANAN, V. O.

The executors of the estate of William Huggins, deceased, appeal from the transfer tax assessed by the Comptroller, under *P. L. 1909, c. 228*, and the subsequent amendments, against the estate of Louis Huggins, deceased. 10

Louis Huggins died January 8, 1918, a resident of Missouri. He was a joint owner with his brother William in considerable property, including some shares of stock of New Jersey Corporations, but other than this left no estate whatever. William Huggins, as the survivor, became the sole owner of this jointly owned property; after his death his executors sought to transfer the corporate stocks, but the Comptroller refuses his consent thereto unless the tax assessed by him in respect to the "transfer" from Louis Huggins be paid. 20

The affidavits submitted to the Comptroller set forth that the two brothers, Louis and William, were men of advanced years; that all their lives they had been exceptionally close and intimate; had lived in the same house, had the same office, a single desk, shared the same friends, amusements, business activities, bank account and the like; the property which they accumulated was considered and created by them as joint or common property—anything which belonged to either belonged to the other, and this was so notwithstanding that the formal legal title to different portions of the property might have been taken in the individual name of one or the other. 30

On March 22, 1917, the two brothers, being then both about seventy-five years of age, mutually executed an agreement, and pursuant to the provisions thereof, conveyances were executed by them vesting in them as joint

tenants, with right of survivorship, the title to all property, real and personal, held by them and each of them. The agreement (omitting formal parts) reads as follows:

10 “Witnesseth that whereas the legal title to sundry tracts of real estate and sundry articles of personal property, accounts, stocks, notes, bonds, choses in action and securities is vested in the said Louis Huggins in which the said William Huggins has a beneficial and equitable interest as joint owner thereof with the said Louis Huggins and whereas the title to sundry tracts of real estate and sundry articles of personal property accounts, stocks, notes, bonds, choses in action and securities is vested in the said William Huggins in which the said Louis Huggins has a beneficial and equitable interest as joint owner thereof with the said William Huggins, and whereas it is desired by the said Louis Huggins and the said William Huggins to settle, adjust, fix and determine the rights of property of each of them in and to all of said property, real and personal, so held as aforesaid by said Louis Huggins and said William Huggins, and

20 “Whereas considering the situation and character of said property, real and personal, so held by said Louis Huggins and said William Huggins, they deem it not best to their interests to partition and divide the same in two parcels to be held in severalty by them, but they deem it wise and prudent, as being for the best interest of both of them, and as being a fair and just settlement of the rights of each of them therein that the title to all of said property, real and personal, be vested in both of them, the said Louis Huggins and the said William Huggins, to be held by them jointly with the right of survivorship in the survivor of them

30 “Whereas the said Louis Huggins and the

said William Huggins are each possessed of an individual estate which they deem advisable for the best interests of both of them to own and hold like their joint estate by joint title with the right of survivorship in the survivor of them,

“Now, therefore, the said Louis Huggins and the said William Huggins, in consideration of the premises above recited and of the covenants entered into by each with the other herein, do covenant and agree with each other that from and after the execution hereof the legal title to all said property, real and personal, wherever situate, including all accounts, stocks, bonds, notes, securities and choses in action held by either of them in which the other has an interest, and all such property, real and personal held by either of them individually, and all such property, real and personal, held by them jointly, and all such property, real and personal, held by any other person or corporation in which they or either of them have an interest, legal or equitable, shall vest in both of them, the said Louis Huggins, and the said William Huggins jointly to have and to hold the same unto them, the said Louis Huggins and the said William Huggins jointly and unto the survivor of them forever.

“And the said Louis Huggins and the said William Huggins do further covenant with each other that all necessary and proper assignments, transfers, deeds and conveyances of said property, real and personal, will be made as speedily as practicable to vest the full and complete title, legal and equitable, of, in and to all of such property, real and personal in the said Louis Huggins and the said William Huggins jointly and in the survivor of them as above provided.”

It is contended by appellants (1) that there was no transfer of any property or interest therein from Louis to

William at Louis' death, and hence no tax could be assessed thereon; (2) that the only transfer, if any, was at the time of the creation of the joint tenancy, and that the transfer at that time was merely a technical legal one, which simply put it to legal form the equitable and actual situation which had always theretofore existed between the brothers, and hence is not taxable; (3) that such transfer as was made at the creation of the joint tenancy was in no wise donative in character but for valuable consideration, and hence not taxable.

10

I have little difficulty in determining that the change of interest, ownership or possession (whatever it may be called), which takes place at the death of the first of two joint tenants, was not taxable under our statute as it existed in 1917, or at Louis' death,—if that change be considered simply by itself, uncomplicated by any question of participation by the joint tenants in the creation of the joint tenancy.

20

Let us assume, for instance, that the property held in joint tenancy was conveyed to them in joint tenancy by a third party, without consideration from them or either of them, and without request from them or either of them that the conveyance be in joint tenancy, and consider the "transfer" or "succession," which occurs on the death of one of the joint tenants.

Section 1 of the act specifies the transfers which are made taxable. The tax is imposed on transfers "in the following cases:" *ergo*, transfers not coming within the ensuing category are not taxable.

30

Sub-section Fifth, of Section 1, expressly makes the "succession" of a surviving joint owner a taxable transfer; but this provision, *vide P. L. 1922, C. 174*, was not written into the statute until after the death of Louis.

Sub-sections First and Second deal only with transfers by will or intestate law. The "succession" by survivorship does not fall within either of these classes, for it is an incident of the joint estate which takes place irrespective of whether the other joint tenant dies testate or in-

testate. A joint tenant may dispose of his interest, thus severing the joint tenancy, during his lifetime; but cannot do so by will.

Neither does the "succession" of a surviving joint tenant come within the scope of Sub-section Third,—for it is not a "transfer" from the deceased joint tenant by "deed, grant, bargain, sale or gift."

Finally, it is not taxable under Sub-section Fourth,—for, assuming that it comes within the meaning of "an estate (or interest) in expectancy of any kind or character which is contingent or defeasible," it is not transferred by any instrument made by the deceased joint tenant. Section 26 of the statute provides that the words "estate" and "property" (the transfer whereof is made taxable) means "the interest of the *testator, intestate, grantor, bargainor or vendor,*"—the deceased joint tenant is none of these,—"*passing to the legatee, devisee, heir, next of kin, grantee, donee, or vendee*"—the surviving joint tenant is none of these, as regards the other joint tenant. Neither is the succession of the surviving joint tenant a transfer "by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift" from the deceased joint tenant (See Sec. 26 of the act). Assuming, as I have said, that it comes within the scope of Sub-section Fourth, I think it is clear that Sub-section contemplates its taxability as a transfer from the original creator of the joint tenancy, and not from the deceased joint tenant. Compare Section 3, dealing also with "instruments" creating estates in expectancy, &c.; and Section 5, providing that the taxes shall be due and payable at the death of the "*testator, intestate, grantor, donor or vendor.*"

As a matter of fact the "succession" of the surviving joint tenant, I take it, is not a transfer *by*, or a succession *from*, the deceased joint tenant at all,—any more than the "succession" of a remainderman is a transfer *by*, or a succession *from*, the prior life tenant. The change of interest which take place on the death is in no wise the

act of the decedent nor a succession by operation of law, but is the act of the original creator of the estate. The additional interest which the survivor gains on the death of his co-tenant comes to him not from the co-tenant, but from the original grantor. Essentially, the original grantor conveys to him not only a half interest defeasible at his death if he predecease his co-tenant, but also a contingent remainder in the other half if he survive the co-tenant. The fact that the right of survivorship may be

10 terminated at the will of either co-tenant during the joint lives does not alter the situation. The fact that the deceased co-tenant has failed to exercise his right to deprive the other co-tenant of his contingent half interest in "remainder" in no wise changes the fact that the survivor takes that contingent half interest "in remainder" from the original grantor and not from the deceased tenant. It cannot be said, in this regard at least, that a man does an act by failing to do an act.

20 So far, however, as concerns the question of taxability of transfer from the deceased joint tenant under our statute, we have a very different situation with which to deal, if the deceased joint tenant himself created or participated in the creation of the joint tenancy, as is the fact in the case at bar.

By the third paragraph of the agreement of 1917, both brothers acknowledge that each has separate individual property which he is transferring to joint ownership with right of survivorship. That is competent in this proceeding as an admission by Louis and William that

30 Louis had and was transferring such individual estate.

The effect of the 1917 agreement (assuming for the moment that the individual property of each was equal in amount) was substantially to transfer the property theretofore individually owned by each (both as to estate during his life, and remainder), to an estate in each for the joint lives of both, with remainder to whichever one of the two should survive the other—contingent also upon

there being no severance of the joint tenancy by either during the joint lives.

The fact that technically there was an immediate transfer from Louis to William of only a half interest in his original estate is of no significance; it is the net substantial result of the entire transaction that is to be looked at. William at the same time made an immediate transfer of a half interest in his original estate; so that the substantial nature of the entire transaction was as set forth above.

10

No severance took place during the joint lives, and on Louis' death William came into possession and enjoyment, by the original transfer from Louis, of this "remainder" interest, which is an estate or interest in expectancy, contingent or defeasible, in the shares of stock of the New Jersey corporations, and was transferred by Louis by an instrument taking effect after 1909. It, therefore, is taxable under the provisions of Sub-section Fourth—at least *prima facie*.

It may be added, in case it be material (and I am inclined to think it is) that the instrument or agreement was a transfer by bargain intended—so far as the "remainder" interest is concerned—to take effect in possession or enjoyment at or after the death of the transferor, Louis. This is obvious, not only because the parties to the agreement must be deemed to intend the legal effect and meaning of their agreement, but also because of the age of the two men and the fact that the incident of right of survivorship is so prominently and especially mentioned, repeatedly, in the agreement. There seems no doubt, from the facts, that that is the one thing they desired to establish and effectuate.

20

30

Let us now turn to the question of consideration. It is clear, I think, from the history and purpose of the legislation on the subject, that by this taxing statute the legislature intended to tax only transfers of a donative nature—and so far as I know or can recollect, there has never been any attempt made in this State to levy a tax

on any contrary theory. Under Sub-section Third of Section 1, if the transferor received a consideration of substantially equal value to the property transferred by him, his transfer would not be deemed taxable. Likewise, if a decedent gave property by will to a man from whom he had in his lifetime received property of equal value in consideration of his promise to make the testamentary gift in question, the testamentary "gift" would probably not be deemed taxable.

- 10 Assuming this to be so—the present case goes quite beyond that situation. Here we have what amounts to mutual promises to make wills in favor of each other, to take effect if the beneficiary survive the testator. The two promises are of equal value, but the actual effect or result is a testamentary benefaction by one only, without any property of equal value having been received by the testator's estate in exchange for the gift. This situation, to my mind, does not come within the implied exception based on the legislative intent.
- 20 So far we have considered the matter, only with regard to the individually owned property which each of the brothers, as acknowledged in the agreement itself, had and transferred to joint ownership with survivorship. The tax has been assessed upon the basis of a previous individual ownership of the entire half interest in the whole of the joint estate created by the agreement, or perhaps it would be more accurate to say, upon the basis of the absence of any prior joint tenancy or right of survivorship in any of the property. I am unable to find that this
- 30 was erroneous. It is true that the agreement refers to the other property as being "jointly owned,"—that they are joint owners, equitably and beneficially, and perhaps legally, of this other property mutually transferred by this agreement, but nowhere does it say that such joint ownership is in technical joint tenancy, or that it has the incident of survivorship. The same thing is true as to the affidavits submitted to the Comptroller. The affidavits speak variously of "common property"; "jointly held";

“common fund”; “community of interest”; “jointly interested”; “joint owners”; “owning everything in common.”

The most that might be argued for appellants is that this evidence is in equipoise as between joint tenancy and tenancy in common. But even that is not the fact, for “joint ownership” does not mean “joint tenancy” alone; parties and tenants in common are joint owners, though not joint tenants.

Joseph Morton, attorney for the brothers, says the purpose of the execution of the agreement was “to establish in proper legal manner the arrangement, agreement and understanding long time theretofore had between the two men respecting the title to their properties.” This is not the same thing as saying that the equitable ownership prior to the execution had been in joint tenancy; rather does it mean that they had long before agreed that they would eventually put their property into an estate in joint tenancy. If there had in fact been a prior equitable joint tenancy the presumption is that Morton would have said so.

To my mind the proofs not only do not establish a prior joint tenancy, or right of survivorship, in any of the property, but rather preponderate in the other direction. Even were the evidence in equipoise, the result, I think, would be the same, for the law does not favor joint tenancies, and the existence of such would be required to appear by at least a preponderance of the evidence.

The assumption was made herein that the shares which each brother contributed to the joint estate were equal. This assumption is, to my mind, warranted by the proofs. Consideration of the affidavits leads one to the conclusion that the shares or interests of the brothers in the property were substantially equal.

The tax was assessed under the “ratio clause” in Section 12, of the statute. No objection has been taken to the method of computation in this regard; nor to the rates,

and it is therefore unnecessary to make any examination in this behalf.

The New York Court of Appeals had before it in *Matter of Orvis*, 223 N. J. 1, a case essentially similar. Two brothers, partners, took from the partnership funds a sum in which they had an equal share as partners, and established it as a fund owned in equal shares by them but to go to the survivor on the death of either. It was there held that the "succession" of the survivor was taxable under the section of the New York statute corresponding to our Sub-section Third of Section 1, as a transfer intended to take effect at death and not exempted by consideration.

The assessment under review will be affirmed.

ENDORSED:

"Filed May 7, 1924,
THOMAS F. MARTIN,
Register."

20

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE }
INHERITANCE TAX OF }
THE ESTATE OF LOUIS }
HUGGINS, DECEASED. }

30

DECREE.

(Filed July 31, 1924.)

This matter coming on to be heard on appeal as in the statute made and provided from assessment of Transfer Inheritance Tax by the Comptroller of the Treasury against the estate of Louis Huggins, deceased, late a resident of the State of Missouri, in the presence of Messrs.

Scammell and Besore, Proctors for Appellants, and Edward L. Katzenbach, Attorney-General, Proctor for Respondent, and the Petition and Answer having been read and the arguments of the respective Counsel having been heard and considered, and it appearing that the assessment of Transfer Inheritance Tax was lawfully assessed on the succession by William Huggins to the one-half interest in the joint estate of the said Louis Huggins, deceased, and the said William Huggins under articles of agreement between them made March 22, 1917, whereby under rights thereunder of survivorship to take effect on and at the death of the survivor the said William Huggins succeeded to the interest or joint ownership and tenancy of the said Louis Huggins, deceased, and the said levy and assessment of Transfer tax being in all respects lawful; 10

It is, on motion of the Attorney-General, on this ninth day of June, 1924, ordered, adjudged and decreed that the assessment of transfer tax be affirmed.

E. R. WALKER, 20
Ordinary.

Respectfully advised:

MALCOLM G. BUCHANAN,
Vice Ordinary.

Endorsed:

"Filed June 10, 1924,
THOMAS F. MARTIN,
Register."

NEW JERSEY SUPREME COURT.

J. O'NEILL FAIRLEIGH AND JOSEPH
MORTON, EXECUTORS OF THE LAST
WILL AND TESTAMENT OF WIL-
LIAM HUGGINS, DECEASED,

Prosecutors,

vs.

10

NEWTON A. K. BUGBEE, COMP-
TROLLER OF THE STATE OF NEW
JERSEY,

Defendant.

On Writ of
Certiorari.

 REASONS.

20

(Filed September 11, 1924.)

The Prosecutors, J. O'Neill Fairleigh and Joseph Morton, by their attorneys, Scammell & Besore, Esqs., submit the following reasons upon which they will rely for the reversal of the order or decree made by Edwin Robert Walker, Ordinary, or Surrogate General and Judge of the Prerogative Court of the State of New Jersey, on the tenth day of June, A. D. 1924, confirming an assessment of transfer inheritance taxes against the state of Louis Huggins, deceased, late of St. Joseph's, Missouri, theretofore made by Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, under and by virtue of an Act of the Legislature of the State of New Jersey, entitled "An Act to tax the transfer of property of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases," approved April 20, 1909, and the various acts amendatory

30

thereof and supplemental thereto, in a certain proceeding before him, on appeal from said assessment, that is to say:

1. Because said taxes were assessed and said assessment sustained upon an alleged transfer of certain property from Louis Huggins, deceased, to William Huggins, upon the death of the said Louis Huggins, whereas said property was held by said Louis Huggins and said William Huggins, as joint tenants at the time of the death of the said Louis Huggins and no transfer thereof, or of any interest therein, taxable under the provisions of said Act of the Legislature, occurred upon the death of the said Louis Huggins, or at any other time; 10

2. Because no transfer of said property, or of any interest therein, was ever made from Louis Huggins to William Huggins, which was taxable under said Act of the Legislature;

3. Because the alleged transfer which took place at the time of the making of the written agreement for the establishment of a joint tenancy was not an actual transfer but a mere ratification of a joint tenancy theretofore existing and said alleged transfer was not taxable under said Act of the Legislature; 20

4. Because whatever transfer took place at the time of the creation of said joint tenancy, was not donative in character but made for a valuable consideration and not taxable under said Act of the Legislature.

WHEREFORE, the Prosecutors pray that said order, or decree, may be set aside, reversed and for nothing holden. 30

CHARLES DE F. BESORE,
Attorney for Prosecutors.

NEW JERSEY SUPREME COURT.

10	J. O'NEILL FAIRLEIGH AND JOSEPH MORTON, EXEC- UTORS OF THE LAST WILL AND TESTAMENT OF WILLIAM HUGGINS, DECEASED, <i>Prosecutors,</i>	}	On Certiorari.
	<i>vs.</i>		
	NEWTON A. K. BUGBEE, COMPTROLLER OF THE TREASURY OF THE STATE OF NEW JERSEY, <i>Defendant.</i>	}	

20

RULE OF AFFIRMANCE.

(Filed November 5, 1925.)

This cause coming on to be heard at the June term, 1925, and the Court having considered the return of the writ of certiorari and the reasons assigned for reversing the decree of the Prerogative Court and being of the opinion that said decree should be affirmed,

30 It is on this fifth day of November, 1925, ordered that the decree of the Prerogative Court removed by the writ of certiorari in this cause be, and the same is hereby affirmed.

Entered November 5, 1925.

On motion of

EDWARD L. KATZENBACH,
Attorney-General.

No. 263. May Term, 1925.

NEW JERSEY SUPREME COURT.

J. O'NEILL FAIRLEIGH AND
JOSEPH MORTON, EXEC-
UTORS OF THE LAST
WILL AND TESTAMENT
OF WILLIAM HUGGINS,
DECEASED,

Prosecutors,

vs.

NEWTON A. K. BUGBEE,
COMPTROLLER OF THE
TREASURY OF THE STATE
OF NEW JERSEY,

Defendant.

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Submitted June 9th, 1925.

Decided October 5th, 1925.

On writ of certiorari.

Before Justices Trenchard, Katzenbach and Lloyd.

For the prosecutors, Charles De F. Besore, Esq.

For the Defendant, Edward L. Katzenbach, Esq.

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PER CURIAM:

After a full examination of this case we have reached
the conclusion that the judgment of the Prerogative
Court should be affirmed for the reasons expressed in
the opinion delivered by Vice-Chancellor Buchanan, and
reported in 125 *Atlantic Reporter* 27.

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NEW JERSEY SUPREME COURT.

10	J. O'NEILL FAIRLEIGH AND JOSEPH MORTON, EXEC- UTORS OF THE LAST WILL AND TESTAMENT OF WILLIAM HUGGINS, DECEASED, <i>Prosecutors,</i>	}	On Writ of Certiorari.
	<i>vs.</i>		
	NEWTON A. K. BUGBEE, COMPTROLLER OF THE STATE OF NEW JERSEY, <i>Defendant.</i>		

NOTICE OF APPEAL.

20 (Filed February 17, 1926.)

Take notice, that the Prosecutors hereby appeal from the whole of the judgment entered in this cause to the New Jersey Court of Errors and Appeals, a last resort in all causes.

Yours respectively,

CHARLES DE F. BESORE,
Attorney of Prosecutors.

30 To HON. EDWARD L. KATZENBACH,
Attorney-General of New Jersey.

NEW JERSEY COURT OF ERRORS AND APPEALS.

J. O'NEILL FAIRLEIGH AND
JOSEPH MORTON, EXEC-
UTORS OF THE LAST
WILL AND TESTAMENT
OF WILLIAM HUGGINS,
DECEASED,
Prosecutors-Appellants,

vs.

NEWTON A. K. BUGBEE,
COMPTROLLER OF THE
STATE OF NEW JERSEY,
Defendant.

On Appeal from the New **10**
Jersey Supreme Court.

GROUNDS OF APPEAL. **20**

(Filed March 10, 1926.)

J. O'Neill Fairleigh and Joseph Morton, Executors of the Last Will and Testament of William Huggins, deceased, the prosecutors-appellants herein, by their attorney, Charles DeF. Besore, Esquire, assign the following grounds of appeal in the above-entitled cause, that is to say:

1. That the taxes were assessed by Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and said assessments sustained upon an alleged transfer of certain property from Louis Huggins, deceased, to William Huggins, upon the death of the said Louis Huggins, whereas, said property was held by said Louis Huggins and William Huggins as joint tenants at the time of the death of the said Louis Huggins, and no transfer thereof, or of any interest therein, taxable under the provisions of an Act of the Legisla- **30**

ture of the State of New Jersey, entitled "An act to tax the transfer of property of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases," approved April 20, 1909, and the various acts amendatory thereof and supplemental thereto, occurred upon the death of the said Louis Huggins, or at any other time;

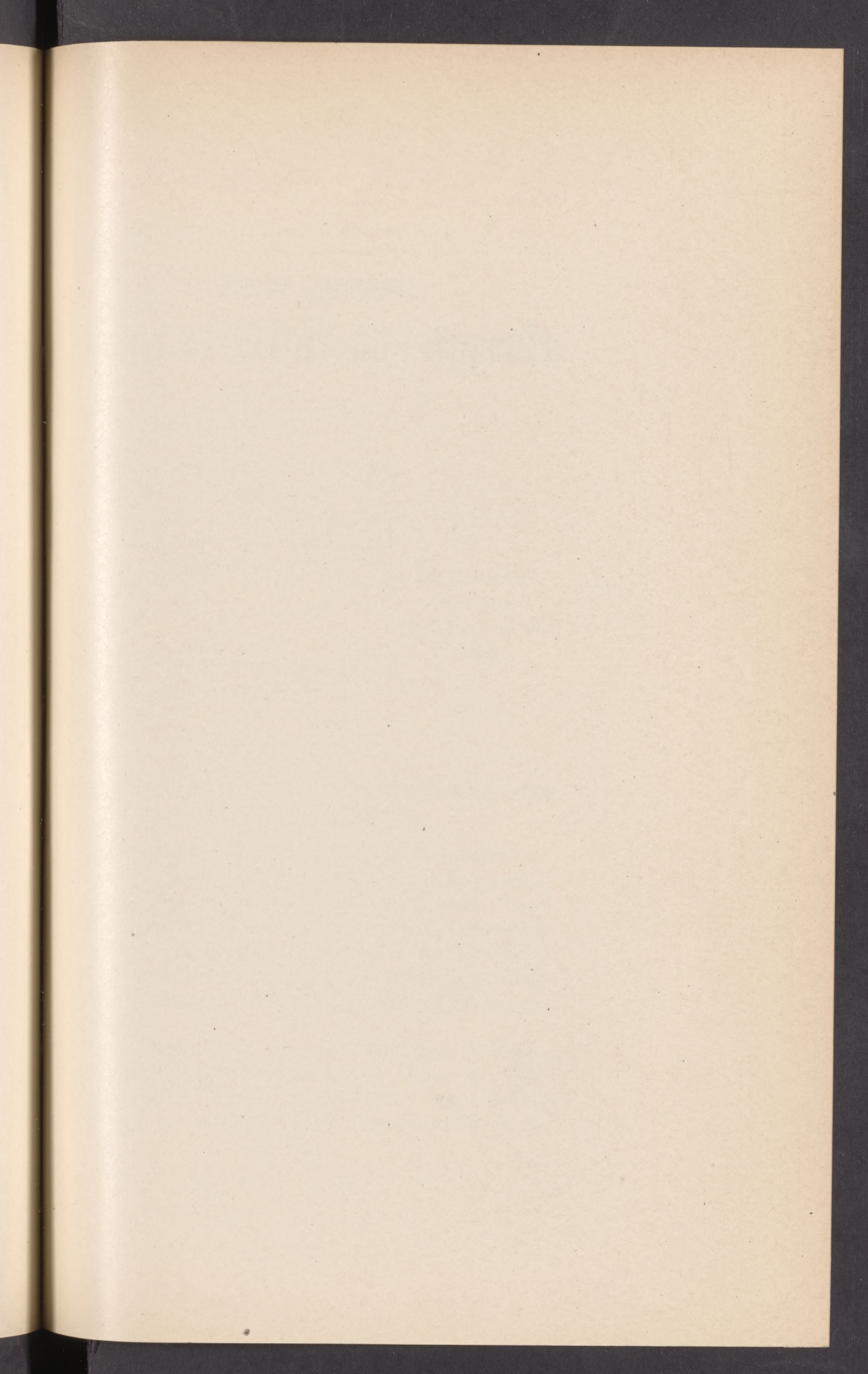
10 2. That no transfer of said property, or of any interest therein, was ever made from Louis Huggins to William Huggins, which was taxable under said act of the Legislature;

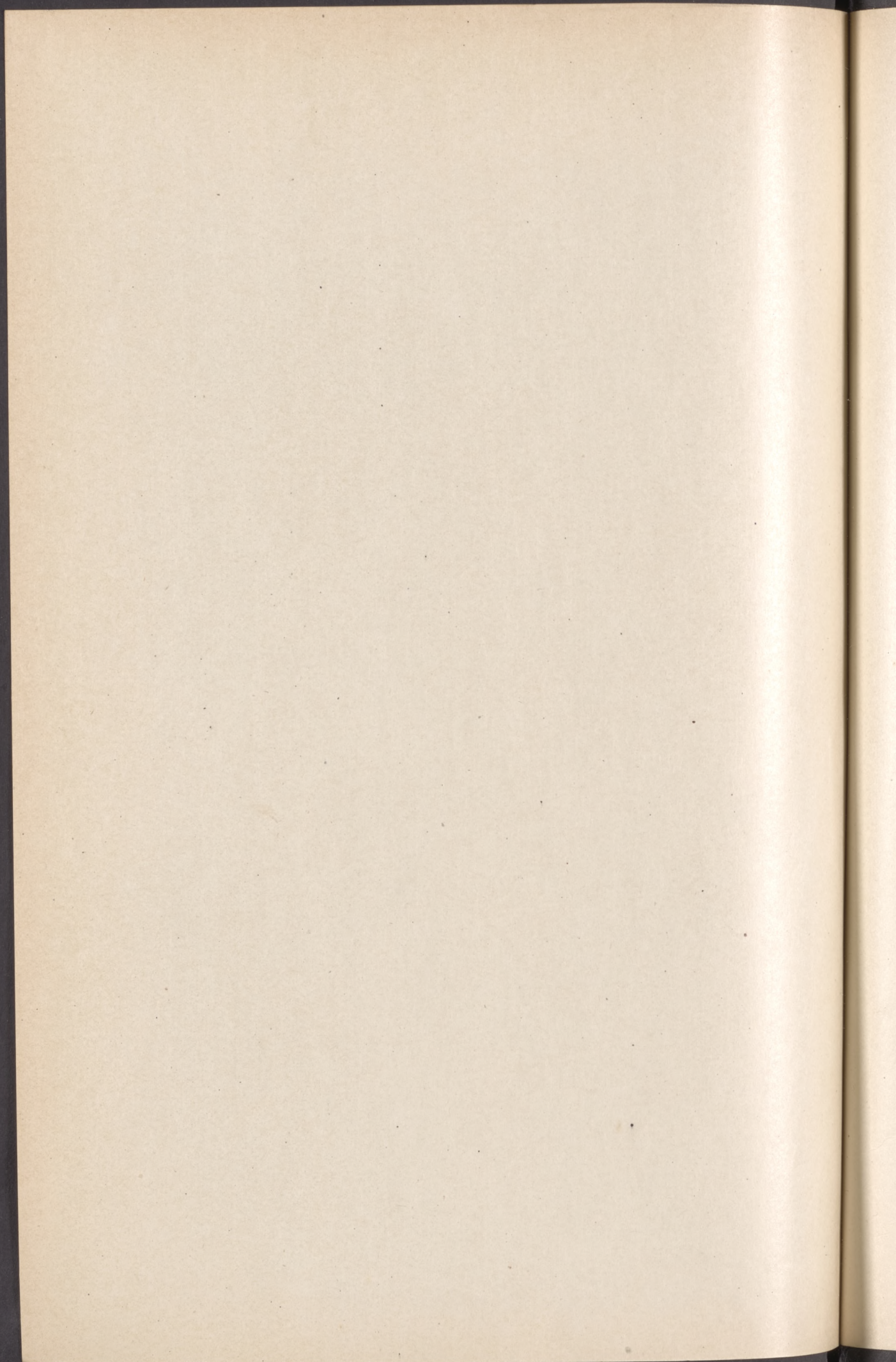
3. That the alleged transfer which took place at the time of the making of the written agreement for the establishment of a joint tenancy was not an actual transfer, but a mere ratification of a joint tenancy theretofore existing and said alleged transfer was not taxable under said act of the Legislature;

20 4. That whatever transfer took place at the time of the creation of said joint tenancy, was not donative in character, but made for a valuable consideration and not taxable under said act of the Legislature.

CHARLES DE F. BESORE,

Attorney for Prosecutors-Appellants.





NEW JERSEY
Court of Errors and Appeals.

J. O'NEILL FAIRLEIGH AND JOSEPH
MORTON, EXECUTORS OF THE
LAST WILL AND TESTAMENT OF
WILLIAM HUGGINS, DECEASED,
Prosecutors-Appellants,

v.

NEWTON A. K. BUGBEE, COMP-
TROLLER OF THE STATE OF NEW
JERSEY,
Defendant-Appellee.

On Certiorari.
On Appeal
from the Supreme
Court.

BRIEF OF THE ATTORNEY-GENERAL FOR
THE DEFENDANT.

This is an appeal from a rule of the Supreme Court dismissing a Writ of Certiorari allowed to review a decree of the Ordinary which affirmed a certain Transfer Inheritance Tax assessment levied by defendant, Newton A. K. Bugbee, as Comptroller of the Treasury of the State of New Jersey, against the estate of Louis Huggins, deceased, who died a resident of St. Joseph, Missouri.

This decedent died January 8, 1918, and an assessment was completed under date of March 20, 1923, showing a tax liability of \$1,758.18. (Pp. 13-14.) This tax was adjusted by the representatives of the

estate under protest. The following statement shows the manner in which the tax was paid. (P. 13.)

Payment on account Feb. 18, 1921, . . .	\$3,552.75	
Taxes assessed,	\$1,758.18	
Interest at 10% from Jan. 8, 1919, to Feb. 18, 1921,	370.88	
		2,129.06

Amount refunded to the estate, . . .	\$1,423.69
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POINT OF LAW.

The sole question at issue is whether the right acquired by a surviving joint tenant upon the death of the other party to the tenancy is a transfer taxable under the Transfer Inheritance Tax Laws of this State, Chapter 228, Laws of 1909, as amended Chapter 151, Laws of 1914, as a transfer intended to take effect in beneficial possession or enjoyment at or after the death of the decedent.

On March 20, 1923, the Comptroller of the Treasury levied a Transfer Inheritance Tax against the estate of Louis Huggins in the amount of \$1,758.18 upon the transfer of 1,200 shares of preferred stock of the National Biscuit Company, thirteen shares of common stock and sixty-two shares of preferred stock of the American Radiator Company, corporations organized under the laws of the State of New Jersey. This assessment was pursuant to the provisions of Section 12, Chapter 228, Laws of 1909, as amended by Chapter 392, Laws of 1915 and Section 1, Chapter 228, Laws of 1909, as amended by Chapter 151, Laws of 1914. It was based on an alleged one-half interest in various items of real and personal property standing in the names of Louis Huggins (deceased) and William Huggins, his brother. As a part of the personal property were the above stocks of New Jersey corporations. The decedent's one-half interest in all of the jointly held property, wherever situate, totaled \$256,217.35

against which deductions in the amount of \$8,373.04 were allowed, leaving the net estate, \$247,844.29. Decedent's interest in the New Jersey property had a value of \$68,781.81. (P. 12, f. 20.)

This assessment on appeal to the Prerogative Court was affirmed. The Supreme Court by Writ of Certiorari reviewed the decree of the Court below and after examination of the return filed pursuant to the command of the writ, dismissed said writ, affirming the findings of the lower Court.

STATEMENT OF FACTS.

The record in this matter indicates that the decedent, Louis Huggins, and his brother, William Huggins, were very closely associated in their social and financial affairs. The affidavit of John S. Logan, Jr., declares that these men were very intimate and for more than twenty years past were practically inseparable. They lived in the same house, made trips together for pleasure and recreation, were members of the same clubs, belonged to the same church, and were understood by the family and their friends, generally, to own everything in common. (Pp. 38-39.)

The affidavits state that title to property was sometimes taken in the name of Louis and sometimes in the name of William, but they were both jointly interested, and it was generally understood that they were joint owners of the interest they represented. (See affidavits of Virginia Weakley, Lawrence O. Weakley, J. O'Neill Fairleigh and Joseph Morton.) (Pp. 35-48.)

Louis Huggins was seventy-six years of age at the time of his death, and William Huggins, his brother, who died February 19, 1920, was, at that time, seventy-seven years old. (P. 40.)

The record further discloses the fact that Louis Huggins, at the time of his death, had no property, real or personal upon which administration was necessary. The only property in which he had an interest being

that held in the names of himself and his brother, William Huggins, jointly and the survivor of them. (P. 42, f. 23.)

The only property subject to the jurisdiction of the State of New Jersey, and upon the basis of which the Transfer Inheritance Taxes have been levied, is twelve hundred shares of preferred stock of the National Biscuit Company and thirteen shares of common and sixty-two shares of preferred stock of the American Radiator Company, corporations organized under the laws of New Jersey. These stocks stood in the names of Louis Huggins and William Huggins jointly and the survivor of them. (P. 15, f. 32.)

Until the year 1917, it appears that these two brothers conducted their business affairs with little regard to the manner in which title to property was taken and the amounts contributed by each. From the affidavits forming a part of the record, it appears that they, because of their exceptionally intimate relation, mingled their properties with practically no regard for individual ownership, but with a mutual understanding that each had an equal interest therein. It appears that in some cases title was taken in the name of Louis, while in other cases it was taken in the name of William, although it is contended throughout that they regarded each other as having an equal interest therein, regardless of the manner in which the title stood.

These two parties, however, in 1917, deemed it advisable to straighten this tangle in their business affairs in order that their respective property rights might be definitely established. Accordingly, a contract was entered into under date of March 22, 1917, which provided as follows (pp. 33-34) :

“Witnesseth, that whereas the legal title to sundry tracts of real estate and sundry articles of personal property, accounts, stocks, notes, bonds, choses in action and securities is vested in the said Louis Huggins in which the said William Huggins has a beneficial and equitable

interest as joint owner thereof with the said Louis Huggins, and whereas the title to sundry tracts of real estate and sundry articles of personal property, accounts, stocks, notes, bonds, choses in action and securities is vested in the said William Huggins in which the said Louis Huggins has a beneficial and equitable interest as joint owner thereof with the said William Huggins, and whereas it is desired by the said Louis Huggins and the said William Huggins to settle, adjust, fix and determine the rights of property of each of them in and to all of said property, real and personal, so held as aforesaid by said Louis Huggins and said William Huggins; and

“Whereas considering the situation and character of said property, real and personal, so held by said Louis Huggins and said William Huggins, they deem it not best to their interests to partition and divide the same in two parcels to be held in severalty by them, but they deem it wise and prudent, as being for the best interest of both of them, and as being a fair and just settlement of the rights of each of them therein that the title to all of said property, real and personal be vested in both of them, the said Louis Huggins and the said William Huggins, to be held by them jointly with the right of survivorship in the survivor of them; and

“Whereas the said Louis Huggins and the said William Huggins are each possessed of an individual estate which they deem advisable for the best interests of both of them to own and hold like their joint estate by joint title with the right of survivorship in the survivor of them;

“Now therefore the said Louis Huggins and the said William Huggins, in consideration of the premises above recited and of the covenants entered into by each with the other herein, do

covenant and agree with each other that from and after the execution hereof the legal title to all said property, real and personal, wherever situate, including all accounts, stocks, bonds, notes, securities and choses in action held by either of them in which the other has an interest and all such property, real and personal, held by either of them individually and all such property, real and personal, held by them jointly and all such property, real and personal, held by any other person or corporation in which they or either of them have an interest, legal or equitable, shall vest in both of them, the said Louis Huggins and the said William Huggins jointly to have and to hold the same unto them the said Louis Huggins and the said William Huggins jointly and unto the survivor of them forever.

“And the said Louis Huggins and the said William Huggins do further covenant with each other that all necessary and proper assignments, transfers, deeds and conveyances of said property, real and personal will be made as speedily as practicable to vest the full and complete title, legal and equitable, of, in and to all of such property, real and personal, in the said Louis Huggins and the said William Huggins jointly and in the survivor of them as above provided.

“In witness whereof the said Louis Huggins and the said William Huggins have hereto set their hands to two copies hereof, one to be retained by each of them, the day and year above written.

“LOUIS HUGGINS.

“WILLIAM HUGGINS.”

Pursuant to the terms of this contract or agreement deeds for all of the real property were executed, vesting the titles in the two brothers, as joint tenants, with the right of survivorship, and title was likewise taken to all

their stocks, securities and other personal property. At the time of the execution of this agreement Louis Huggins was seventy-five years of age and William Huggins seventy-four. The evidence, therefore, definitely establishes the fact that all of the real and personal property of these two persons, at the time of the death of Louis Huggins, was held in their two names as joint tenants with the right of survivorship, and that, therefore, no administration was necessary upon his estate; the other brother succeeding thereto by virtue of his right of survivorship as created by the deeds and the manner in which the title to the various items of personal property was taken.

ARGUMENT.

The Statute.

Chapter 228, Laws of 1909, as amended, Chapter 151, Laws of 1914, section one, relating to the assessment of Transfer Inheritance Taxes in certain cases, provides as follows:

"1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, *or of any interest therein* or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided, in the following cases:

"*First.* When the transfer is by will or by the intestate laws of this State from any person dying seized or possessed of the property while a resident of this State.

"*Second.* When the transfer is by will or intestate law, of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations of this State, or of national banking associations located in this State, and the decedent was a nonresident of this State at the time of his death.

“Third. When the transfer is of property made by a resident, or is of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations of this State or of national banking associations located in this State, made by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death.”

Section twelve of the act is in part as follows:

“12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State *standing in the name of a decedent, or standing in the joint names of such a decedent and one or more persons, or in trust for a decedent*, liable to any such tax, the tax shall be paid to the Treasurer of this State on the transfer thereof. * * * *provided*, there shall be no liability for the payment of such tax and interest, or for such penalty of one thousand dollars, in any case where such safe deposit company, trust company, corporation, bank or other institution, person or persons shall make delivery of securities, deposits, shares of stock or other assets, including the shares of capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, *belonging to or standing in the names of two or more persons, without knowledge or reasonable grounds to believe, that one of the persons to whom such securities, deposits or other assets belong or in whose name they stand is dead.*

“No corporation of this State shall transfer any stock of said corporation standing in the name of or belonging to a decedent, resident or

nonresident, or in the joint names of a decedent and one or more persons, or in trust for a decedent unless notice of the time of such intended transfer be served upon the Comptroller of the Treasury of this State at least ten days prior to such transfer, nor until said Comptroller shall consent thereto in writing."

Section twenty-six of the act provides as follows:

"26. The words 'estate' and 'property,' wherever used in this act, except where the subject or context is repugnant to such construction, shall be construed to mean *the interest of the testator, intestate, grantor, bargainor or vendor passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee or vendee, not exempt under the provisions of this act, whether such property be situated within or without this State. The word 'transfer,' as used in this act, shall be taken to include the passing of property, or any interest therein, in possession or enjoyment, present or future, by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift."*

Attention is also particularly directed to the title to this act which reads as follows:

"An Act to tax the transfer of property of resident and nonresident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases, approved April twentieth, one thousand nine hundred and nine."

(Italics by the defendant.)

It is submitted that the Legislature, according to the object expressed in the title to the act, intended to tax transfers of property, or any interest therein, in certain cases, of a resident and nonresident decedent where such transfer was by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, as more particularly set forth in the body of the act. The act

was intended to reach all transfers, whether made in contemplation of death or to take effect in beneficial possession or enjoyment at or after death, which, if made by a will, would have been subject to a tax.

Carter v. Bugbee, 91 N. J. Law, page 438; *aff'd* 92 N. J. Law, page 390.

In re Bottomley, 92 N. J. Eq., page 202.

Matter of Francis A. Hall, 94 N. J. Eq., page 398; 99 N. J. Law, page 1.

Matter of American Board of Commissioners for Foreign Missions v. Newton A. K. Bugbee, 118 Atl Rep., page 700.

These cases clearly indicate that the act is sufficiently broad not only to tax transfers of property of a decedent when the same passes by will or under the intestate laws, but also reaches those transfers which are either made in contemplation of death or intended to take effect in possession and enjoyment only upon the death of the decedent, provided, of course, that there is involved a transfer of property which is donative in character and not based upon a full valuable consideration. It is to be noted at this point, however, that the mere existence of a consideration does not in itself decide whether the transfer is or is not subject to the provisions of the act, if, as a matter of fact, the general scheme is donative in purpose and the possession and enjoyment of the same is determined by the death of the decedent.

The Court of Appeals of New York, in the *Matter of Orvis*, 179 App. Div., page 1, *affirmed* 223 N. Y. Rep., page 1, clearly establishes the law as to a transfer based upon consideration:

“The Legislature did not intend that a purchaser who had paid full value for the property transferred should directly or indirectly pay the tax besides. We have not decided, however, that subdivision four of the section which we have quoted is applicable only to voluntary transfers or gifts which are within its conditions. (*Matter*

of *Keeney*, 194 N. Y. Rep., page 281-286.) Its language does not permit that conclusion. It makes taxable a transfer by bargain or sale when made in contemplation of the death of the grantor or vendor or intended to take effect in possession or enjoyment at or after such death. The provision discloses a distinction in the legislative mind between a transfer by gift and a transfer by bargain or sale. It enacts, moreover, that transfers by bargain or sale should be taxable or should not always and indiscriminately be nontaxable. The meaning of that enactment must be ascertained from the context and the object sought to be accomplished by the statute. The statute was not intended to restrict or burden the right of persons to transfer property in all legitimate ways and for all the usual and manifold purposes and objects of trade, commerce and purchase, or of voluntary transfers or gifts not made in contemplation of the death of the transferor or intended to take effect in possession or enjoyment after such death. It was intended to tax all transfers which are accomplished by will, the intestate laws of this State, and those made or incepted prior to the death of the transferor in contemplation of or intended to take effect in possession or enjoyment after his death which are in their nature and character instruments or sources of bounty or benefaction and which can be classed as similar in nature and effect with transfers by wills or the intestate laws, because they accomplish a transfer of property, donative in effect, under circumstances which impress on it the characteristics of a disposition made at the time of the transferor's death. *In all cases in which the value of the consideration for the property transferred, under the statutory conditions, is so disproportionately less than the value of the property*

transferred that the transfer is, in the light of reason or of ordinary intelligence and judgment, beneficent and donative, the transfer is taxable."

(Italics by defendant.)

The statute has received the same judicial construction in New Jersey as that laid down by the Court in the *Matter of Orvis*. (*Matter of Bottomley, supra, Matter of Francis A. Hall, supra.*)

In the *Matter of Hall*, Vice-Ordinary Buchanan stated:

"It is the essential character of the transaction which is to be looked at—not the mere legal form thereof. As I had occasion to point out in *Re Bottomley*, 111 *Atlantic Reporter*, page 605, the statute specifically applies to transfers made by way of bargain or sale. * * * The inquiry must be as to whether or not the net practical result and effect of the transaction is a substantial diminution of the assets of the decedent."

It, therefore, resolves itself to the fact that even though some element of consideration may be involved in the transfers, this does not determine the question as to whether or not the same are taxable.

In the *Matter of Security Trust Company, Executor of Leonard Morse, v. Edward I. Edwards*, 89 *N. J. Law*, 396, *reversed* 90 *N. J. Law* 558, the Court of Errors and Appeals of this State, reversing the judgment of the Supreme Court, determined that it was not necessary that the decedent should be possessed of the absolute legal title to the property itself but that the Transfer Inheritance Tax Act was sufficiently broad to reach the transfer of any interest in property which took effect upon the death of the decedent. The Court, upon this point, establishes the following precedent in this State:

"It being firmly established that the stock is subject to succession taxation by the State, it necessarily follows that *not only is the entire*

legal interest in the stock subject to taxation by the State, but, as well every undivided or fractional interest in any such given share of stock, and as well any proprietary interest in such share of stock though it be an interest of a quality different in character from a mere fractional or other legal interest less than the whole."

This opinion was subsequently followed by the Court of Appeals of New York in the *Matter of Hallenbeck*, 231 N. Y., page 409.

It is, therefore, apparent from an examination of the act and the various cases construing the scope of this legislation, that any transfer, taking effect in contemplation of death, or which is intended to pass property or any interest in property in beneficial possession or enjoyment at or after death, which is donative in its character, even though there may be some element of a consideration, is subject to a tax.

Nature and Extent of Decedent's Interest in the Jointly Held Property.

It is well established that a joint tenancy may exist in personal property. See:

Overheiser v. Lackey, 207 N. Y., page 229.

Martin v. Smith, 5 Bin (Pa.), page 16.

Fielder v. Howard, 99 Wis., page 388.

New Jersey Title Guaranty and Trust Co. v. Archibald, 90 N. J. Eq., page 384.

Morristown Trust Company v. Capstick, 90 N. J. Eq., page 22.

Johnston v. Johnston, 173 Mo., page 91.

This form of ownership is looked upon generally throughout the country with disfavor. In the States of Maine, Massachusetts, New Hampshire, Vermont, Rhode Island, New York, Delaware, Maryland, Michigan, Minnesota, Illinois, Wisconsin, Missouri, Indiana, Arkansas, Iowa and California, laws have been enacted regulating the creation of such estates.

By R. S. 1899, Section 4600, the Legislature of Missouri (State of domicile of decedent) has provided that no estate in joint tenancy can be created unless a clear intent to that effect is expressed in the instrument. The law has been so construed in that State.

Johnston v. Johnston, 173 Mo. page 91.

Rodney v. Landau, 104 Mo., page 251.

Lemmons v. Reynolds, 170 Mo., page 227.

The same law prevails in New Jersey. (*Comp. St.*, page 1538, Par. 16.) See also *Den v. Hardenberg*, 10 N. J. Law, page 49.

Also in New York in the case of *Overheiser v. Lackey*, 207 N. Y., page 229.

The Tenancy May be Severed By the Act of Either Party Thereto.

Until the death of one of the parties to a joint tenancy, either tenant therein has the right to dispose of his interest at will in any manner that he might see fit, with the exception that he could not devise or bequeath such interest by his last will and testament. *Tiedeman on Real Property*, third edition, section 177; *Washburn on Real Property*, sixth edition, section 864; *Den v. Hardenberg*, 10 N. J. L., page 49; *Midgley v. Walker*, 101 Mich. 583.

Tiedeman on Real Property, third edition, section 177.

“But a joint tenancy, and therewith the right of survivorship, may be destroyed by a conveyance by one joint tenant to a third person. Although he has not the power to devise his interest, and although there is a joint possession and interest in the estate, he may alien his share to a stranger. Such a stranger would at once become a tenant in common, and the alienation would thus destroy the right of survivorship.” (See cases there cited.)

Washburn on Real Property, sixth edition, section 864.

“Though thus united in their ownership, either tenant may convey his share to a co-tenant, or even to a stranger, who thereby becomes tenant in common with the other co-tenant. If the conveyance be by one of two joint tenants to the other, the estate is turned into one in severalty. * * * In conveying his interest to a stranger, a joint tenant, like a tenant in common, must do so by deed of grant with words of inheritance, if it is intended to pass an estate in fee.”

Chief Justice Ewing in the *Matter of Den v. Hardenberg, supra*, at page 54, states:

“In joint tenancy, either of the owners may at his pleasure, dispose of his share and convey it to a stranger, who will hold undivided, and in common with the other owner.”

Each Tenant is Entitled to an Equal Share of the Income and Profit.

It is also a well recognized rule of law that each party to the tenancy is entitled to an equal share of the income and profits derived from the joint property.

7 R. C. L.—*Cotenancy*, page 826, par. 22. *Izard v. Bodine*, 11 N. J. Eq., page 403. *Fenton v. Miller*, 116 Mich., page 45. *Bates v. Hamilton*, 114 Mo., page 1. *Johnston v. Johnston*, 173 Mo., page 91.

In the *Matter of Johnston v. Johnston, supra*, the Supreme Court of Missouri, at page 109, says:

“It is the fundamental principle of a joint tenancy, that while the parties constitute but one person, so to speak, as far as the rest of the world is concerned, with regard to themselves each is entitled to an equal share of the rents, income, and profits, so long as he lives; and when one dies, the survivor takes the entire interest, to the complete exclusion of the heirs or personal representatives of the party deceased.”

It should be clearly borne in mind that this matter does not involve a case wherein property is owned by husband and wife as tenants by the entirety where the act of one without the consent of the other cannot affect the rights of such other tenant.

Den v. Gardner, 20 N. J. L., page 556. *Vunk v. Raritan River Railroad Co.*, 56 N. J. L., page 395.

The Surviving Joint Tenant Succeeds to Valuable Rights Upon Death of Other Tenant.

But by the very nature of the tenancy, each party thereto holds by moieties and not by the entirety. (*Thomas v. De Baum*, 14 N. J. E., page 37.)

Chief Justice Ewing in the Matter of *Den v. Hardcnberg*, *supra*, at page 54 points out what he considers to be the rights derived by a surviving joint tenant:

"The surviving joint tenant takes something by way of accretion or addition to his interest, gains something he previously had not, the undivided moiety which belonged to the deceased."

The New York Courts in their recent decisions also acknowledge the fact that a surviving joint tenant acquires something through the death of the other cotenant. (*Matter of McKelway*, 221 N. Y. Rep., page 15; *Matter of Teller*, 178 App. Div., page 450; *Matter of Moebus*, 104 Misc. Rep., page 118.)

Cyclopedia of Law and Procedure, Vol. 23, at Page 488, also sets forth quite definitely the rights derived by a surviving joint tenant:

"The distinct characteristic of a joint tenancy is that, upon the death of one of the joint tenants, there being no severance, his interest descends to the survivor or survivors, and at length to the last survivor. Where a joint tenancy exists therefore, whether at common law or under the statutes, on the death of one of the joint tenants and in the absence of statute or otherwise, the

survivors take the whole estate, free from any charges on the property made by the deceased cotenant, and on the death of the last survivor the whole goes to his heirs or personal representatives.

Tiedeman on Real Property, third edition, in section 175, says:

“A joint tenancy is an estate held by two or more persons jointly so that during the lives of all they are equally entitled to the enjoyment of the land or its equivalent in rents and profits; but upon the death of one, his share vests in the survivor or survivors, until there be but one survivor, when the estate becomes one in severalty in him and descends to his heirs upon his death.”

We therefore find that a tenancy of this nature is looked upon with disfavor not only in Missouri, the domicile of the decedent; in New Jersey, the situs of some of his personal property, but in many other States of the country; that either tenant, during the life of both, may sever the tenancy at will and thereby defeat the interests of the other tenant; and in the case of a severance the party acquiring the interest holds, as between himself and the other party, as tenant in common. It is also equally well established that each tenant is entitled to his respective share of the income and profits of the joint property and is entitled to equal control and rights thereover. It is also recognized in the law that the survivor of such a tenancy acquires an additional interest in the property by the death of the deceased, namely, that “*moiety which belonged to the decedent.*” (*Den v. Hardenberg, supra.*)

It might be noted at this stage that the Comptroller has at no time in this proceeding contended that any portion of the joint property, beyond the extent of the decedent's interest therein, was subject to a tax, and, as a matter of fact, in the history of Inheritance Taxation in this State, so far as can be recalled, has never attempted to assess a Transfer Inheritance Tax upon the

rights of a surviving joint tenant where such rights were not donative in character and which did not vest in the surviving tenant property rights which were substantially in the form of a gift. The rights of a surviving joint tenant where it could be proved were donative in character have been subjected to the provisions of the Transfer Inheritance Tax Act of this State from 1914 to date, without a single case reaching the Courts for review.

Until the death of Louis Huggins, each joint tenant was entitled to fifty per cent of the income from the property, and the right to dispose of his interest therein, which was also fifty per cent. Upon the death of Louis Huggins his right to the income from the property ceased as well as his right to dispose of his interest in the joint tenancy. These valuable interests in the property vested upon his death in William Huggins, the survivor, and thenceforth increased his holding from fifty per cent to one hundred per cent. The rights retained by each of these joint tenants in the property involved were analogous to those of a donor under a revocable deed of trust, wherein he also reserves the right to the income during his lifetime. Since until the death of Louis Huggins he had the right to dispose of his interest in the joint property there could, of course, be no vested interest in his share of the property in William Huggins, the survivor, either in title or in beneficial possession or enjoyment and there could therefore be no objection to a tax, based upon constitutional grounds, as heretofore passed upon by the courts of this State in the case of *Carter v. Bugbee, supra*. This element of the case will be more fully discussed later.

As heretofore pointed out no cases have ever been before the courts of this State involving the question of the right of the State to levy a Transfer Inheritance Tax in the case of joint tenancies. Analogous cases, as above referred to, and more fully argued hereafter, have, however, been decided by our courts.

This identical point has been before the courts of New York in several cases and reference thereto follows in view of the decisions in New Jersey to the effect that consideration will be given to decisions of the New York courts under certain circumstances:

Clay v. Edwards, 84 N. J. Law, page 221.

Hopper v. Edwards, 88 N. J. Law, page 471.

Torrence v. Edwards, 89 N. J. Law, page 507.

The Law in New York.

This question appears to have presented itself for the first time in New York in the *Matter of Stebbins*, 52 Misc., page 438. Surrogate Brown, of Monroe County, during the month of January, 1907, rendered a decision wherein he determined that when moneys were deposited in the names of husband and wife with the provision that either or the survivor might draw, there was no Transfer Tax chargeable upon the right of a surviving joint tenant to the entire account.

The same surrogate held to the same effect in the *Matter of Graves*, 52 Misc. Rep., page 433, another case decided by him during the month of January, 1907. As it will be noted hereafter, these two decisions were not generally followed by the lower courts of that State. Chrystie on Inheritance Taxation, at page 788, also points out this fact when he says:

“The cases of *Matter of Stebbins*, 52 Misc. 438 (1907), and *Matter of Graves*, *id.* 433, both Monroe County, are frequently quoted by attorneys, but these decisions have not been followed in many of the later adjudications. *Matter of Kline*, 65 Misc. 446; *Matter of Von Bernuth*, N. Y. Law Journal, March 1, 1913, *post*, page 791.”

This case was followed by the *Matter of Kline*, 65 Misc. Rep., page 446. Surrogate Miller, of Oswego County determined that the deposits of a husband and wife of moneys belonging to each to be credited to their joint names, the entire fund to be paid to the survivor,

was subject to a tax upon the death of one of the joint tenants as a transfer intended to take effect in beneficial possession and enjoyment at death. It might be specifically pointed out, however, that the surrogate determined only that part of the different deposits as was the property of the decedent when deposited, was subject to a tax upon his death. Such is the contention of the Comptroller in the present case.

Matter of Spring, 75 Misc. Rep., page 586, was decided by Surrogate Ketcham, of Cattaraugus County, during the month of February, 1912. This case involved the assignment of several mortgages to a mother and a daughter with the provision that the survivor of them would become the absolute owner thereof, and that neither should have the power to affect the rights of the other. The surrogate determined that the interest which the daughter took in one-half of the securities upon the death of her mother was subject to a tax. The appellant in that particular matter, however, claimed that the transfer to these two persons jointly with the right of survivorship, vested the title in the survivor, and that, on the death of one, the title of the survivor related back to the date of the original transfer. The surrogate, in answering this claim, stated:

“It is of no importance to consider whether or not these transfers bestowed title or ownership at the time when the mortgages were assigned.

“If the claim of the executrix in this respect were conceded the transfers would, nevertheless, be taxable under the expressions of the statute.”

He further points out that under each of the several assignments the decedent received a right at least equal to that of her associate assignee, to collect interest upon the mortgages. It is to be noted that this opinion was rendered even in face of the fact that the tenants, apparently, under the provisions of the assignments did not have the right to defeat the rights of the other, which, of course, is far more limited than in the

case of an ordinary joint tenancy where either party has the right to work a complete severance of the ownership.

This case was followed by the *Matter of Pitou*, 79 Misc. Rep., page 384. Surrogate Ketcham (as in *Matter of Spring, supra*), again expressed his opinion that the right of a surviving joint tenant in bonds and mortgages was subject to a tax to the extent of at least a one-half interest, the presumed interest of a decedent in jointly held property where the exact amount of contributions by each to such property could not be definitely established. The surrogate further points out in this case those difficulties arising under so-called "joint tenancies in personal property." In the course of his opinion he holds that each joint tenant owned his or her one-half interest down to the moment of the decedent's death, at which time the survivor became the owner thereof and a transfer of this one-half was within the statute a transfer "*intended to take effect in possession and enjoyment upon his death.*"

Matter of Durfee followed. (79 Misc., page 655.) A case decided by Surrogate Knapp, March, 1913. It was again determined that one-half of the balance of joint bank deposits standing in the names of decedent and his wife, payable to the survivor, became transferable as a gift to the wife upon the death of her husband and was, therefore, intended to take effect in possession or enjoyment at or after his death. The surrogate states:

"Whatever this transaction may be called, whether it was an uncompleted gift in the nature of a trust or a joint tenancy, the fact still stands out that it was the evident intent and purpose of both the husband and his wife, and it appears by the testimony, that the accounts in these savings banks should be for the common use of both—he put his money in the accounts, and she put in hers. * * * The possession was joint. The right to reduce was several. It was revo-

cable. It became irrevocable at the death of one, and the right to reduce to possession in the lifetime of both resolved into the absolute and sole possession of the balance remaining at the death of one.

"It seems to me that so much of these deposits as was the property of the decedent became transferable at his death as a gift to his wife intended to take effect in possession or enjoyment at or after his death." (Italics by defendant.)

In the Matter of Von Bernuth's Estate, 143 N. Y. Supp., page 672, the next case that came before the Surrogate's Court, Surrogate Fowler, under date of March 1, 1913, decided that where a husband and wife deposited money belonging to the wife with a trust company, at the same time signing statements declaring that they were joint owners of the fund, that either one, before or after the death of the other, might sign drafts or orders, and that on the death of either the survivor should take absolute and single ownership of the balance, there was a transfer of property upon the death of the wife to the extent of the balance of the account at that time and a transfer tax was, therefore, properly assessed. Surrogate Fowler in the course of his opinion relates the various New York cases upon this subject.

In the Matter of Reed, 89 Misc., page 632, Surrogate Ostrander, of Saratoga County, in March, 1915, concluded that a joint account, representing moneys of the decedent, passed, upon the death of the decedent, to the survivor and was subject to a transfer tax.

In addition to the regularly reported decisions above referred to, there were several other cases, reference to which can only be found in the New York Law Journal or in *Chrystie on Inheritance Taxation* at pages 789-794 and 804 as follows:

Matter of Joseph Wunsch, N. Y. Law Journal, January 24, 1913.

Matter of Virginia Wallace, N. Y. Law Journal, June 21, 1913.

Matter of Sarah Heiser, N. Y. Law Journal, July 19, 1913. (Chrystie on Inheritance Taxation, page 804.)

In the matter of *Sarah Heiser*, the last case above referred to, Surrogate Fowler determined that where all the property was originally owned by decedent and her sister as tenants in common but subsequently conveyed to a third person and then assigned and transferred to the decedent and her sister as joint tenants, the right of the survivor to the entire property was not subject to a tax upon the death of one of such tenants. The surrogate stated:

“But if the joint tenants have contributed out of their individual funds to the purchase of the property held by them as joint tenants, the right of the survivor to take the entire property is not a gift from the other joint tenant, but a right derived from the contract entered into between them at the time the instrument creating the joint tenancy was executed. A contract by which each of two persons holding property as tenants in common transfers his interest therein to the other, if he survives, is supported by a good consideration and is not subject to revocation.

“When the decedent and her sister as tenants in common of the bonds and mortgages mentioned in the appraiser’s report agreed with each other to transform the nature of their tenancy in the property from tenants in common to joint tenants, each of them surrendered rights over the property in consideration of the right of survivorship conferred by the instrument creating the joint tenancy. Instead of each owning an undivided one-half of the property, subject to sale, assignment or to transfer by will, each took under the instrument creating the joint tenancy an undivided half which was not subject to

sale, assignment or to transfer by will. Each, therefore, parted with a valuable consideration for the right to take the entire property as survivor."

It is not clearly understood upon what grounds the surrogate concludes that the parties to such a joint tenancy do not have the right to sell or assign their interest therein, since it seems to be the accepted law relative to this sort of a tenancy, that either joint tenant may sell or otherwise dispose of his interest in the jointly owned property at will. The surrogate concedes that had the entire joint property been contributed by one of the joint tenants that there would have been a tax upon the death of one of the tenants upon the entire property, since this would have been in the nature of a gift intended to take effect at or after death. If it can be readily conceded that where all of the property originally belonged to one of the joint tenants, there is a tax, it would seem to follow that in a case where each tenant contributed equally thereto, there should also be levied a tax, at least to the extent of their respective interests therein. This case also seems to disregard the accepted rule of law relative to the question of consideration in executory arrangements of this nature which become fully determinable only upon death. (*Matter of Orvis*, 179 *App. Div.*, page 1; *aff'd* 223 *N. Y. Rep.*, page 1.)

From an examination of the various opinions of the surrogates in the lower courts it is readily noticeable that the law in New York on this subject was, until 1915, not very definitely established. The weight of authority, however, seemed to conclude that the right of a surviving joint tenant was at least subject to a tax to the extent of the decedent's contribution to such jointly held property.

At about the time of his opinion in the *Matter of Sarah Heiser*, *supra*, Surrogate Fowler, in the *Matter of De Escoriaga's Estate*, 149 *N. Y. Supp.*, page 796, determined that the right of a surviving joint tenant

to the entire interest in a parcel of real property held by them in joint tenancy was not subject to the Transfer Inheritance Tax Act. He stated in the course of his opinion:

"If the grantor, although old and infirm and contemplating his early demise, conveys his real estate in the ordinary course of business for a valuable consideration, such transfer is not subject to a transfer tax. It is only when the conveyance to the grantee is not supported by a valuable consideration, and is made in contemplation of the death of the grantor, or intended to take effect in possession or enjoyment at his death that it is subject to a transfer tax."

He stated that in order to justify the imposition of a tax it was incumbent upon the State Comptroller to show that the deed was given by grantor as a gift to the grantee and that it was given in contemplation of death or intended to take effect in beneficial possession or enjoyment at or after death. He stated that if it was a gift it would be subject to a tax, but concluded that the evidence submitted to the appraiser did not show that it was a gift, since the deed recited, "\$1.00 and other good and valuable consideration," which presumption of consideration was not rebutted by the State. While it might be true in this case that the Surrogate intimated that the State should have taken further testimony as to the actual consideration involved in the transfer, it must be admitted that his decision cannot be understood, if such was not his intention, since it seems to be the accepted law that proof can be submitted to show conclusively that the transfer was in the nature of a gift and not for a full valuable consideration even though an expression to that effect may be contained in the instrument.

Until the year 1915 apparently no case involving the right to tax the survivor of jointly owned property had reached the Supreme Court or the Court of Appeals of New York.

The first case which seems to have been decided by the Supreme Court and later affirmed by the Court of Appeals upon this subject was the *Matter of Tilley*, 166 *App. Div.*, page 240, affirmed 215 *N. Y. Rep.*, page 702.

This case seems to have finally determined the law in New York on the question of joint tenancies in bank deposits and the right to a tax in such a case. In this matter the appraiser found that the decedent was the owner of one-half of several joint accounts, the other one-half being owned by his wife, the survivor. The Supreme Court in the course of its opinion states:

“The great incident of joint tenancy is the right of survivorship and by reason of this right the interest of a joint tenant is not descendible and cannot be devised by will. No right passes by the death of one of the parties, for where the deposit is in the joint names of the parties and the intent appears—as it now must under the statute—to create the joint tenancy, its effect is to vest title in the entire fund in the survivor. The right of survivorship vests on the creation of the joint tenancy, and the only question determined by death is which shall take the entire estate. * * * The possession is given upon the creation of the estate; the rights are absolutely and conclusively fixed, and the only question which is contingent is which of two or more joint tenants shall eventually own the entire estate * * * *It was then that the rights vested, and the death only determines which shall be the gainor by the transaction.* While there might be a joint tenancy created which would be so obviously fraudulent in its inception as to take it out of the general rule, we are persuaded that where an account is created in the manner permitted by the Banking Law, with all of its incidents known and recognized in the law, it cannot be presumed that there was any other intention than that which the law as-

scribes to such an act and that property thus disposed of is not 'made in contemplation of death of * * * death,' as the language is understood in the jurisprudence of this State, nor 'intended to take effect in possession or enjoyment at or after such death.' "

The Court, however, admits that the survivor of a joint tenancy is the "gainor." It is not understood exactly what the Court meant when they said that if there was a joint tenancy which was so obviously fraudulent in its inception as to take it out of the general rule there might possibly be a tax chargeable. If this was intended to refer to such a case as where the decedent and the other joint tenant had, previous to the creation of such tenancies, owned their property individually or as tenants in common, and then, at a very advanced age pooled their property and created joint tenancies with the right of survivorship, apparently for the purpose of passing the ownership of the entire property to the survivor thus avoiding the complications of administration, the making of joint wills, the uncertainty of probate and the imposition of taxes then it must be clearly seen that the case now before the department is of exactly that nature. No motives other than as just referred to can be ascribed to the brothers' action in the present matter.

This case was followed by the *Matter of Klats*, 166 *App. Div.*, page 921, reversed 216 *N. Y.*, page 83. In addition to the matter of tax there was a further question in this matter as to whether or not the tenancy created between the husband and the wife was that of tenants by the entirety or tenants in common. The Surrogate in disposing of the case concluded that there was a tenancy by the entirety and that there was no tax chargeable upon the right of the surviving tenant. The Court of Appeals, in overruling the decision of the Surrogate determined, however, that this was not a tenancy by the entirety but a tenancy in common and that, therefore, the tax chargeable as to one-half of the property

was properly levied. In this matter it is interesting to note the reasoning of the dissenting opinion of Chief Justice Willard Bartlett in the Court of Appeals. He concurred with the Court in that the transfers in that particular case should be subject to a Transfer Inheritance Tax to the extent of a one-half interest but not by reason of the fact that the properties were held by the parties as tenants in common as the Court in its opinion decided, but upon the theory that the properties were held by the parties as tenants by the entirety, and that the one-half which the survivor succeeded to upon the death of the decedent was subject to a tax as intended to take effect in beneficial possession and enjoyment at the death of the decedent. He points out quite clearly what he is of the opinion the rights of a tenant by the entirety are when he states as follows (216 N. Y., at page 89):

“The estates and rights of the husband and wife were these: Each was entitled to the enjoyment, use and profits of an undivided half during his or her life with an absolute fee in the whole in case of surviving the other. (*Hiles v. Fisher supra.*) The undivided half to the enjoyment, use and profits of which the husband was entitled during his life never passed into the possession of the wife until her husband's death, and, consequently, then became subject to that provision of the tax law which declares that a transfer tax shall be imposed where the transfer is of property made in consequence of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.” (*Matter of Brandreth*, 169 N. Y., page 437.)

This declaration by the Chief Justice is rather difficult to understand in view of the decisions of the Court of Appeals in the *Matter of Tilley, supra*, and *Matter of Thompson*, 151 N. Y. Supp. 244; 167 App. Div. 356; 217 N. Y. Rep. 609. It might also be pointed

out that this seems to be the only case previous to the amendment of the Tax Law in 1915 to elicit an opinion by the Court of Appeals upon this subject, appeals in other cases to this court being disposed of without opinion. This expression by the Chief Justice therefore intimates the possibilities of a tax even in the case of tenancies by the entirety.

In the *Matter of Thompson, supra*, the Appellate Division determined that the interest of a surviving joint tenant was not subject to a tax. To the same effect is the *Matter of Dalsimer*, 167 App. Div. 365. The Court in its opinion in the *Matter of Dalsimer* stated:

“No right passes by the death of one of the joint tenants and its only effect is to vest the entire title in the survivor * * * in other words, the only question determined by the death is which of the joint tenants takes the whole.”

As it will be more fully pointed out later, these expressions by the higher courts have been considerably modified. It would seem that their narrowed ideas of the rights of a surviving joint tenant had about reached their limit when these cases were decided, and from that time on their opinions expressed a much broader view of the subject, and determine what the Comptroller of the State of New Jersey has always contended has been the rights of a surviving joint tenant and the right to levy a tax upon such benefits so acquired by such survivor.

After it was definitely established by the *Matters of Tilley, Thompson and Dalsimer* that the rights of a surviving joint tenant in both real and personal property was not subject to a Transfer Tax upon the death of one under the provisions of the Inheritance Tax Act then in effect, the Legislature of New York, during the year 1915, amended paragraph 220 of the Tax Law, Subdivision 7—by Chapter 664, Laws of 1915. This amendment provided as follows:

“Whenever intangible property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor by will.”

This legislation immediately resulted in considerable litigation. Several cases came before the Surrogate's Courts of New York in which various opinions conflicting in many respects were rendered. These cases are collected in *re Cossitt's Estate*, 198 N. Y. Supp. 560, as follows:

Matter of Reardon's Estate, 182 N. Y. Supp. 218.

Matter of Weissbach's Estate, 111 Misc. Rep. 501.

Matter of Van Deusen's Estate, 118 Misc. Rep. 212.

Matter of Bigelow's Estate, 108 Misc. Rep. 601.

Matter of Chases' Estate, 112 Misc. Rep. 684.

Matter of Koch's Estate, 117 Misc. Rep. 227.

Lydig's Estate, 184 N. Y. Supp. 542.

Horler's Estate, 161 N. Y. Supp. 957; 168 N. Y. Supp. 221.

The first case before the higher courts under this amendment appears to have been the *Matter of McKelway*, 176 *App. Div.*, page 929; reversed 221 *N. Y. Rep.*, page 15. The Court of Appeals in this matter determined that where husband and wife owned jointly, certain securities, that for the purpose of taxation the wife was deemed to have acquired the husband's interest in the joint property by his death and was, therefore, taxable under the statute. They particularly pointed out that as to the one-half which the wife already owned she gained nothing by the death of the husband except the elimination of his interest, and such one-half was, therefore, not taxable.

The opinion in this case expresses quite differently the highest court's ideas regarding the rights acquired by a surviving joint tenant as hereinbefore referred to. They point out with considerable care the fact that either party to a joint tenancy may dispose of his interest therein at will, and that the decedent, during his lifetime, was entitled to an equal interest in the income and the profits of the jointly-owned property. In view of its importance to the present case the portion of the opinion in point is cited as follows:

"Mr. and Mrs. McKelway owned this personal property as joint tenants but not by the entirety. There is a joint ownership of personal property analogous to a joint estate in lands (*Overheiser v. Lackay*, 207 *N. Y.* 229, 236), but husband and wife do not take personal property as tenants by the entirety. (*Matter of Albrecht*, 136 *N. Y.* 91, 94.) Joint tenants, by reason of the combination of entirety of interest with the power of transferring in equal shares, are said to be seized per my et per tout; or by the half and the whole, but tenants by the entirety are seized per tout et non per my, and the conveyance by either husband or wife will have no effect against the other if survivor. (*Hiles v. Fisher*, 144 *N. Y.* 306.) Upon the vesting of an estate by the en-

tirety, both tenants become seized of the whole estate and upon the death of one the survivor acquires no new or additional interest by survivorship. (*Matter of Klatzcl, supra.*) But joint ownership in personal property may be severed by the act of one in disposing of his interest. If the interest of one joint owner passes to a third party he and the other joint tenant become tenants in common. The doctrine of survivorship applies only if the jointure is not severed. (*Williams on Personal Property, pp. 302-306.*) The undivided half of this joint property which Mr. McKelway might have effectually disposed of at any time during his life never passed into the absolute ownership of his wife until her husband's death. A transfer tax thereon does not diminish the value of a vested estate and is free from the objections to a tax on vested remainders and reversions as set forth in *Matter of Pell* (171 N. Y. 48), or to a tax on contingent remainders as set forth in the *Matter of Lansing (supra)*.

"As to the one-half which Mrs. McKelway herself owned and had the right to dispose of, the rule of the Pell case must govern. She gained nothing in regard thereto by the death of her husband except as the *jus accrescendi* eliminated his interest. The right of the survivor of two joint tenants of personal property to the exclusive ownership thereof may be deemed a taxable transfer of one-half of the joint property but not to the whole. It is taxable only to the extent of the beneficial interest arising by survivorship, which is, as we have seen, the accruer by survivorship of the whole instead of the half. To this extent it was a property right fully acquired only on survivorship, analogous to an interest created by a power of appointment under a will executed prior to the enactment of the

law taxing transfers, and, therefore, one that could be cut down by the imposition of an excise tax after the joint ownership began. (*Matter of Vanderbilt*, 50 *App. Div.* 246; 163 *N. Y.* 597.) The imposition of such a tax violates no contract for neither joint tenant agrees not to terminate the joint tenancy. Mrs. McKelway had no contract with her husband as to the joint property which was not as ambulatory as a will to the last moment of Mr. McKelway's life and, for the purposes of taxation, she is deemed to have acquired his interest in the joint property by his death."

Matter of Teller, 178 *App. Div.*, page 450, another case under the amendment of 1915, followed the McKelway case.

Next came the *Matter of Dolbeer*, 104 *Misc. Rep.*, page 118. This case was affirmed by the Appellate Division, 186 *App. Div. Rep.*, page 963, but was reversed by the Court of Appeals, 226 *N. Y. Rep.*, page 623, wherein they held that the tax should be chargeable upon the entire joint property and not merely upon a one-half interest. Surrogate Ketcham in his decision, 104 *Misc. Rep.* at page 120, said:

"It is clearly intimated (*Matter of McKelway*, 221 *N. Y.* 15; *Matter of Teller*, 178 *App. Div.* 450; *Matter of Moebus*, *Id.* 709) that the surviving joint tenant of a bank deposit, whether the account was opened before or after the amendment quoted supra took effect, was possessed of an undivided one-half of the deposit at all times after the deposit was made; that the only thing which comes to the surviving joint tenant upon the death of the co-tenant is the right of the latter, and since no transfer is effectuated by the death as to the one-half always owned by the survivor, a transfer tax is not to be imposed thereon."

Even fortified with this legislation providing for a Transfer Tax upon jointly owned property to the extent of the whole of such property the same as if it belonged absolutely to the deceased, the various courts in their construction of this act still looked toward the question as to how each contributed toward the joint property and whether or not there was any transfer in the nature of a gift upon the death of one of the joint tenants and if so concluded that a tax should be levied accordingly.

In re Weissbach's Estate, 183 N. Y. Supp. 771.

Matter of Buchanan, 184 App. Div. 237.

Matter of Dolbeer, 226 N. Y. 623.

It appears that the courts of New York, after the amendment to the Inheritance Tax Act of 1915, took an entirely different view of the rights of a surviving joint tenant and the question of the right to levy a tax thereon, than had been expressed in any of their previous decisions. The courts seem to be unanimous in the conclusion that where the jointly owned property was contributed to, one-half by each, there was a tax to that extent upon the death of one. It, of course, can be accepted without argument, that the amendment to the Transfer Inheritance Tax Act of New York, did not in any manner effect the common law rights of joint tenants nor the nature of the benefits acquired by the survivor thereof. Their interests and rights in such property were always the same. What this legislation did do, however, was to lead the courts to an expression as to what had always been the fact relative to the rights acquired by a surviving joint tenant. That there were valuable property rights passing upon the death of one of the joint tenants to the survivor which the survivor did not have previous to that time, there can be little doubt as expressed in the Matters of McKelway, Teller, Moebus and Dolbeer, *supra*.

Gleason and Otis, third edition 1923, at page 195, refers to the change in the trend of the New York Decisions regarding this subject of the law:

"It is difficult to reconcile the Dana, and Thompson and Dalsimer cases. The fact that the gifts were from husband to wife was not sufficient to alter the nature of the tenancy; and the fact, in the two latter cases, that the tenancy was created by gift was possibly over-looked.

"No true common law joint tenancy can be created by gift because there is no unity of title. Nor does the reservation of a power to revoke afford the distinction because, by its very nature, a joint tenancy is always revokable by conveyance at the option of either joint tenant."

We therefore have the expression of the Supreme Court, Third Department, in the Matter of Tilley, supra, to the effect that :

"No right passes by the death of one of the parties, for where the deposit is in the joint names of the parties, and the intent appears—as it now must under the statute—to create the joint tenancy, its effect is to vest title in the entire fund in the survivor. * * * The right of survivorship vests in the creation of the joint tenancy, and the only question determined by death is which shall take the entire estate. Under such circumstances it is clear that there is no succession to be taxed, for it was not 'made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.' The possession is given upon the creation of the estate; the rights are absolutely and conclusively fixed, and the only question which is contingent is which of two or more joint tenants shall eventually own the entire estate, but each is in full possession, each has full ownership as against all the world, with the exception of the equal right of the others, and the transfer which becomes fully determined at the death of one of two joint owners relates back to the creation of the estate.

It was then that the rights vested, and the death only determines which shall be the gainor by the transaction."

While the Court of Appeals on the same point in the case of McKelway said:

"The undivided half of this joint property which Mr. McKelway might have effectually disposed of at any time during his life never passed into the absolute ownership of his wife until her husband's death. * * *

"As to the one-half which Mrs. McKelway herself owned and had the right to dispose of, the rule of the Pell case must govern. She gained nothing in regard thereto by the death of her husband except as the jus accrescendi eliminated his interest. The right of the survivor of two joint tenants of personal property to the exclusive ownership thereof may be deemed a taxable transfer of one-half of the joint property but not to the whole. It is taxable only to the extent of the beneficial interest arising by survivorship, which is, as we have seen, the accruer by survivorship of the whole instead of the half."

These expressions by the higher courts of New York are, of course, contradictory and indicate clearly that there has been a change in the judicial opinion relating to the rights of a surviving joint tenant. To urge that each of two joint tenants has the full ownership as against the world with the exception of the equal right of the other joint tenant, seems to beg the question—why is it not more logical to say that each joint tenant was possessed of an equal moiety of the whole subject to be increased to an entirety in the case of the one surviving.

**It is Not the Form But the Essence of the Transfer
Which Determines its Liability to Tax.**

The more recent opinions by the N. Y. courts seem to correctly state the law in respect to joint tenancies and follow the many cases which hold that the law searches out the reality and is not halted or controlled by the form.

Matter of Orvis, 223 N. Y. Rep., page 1.

Matter of Reish, adm., v. Commonwealth of Pennsylvania, 106 Pa. St. Rep., page 521.

Matter of Brandreth, 169 N. Y., page 437.

In re Dobson's Estate, 132 N. Y. Supp., page 472.

Matter of Bottomley, 92 N. J. Eq., page 202.

Matter of Hall, 94 N. J. Eq., 398.

In the *Matter of Orvis* the Court said:

"The taxability does not depend upon fraud or an attempt to evade the statute; nor does it depend upon the purpose or inducement of the transfer; nor does it depend upon the form given the transfer. The law searches out the reality and is not halted or controlled by the form. (*Matter of Gould*, 156 N. Y. 423.) The measure determining the liability or freedom from liability to the tax is the nature, the essence, the effect of the transfer. If, in truth, it, in effect, bestows, under statutory conditions a bounty or benefaction and is not a transfer for money's worth, it is taxable."

In the *Matter of Reish* the Court said:

"It is true, the obligation of the bond was not inserted as a condition or reservation in the deed, it was in form a mere personal obligation; but this contention does not involve a technical question of title nor of lien, the whole matter depends upon a single fact, whether or not the transfer was made or intended to take effect in enjoyment at the death of the grantor. The

policy of the law will not permit the owner of an estate to defeat the plain provisions of the Collateral Inheritance Law by any device which secures to him, for life, the income, profits, and enjoyment thereof; it must be by such a conveyance as parts with the possession, the title, and the enjoyment in the grantor's lifetime."

In the *Matter of Smith v. Douglass County, Nebraska*, 254 *Fed. Rep.*, page 244, the Circuit Court of Appeals, 8th District, determined that the interest acquired by a surviving joint tenant was not subject to an Inheritance Tax, as did also the Court in the *Matter of Attorney-General v. Clark*, 222 *Mass.*, page 291. While on the other hand in *U. S. v. Robertson*, 183 *Fed. Rep.* 711, Baker, J. of the Circuit Court of Appeals, 7th Circuit, determined that the rights acquired by a surviving joint tenant were subject to a tax under the War Revenue Act of 1898.

Attention is particularly called to the reasoning of the Court in the case of *U. S. v. Robertson*, *supra*, at page 714.

"So we come to the question: Did the title of defendant to one-half of the share that James Law possessed in his lifetime vest on the execution of the contract or did it vest only after the death of James Law? Defendant's insistence upon an affirmative answer to the first alternative comes, we believe, from a confusion of estates in entirety with estates in joint tenancy. Survivorship is a characteristic of both. In estates by the entirety the title of each is to the whole, and from this it inevitably follows that no adverse act of the one can destroy the right of survivorship in the other. When the one dies, the other takes nothing by a new title of survivorship; he merely ceases to divide the enjoyment of an estate of which he was completely seized by virtue of the creative instrument. 21 *Cyc.* 1198, 1199, title 'Husband

and wife'; *Freeman on Cotenancy (2d Edition)*, paragraphs 63-76; *Preston on Estates*, p. 131. But in joint tenancy the title is to a share only. If, during the continuance of the joint tenancy, the one dies, the survivor comes into the whole. But since the creative instrument gave him title to his own share only, it follows that he acquires the other share by the new title of survivorship. And since the creative instrument confers upon the one only a title to his own share, he has no lawful basis for interposing obstacles to the other's enjoyment of his unconditional title to his share. Incidents of enjoyment of an unconditional title are sale, mortgage, lease, partition. So, if the one puts a stranger in his place, the original unities of title, of interest, of possession, of enjoyment, and of the right of survivorship in the possessors, are all destroyed. If survivorship occurs it is because the decedent failed to exercise his legal right of severance. If survivorship occurs, the survivor by the death of the other for the first time acquires a title and right of enjoyment in the decedent's share. 23 *Cyc.* 487, 488, title 'Joint Tenancy'; *Freeman on Cotenancy (2d Ed.)*, paragraphs 29-33, 194-196; *Preston on Estates*, pp. 136, 137; *Co. Litt.*, par. 292; 2 *Bl. Com.*, p. *185; 4 *Kent's Com.*, pp. *363, *364."

To the same effect is the *Matter of Carr's Estate*, 30 *Penna. Dist. Court Reports*, p. 481; also cited in *Prentice Hall Inheritance Tax Service*, 1921-22—*Vol. 2 (Pa.)—Recent Decisions*, 601, wherein the Orphans' Court of Philadelphia County held that the benefits derived by a surviving joint tenant were taxable as a transfer intended to take effect in beneficial possession and enjoyment at the death of the decedent.

In addition to the foregoing cases involving the question of the right of the State to tax joint tenancies there are three other cases which were before the Courts

of New York and are closely related to the subject now involved:

Matter of Dana, 164, *App. Div.*, page 45; *aff'd*. 214 *N. Y. Rep.*, page 710.

Matter of Cory, 177 *App. Div.*, page 871; *aff'd*. 221 *N. Y. Rep.*, page 612.

Matter of Orvis, 179 *App. Div.*, page 1; *aff'd*. 223 *N. Y. Rep.*, page 1.

The *Matters of Dana and Cory* are analogous to the present case. The *Matter of Orvis* is exactly in point and dispositive of the issue in defendant's favor.

In the *Matter of Dana*, William B. Dana, during the month of March, 1905, directed the issuance of a certificate covering six hundred and twenty shares of stock to William B. Dana & Co., which certificate was to be issued in the names of William B. Dana and Jacob Seibert, Jr., and the survivor. Upon the death of Dana, Jacob Seibert, the surviving joint tenant, contended that the transfer to him was by operation of law and the title vesting in him as surviving joint tenant, and, therefore, was not subject to the provisions of Section 220 of the Tax Law then in effect. The Supreme Court in its opinion reasoned as follows:

"Two things are present in this case: First, the interest of Seibert in the stock of the William B. Dana Company was by gift from Dana, and, second, such gift was only 'intended to take effect in (complete) possession or enjoyment at or after such death,' that is, the death of the donor. It is true that there is some evidence that the inducing cause of the gift was services which Seibert had rendered to the William B. Dana Company in the past and might be induced to render in the future in the hope of ultimately becoming the owner of the stock. But when the agreement for transfer is considered in connection with the nearly contemporaneous agreements, one preceding and the other shortly succeeding the gift of the stock, with regard to the

dividends thereon, the right reserved to Dana to revoke and annul any interest of Seibert therein, and the failure of Seibert to obligate himself to remain in the employ of the company until Dana's death, we think that the relation of the parties was that of donor and donee, and not a contractual relation for a valuable consideration.

"We do not think it is necessary to determine exactly the character of title or ownership as between themselves of joint owners of personal property, nor whether this was a gift *inter vivos*, or whether it was made in contemplation of death. It might have been the former and not the latter, and still the ultimate succession be taxable. (*Chrystie Inheritance Taxation*, 697.) Certainly, while Dana lived the gift by him to Seibert of the stock did not take effect in complete possession or enjoyment, nor was it intended that it should. The intention was that such gift should take such effect only after Dana's death and by reason thereof. When the stock was transferred, Seibert may have become 'beneficially entitled in * * * expectancy' to such property, provided he survived Dana, but not otherwise, and it was Dana's intent that he should thus become entitled, and only to that extent. It was such gift and such only that Dana made to him. Seibert's 'right of succession,' therefore, became effective when Dana died, and not before. A father in robust health may make a gift to his son of property, reserving to himself a life interest therein. This would be a gift to take effect in enjoyment after the father's death, and would be a taxable transfer. (*Matter of Green*, 153 N. Y. 223.)

It is to be particularly noted that the Court in rendering its opinion stated that they did not think it necessary to determine exactly the character of title or

ownership as between the parties nor whether this was a gift *inter vivos* or whether it was made in contemplation of death, since as the Court stated it might have been the former and not the latter and still the ultimate succession would be taxable. The Court in this particular case apparently was satisfied of the taxability of the transfer when they ascertained that it was donative in character. They specifically point out that if Seibert had died first the interest passing to Dana would not be subject to tax since Dana did not acquire his interest in the stock from Seibert. Even in his dissenting opinion Judge Thomas points out the fact that even though it may be considered that Seibert was possessed of a one-half interest and acquired the other one-half upon Dana's death, such one-half which became effective for Seibert upon Dana's death might be subjected to a tax.

In the *Matter of Cory, supra*, the facts showed that two brothers, long associated in business as co-partners, incorporated and issued stock, each receiving five hundred shares or an interest worth \$100,000.00. They agreed that the survivor might buy of the estate of the decedent the \$100,000.00 interest for \$30,000.00 or \$60.00 per share. The deceased brother, Charles, ratified the agreement by will. The surviving brother, John, claimed that he should be taxed on a transfer of \$30,000.00 and not on \$100,000.00 and the Surrogate so held. The Appellate Division in the course of its opinion reversing this decision of the Surrogate said:

"Subdivision 4 of section 220 of the Transfer Tax Act imposes a tax upon the 'transfer * * * by deed, grant, bargain, sale or gift * * * intended to take effect in possession or enjoyment at or after * * * death.' (*Tax Law [Consul. Laws, chap. 60; Laws of 1909, chap. 62], par. 220, subd. 4, as amd. by Laws of 1911, chap. 732.*)* The transfer of the stock to John M. Cory falls exactly within the terms of the act. There was no present sale of the stock from

Charles Cory to his brother, but merely a contract that after Charles Cory's death John M. Cory might purchase the stock at an agreed price. We are of the opinion that the mutuality of obligation assumed by the brothers furnished a sufficient consideration for their mutual agreement, but, even so, the agreement constituted merely a mutual bargain for the sale of the stock after the death of whichever brother should first die, and under which the transfer of ownership could not take effect either in possession or enjoyment until after death. In fact, so long as Charles Cory lived he could at any time have sold or otherwise parted with the stock as he chose, without violating his agreement with his brother, which in terms applied only to the stock owned by the brother first dying 'at the time of my decease.' Until one of the brothers died the contract remained wholly executory, and after death the only right given to the survivor was that he might buy the stock from the estate of the decedent, paying therefor \$60.00 per share."

It seems that as long as Charles Cory lived he could at any time have sold or parted with his stock as he chose, without violating the agreement with his brother and until one of the brothers died the contract remained wholly executory. The fact that a mutuality of obligation assumed by the brothers furnished sufficient consideration for the contract was disregarded by the Court in determining the actual intent of the parties and the purposes of the transaction.

As above stated, the *Matter of Orvis* is identical to the present case and relied upon by the Comptroller as sustaining his action. *Gleason and Otis on Inheritance Taxation*, third edition, 1923, at page 145, in regard to this case, state:

"This is a pioneer case and of wide application, and the opinions both in the Appellate Division and Court of Appeals establish the doctrine that

any agreement donative in character, even though based upon consideration, is subject to the tax when taking effect at or after death."

The opinions in both the Supreme Court and the Court of Appeals in the above matter are very enlightening and directly answer every possible argument raised in the present case.

The Supreme Court (179 *App. Div.*) at page 3 said:

"As will be seen from a reading of the agreement, one half of each fund was owned by Charles E. Orvis, until at his death it passed by virtue of the agreement to his brother Edwin. The question is whether or not a tax should be levied upon this transfer or devolution of ownership. The learned surrogate held that it should not, because the agreement under which the devolution or transfer was to take place rested on what he termed a valuable consideration, such consideration being found in the mutuality of the agreement whereby the brothers reciprocally agreed that the survivor of them should take the interest in the business belonging to him who died first.

"That this does furnish a sufficient consideration to support the agreement as between themselves I do not question, but I do not consider that that fact alone establishes the nontaxability of the transfer. Mutual promises may furnish a sufficient consideration for a promise to convey in the future, but if there be no other consideration the conveyance when it takes place is, in effect, a voluntary one.

"Section 220 of the Tax Law (Consol. Laws, chap. 60 [Laws of 1909, chap. 62], as amd. by Laws of 1911, chap. 732) imposes a tax upon a transfer by 'grant, * * * sale or gift * * * intended to take effect in possession or enjoyment at or after such death,' i. e., that of the grantor, vendor or donor.

"This language seems to fit exactly the present case. Whether the transaction be considered a sale or a gift, it was clearly intended to take effect only on the death of the vendor or donor, and not then unless the vendee or donee should outlive the vendor or donor.

"Each co-partner retained the sole ownership of one-half of the moneys going to make up the two funds, just as he had before the funds were set up, for it is specifically provided that 'such account shall be owned equally (half and half) by said Charles E. Orvis and Edwin W. Orvis.'" "The effect of the transaction is precisely as it would have been if each brother had made a will leaving to the other his interest in the accumulated and funded profits, providing such brother survived. In such a case no one would doubt that the transfer was taxable.

"Under the terms of the agreement each brother retained the sole ownership of his share of the two funds and was entitled to the profits arising from the use thereof. The only limitation upon his ownership was that he could not freely dispose of the funds after death, if he happened to predecease his brother. All the elements were present that have led to the taxation of property conveyed by trust deeds under which the creator of the trust has retained the beneficial title of the property during life, and has disposed of the remainder after death (*Matter of Green*, 153 N. Y. 223; *Matter of Brandreth*, 169 *id.* 437; *Matter of Cornell*, 170 *id.* 423; *Matter of Keeney*, 194 *id.* 281.) In fact the agreement was essentially testamentary in character, and is, therefore, subject to the Transfer Tax Law. (*Matter of Dana Co.*, 164 *App. Div.* 45; *affirmed* 214 N. Y. 710.)"

Practically the entire opinion of the Court of Appeals bears upon the subject now in litigation. A considerable

portion of this opinion is cited at length in view of its direct bearing upon the present matter.

“The agreement rested upon a mutual and equal consideration and was enforceable. The language of the statute, literally adopted and applied, would, manifestly, subject the share to the tax. The only limitation expressed on the imposition of the tax upon the transfer ‘by deed, grant, bargain, sale or gift,’ is that it be not made ‘in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death.’ (*Carter v. Craig*, 77 N. H. 200.) The nature of the tax (*Matter of White*, 208 N. Y. 64; *Keeney v. Comptroller of State of New York*, 222 U. S. 525) and the language of the statute considered in its entirety have convinced us that the Legislature did not, however, intend that conclusion. Transfers resting upon a valuable and adequate consideration, although within the classification of the statute, are not within the intendment of it and are not taxable. (*Matter of Baker*, 83 App. Div. 530; affirmed on opinion below, 178 N. Y. 575.) In certain other jurisdictions it is so enacted. (*Clarke v. Treasurer and Receiver General*, 115 N. E. Rep. 416; *State v. Mollier*, 96 Kans. 514.) The Legislature did not intend that a purchaser who had paid full value for the property transferred should directly or indirectly pay the tax besides. We have not decided, however, that subdivision 4 of the section which we have quoted is applicable only to voluntary transfers or gifts which are within its conditions. (*Matter of Keeney*, 194 N. Y. 281, 286.) Its language does not permit that conclusion. It makes taxable a transfer by bargain or sale when made in contemplation of the death of the grantor or vendor or intended to take effect in possession or enjoy-

ment at or after such death. The provision discloses a distinction in the legislative mind between a transfer by gift and a transfer by bargain or sale. It enacts, moreover, that transfers by bargain or sale should be taxable, or should not always and indiscriminately be non-taxable. The meaning of that enactment must be ascertained from the context and the object sought to be accomplished by the statute. The statute was not intended to restrict or burden the right of persons to transfer property in all legitimate ways and for all the usual and manifold purposes and objects of trade, commerce and purchase, or of voluntary transfers or gifts not made in contemplation of the death of the transferor or intended to take effect in possession or enjoyment after such death. It was intended to tax all transfers which are accomplished by will, the intestate laws of this State, and those made or incepted prior to the death of the transferor in contemplation of or intended to take effect in possession or enjoyment after his death which are in their nature and character instruments or sources of bounty or benefaction and which can be classed as similar in nature and effect with transfers by wills or the intestate laws, because they accomplish a transfer of property, donative in effect, under circumstances which impress on it the characteristics of a disposition made at the time of the transferor's death. In all cases in which the value of the consideration for the property transferred, under the statutory conditions, is so disproportionately less than the value of the property transferred that the transfer is, in the light of reason or of ordinary intelligence and judgment, beneficent and donative, the transfer is taxable. The taxability does not depend upon fraud or an attempt to evade the statute; nor does it depend upon the purpose

or inducement of the transfer, nor does it depend upon the form given the transfer. The law searches out the reality and is not halted or controlled by the form. (*Matter of Gould*, 156 N. Y. 423.) The measure determining the liability of freedom from liability to the tax is the nature, the essence, the effect of the transfer. If, in truth, it, in effect, bestows, under the statutory conditions, a bounty or benefaction and is not a transfer for money's worth, it is taxable.

"The application of the statute in the instant case leaves no ground for discussion. The mind does not hesitate in determining that the transfer was in essence and in effect beneficent and donative, or in classing it as similar in nature and effect with transfers by wills.

"The order should be affirmed, with costs."

In that case, as in the present one the two parties established joint funds and provided that upon the death of either the survivor should be the sole owner thereof. The court expressed its opinion that each member owned, possessed, and enjoyed his interest as he would if the agreement had not been in existence. They further concluded that the agreement did not attempt to prevent either member from withdrawing moneys from his fund or compel the survivor to continue business after the dissolution of the firm by the death of a member. They admitted that the agreement rested upon a mutual and equal consideration, but stated that in all cases where the value of the consideration for the property transferred under the statutory conditions, is so disproportionately less than the value of the property transferred, that the transfer is, in the light of reason and ordinary intelligence; beneficent and donative, such transfer is taxable. If, in truth, it, in effect, bestows upon the statutory conditions a bounty or benefaction and is not a transfer for money's worth, it is taxable.

This case is identical in all of its points to the present matter. Either joint tenant, according to the accepted law relative to joint tenancies, could have parted with his interest either by sale or gift, the same as partners in the Orvis case. Each was entitled to an equal portion of the income and profits from the joint property and one-half of the income and one-half of such property upon the death of the decedent passed to the surviving joint tenant the same as in this Orvis matter.

The Present Arrangement Obtained the Same Results as Are Present in a Revocable Deed of Trust.

In many cases involving the right of the State to assess a tax upon transfers which, it is contended, were made to take effect in beneficial possession or enjoyment at or after death, the legal title to the property vests in the donee at the time of the execution of the deeds. The decedent, in some instances, merely reserving the right to the income from the property so transferred, while in other instances reserving the additional right to revoke the transfer at will. The reservation by the decedent of the right to the income and profits of the property transferred until his death, is generally accepted as being sufficient to warrant a tax thereon as intended to take effect in beneficial possession or enjoyment at or after death.

Matter of Garcia, 183 App. Div. 712.

Carter v. Bugbee, 91 N. J. Law 438.

Matter of Green, 153 N. Y. 223.

Matter of Kenney, 194 N. Y. 281.

American Board of Commissioners for Foreign Missions v. Newton A. K. Bugbee, 98 N. J. Law, page 84; affirmed 127 Atl. Rep., page 192.

New England Trust Company v. Abbott, 205 Mass. 279.

Where, however, in addition to the income from the property transferred the donor also reserves the right to revoke, or the title to the property transferred is entirely

contingent depending upon his death, it is beyond argument that such a transfer is taxable on the death of the donor as intended to take effect in beneficial possession or enjoyment at or after death.

Crocker v. Shaw, 174 Mass., page 266.

State v. Bullen, 143 Wisc., page 512.

Matter of Bostwick, 160 N. Y., page 489.

Carter v. Bugbee, 91 N. J. Law, page 438;
92 N. J. Law, page 390.

In the *Matter of American Board of Commissioners for Foreign Missions v. Newton A. K. Bugbee*, *supra*, the Supreme Court of this State said:

“It is quite obvious that the deeds of trust were no more than transfers to the prosecutor of the mere naked legal title to the property, in which the donor expressly reserved and postponed the happening of an actual transfer of the full possession or enjoyment of the property by the prosecutor till after the death of himself and his wife.

In the *Matter of Carter v. Bugbee*, *supra*, following the decisions in the *Matters of Green*, *Brandreth* and *Cornell*, the Supreme Court arrived at the following conclusion:

“Thus, it seems to have been settled by the Court of Appeals of New York that such a remainder, after a life estate, given by a trust deed, is subject to the transfer tax which the law imposes when the right to its possession or enjoyment matures. The statutes of both states make a distinction between property passing by will, and property passing by deed intended to take effect in possession or enjoyment after the death of the settlor, the latter referring to a gift *causa mortis* having the effect, by a different method, of a will or intestacy. A will takes effect at the death of the testator, and all estates which it creates then become fixed and subject to such taxes as are then imposable by law, and the

rights of legatees thereunder have a status not to be altered for the purpose of taxation, but are subjected to any change in the law made after the execution of the will and before testator's death, and a trust deed which *donatio causa mortis*, produces the same result by another method, is governed by the same rule. See also, *Crocker v. Shaw*, 174 Mass. 266. * * *

"In the case under review we have a deed in which the remainders are intended to take effect in possession or enjoyment at or after the death of the settlor, which is within the words of the last clause of section 3 of the statute. It was also made in contemplation of death, because the gifts were not effective until that event happened, and thus within the terms of the next preceding sentence or clause. We are of the opinion that the transfers contemplated by the statute did not take effect until the death of the settlor, and are subject in the transfer tax imposed by the statute then in force."

From an examination of the above references we therefore submit that in the present case:

1. That the Transfer Inheritance Tax Act of this State is very broad in its scope and intended to levy a tax upon all transfers, whether by deed, grant, gift, bargain or sale, if made in contemplation of or to take effect in beneficial possession and enjoyment at or after death. (Page 8.)
2. That even though the transfer may have some element of consideration involved, this does not determine conclusively whether or not the same is subject to a tax. (Page 10.)
3. That every undivided or fractional interest in property and as well any proprietary interest, though it be an interest of a quality different in character from a mere fractional or other

legal interest less than the whole, is subject to a tax. (Page 13.)

4. That a joint tenancy may exist in personal property as well as real property. (Page 13.)
5. That such tenancies are looked upon generally with disfavor. (Page 13.)
6. That each tenant has an equal right to sever the tenancy at will. (Page 15.)
7. That each tenant is entitled to an equal interest in the income, rents and profits from the joint property. (Page 16.)
8. That each party holds by moieties and not by the entirety. (Page 17.)
9. That a surviving joint tenant does acquire valuable property rights upon the death of the other co-tenant which the survivor did not have previous to such death. (Pages 17 and 18.)

In summarizing it should be remembered that the decedent and his brother, both of whom had passed the age of seventy-four, and within a period of two years of the decedent's death, executed an agreement by the terms of which all of their property, which at that time was in quite a tangled condition, was to be taken in their joint names, transferable upon the death of one, to the survivor. This tangled condition of affairs had existed over a period of at least twenty years and was one which they desired should be remedied in order to avoid undue complications and litigation regarding their respective rights, in the case of the death of either. All of the facts seem to indicate that it was a testamentary arrangement which answered every purpose. Such an arrangement provided a very convenient means of eliminating the necessity of the execution of joint wills, the inconvenience and uncertainty of probate and the usual tangles involved in the administration of estates. By the creation of these joint tenancies each exercised, to the same extent as he had previously done, equal control over the property; was entitled to receive his one-half of the profits therefrom; could reduce to his sole and indi-

vidual possession his interest in any of the joint property at will, and, at the same time, provide that the survivor should, in the case of those tenancies which were not severed, succeed to the entire property so held, which, it is quite apparent, must have been the thought uppermost in the minds of each since they were attempting to provide for the vesting of their joint property in the survivor. The testimony and all of the facts clearly indicate that this was their intent and purpose. It therefore resolves itself to the fact that by the creation of these joint tenancies in all of their property, from the smallest item of personal estate to the last tract of real property, they succeeded in providing that the interest of the one dying first should pass upon his death to the survivor, but during their joint lives they should, however, be entitled, as they had always been, to exercise equal rights of ownership over the property and an equal share in the profits thereof.

That such an agreement as this, even though it may have been based upon a mutual consideration as between the parties, is subject to a tax there seems to be little doubt in view of the more recent decisions in New York State as above referred to and particularly the finding of the highest Court of New York in the *Matters of Dana, Cory and Orvis, supra*, as well as the decisions in this State in the *Matter of Hall, supra*, and *Bottomley, supra*.

The arrangement was wholly ambulatory depending entirely upon whether or not the tenancies were severed before the death of Louis and there can be no doubt but that the beneficial possession and enjoyment of the property to the extent of Louis's interest therein could not pass until his death.

As above indicated, a reservation of income in property, during the life of the donor, is accepted as being sufficient to subject the same to a tax, but where, in addition to this right, there is also a power of revocation reserved, the cases not only in this State, but in practically every other State in which an Inheritance Tax Law is in effect, hold conclusively that such a trans-

fer is within the provisions of the Act and subject to a tax. If such an arrangement as is involved in the present case is not within the terms of the Statute it is hard to conceive of one that would be.

In view of the well established rule of law as laid down by Chief Justice Ewing in the *Matter of Den v. Hardenberg, supra*, to the effect that:

“the surviving joint tenant takes something, by way of accretion or addition to his interest, gains something he previously had not, the undivided moiety which belonged to the deceased,”

and also considering the matter from a practical standpoint there seems to be no doubt that substantial property rights, of considerable value in this particular case, passed upon the death of Louis Huggins to his brother, William Huggins, and only passed at that time. Surely it cannot be urged with candor that the surviving joint tenant succeeded to nothing which he did not already have during their joint ownership. To so view the matter evidences a fear to face the actual facts.

It is contended by the appellants that the contribution by both parties formed a basis for a valuable consideration and, therefore, takes these particular transfers beyond the provisions of the Transfer Inheritance Tax Act. As hereinbefore pointed out, such is not the law as established by the various decisions. In this respect particular attention is again directed to the decision of the Appellate Division in the *Matter of Cory, supra*, wherein the Court stated:

“We are of the opinion that the mutuality of obligation assumed by the brothers furnished a sufficient consideration for their mutual agreement, but, even so, the agreement constituted merely a mutual bargain for the sale of the stock after the death of which ever brother should first die, and under which the transfer of ownership could not take effect either in possession or enjoyment until after death.”

Also to the decision of the Supreme Court in the *Matter of Orvis, supra*.

"The learned Surrogate held that it should not (be taxable) because the agreement under which devolution or transfer was to take place rested on what he termed a valuable consideration, such consideration being found in the mutuality of the agreement whereby the brothers reciprocally agreed that the survivor of them should take the interest in the business belonging to him who died first.

"That this does furnish a sufficient consideration to support the agreement as between themselves I do not question, but I do not consider that that fact alone establishes the nontaxability of the transfer. Mutual promises may furnish a sufficient consideration for a promise to convey in the future, but if there be no other consideration the conveyance when it takes place is, in effect, a voluntary one."

This rule was accepted by Vice-Ordinary Buchanan *In re Hall's Estate*, 94 N. J. Eq. 398. With reference to this particular feature the Vice-Ordinary states as follows (page 404):

"Unquestionably there was technical legal consideration therefor, for his transfer or surrender.

"That, however, does not terminate the necessity of further investigation of the transaction. It is the essential character of the transaction which is to be looked at—not the mere legal form thereof. As I had occasion to point out *In re Bottomley*, 92 N. J. Equity 202; 111 Atl. 605, the statute specifically applies to transfers by way of bargain or sale. * * * The inquiry must be as to whether or not the net practical result and effect of the transaction is a substantial diminution of the assets of the decedent."

It is readily seen from an examination of the facts that there was a transfer of the beneficial possession and enjoyment of considerable property upon the death of Louis Huggins which was clearly donative and testamentary in its character, which vested in William Huggins and for which he paid no valuable consideration.

The Comptroller respectfully submits that the *Matter of Orvis, supra*, cannot be distinguished from the present matter as has been intimated by appellants. As pointed out in the decision of the Court of Appeals in that case:

“The taxability does not depend upon fraud or an attempt to evade the statute; nor does it depend upon the purpose or inducement of the transfer; nor does it depend upon the form given the transfer. The law searches out the reality and is not halted or controlled by the form. The measure determining the liability or freedom from liability to the tax is the nature, the essence, the effect of the transfer. If, in truth, it, in effect, bestows, under the statutory conditions, a bounty or benefaction, and is not a transfer for money's worth, it is taxable.”

The Supreme Court of N. Y. in its decision in this case in holding the transfer taxable said that the agreement in fact was essentially testamentary in character and was, therefore, subject to the transfer tax law. Such is clearly the fact in the present matter. Satisfactory disposition upon the death of either joint tenant of the property involved was the thing, it is quite apparent, which was uppermost in the minds of these two persons.

There is no basis for constitutional objections to the tax in this particular matter. The rights of the surviving joint tenant in all of the jointly held property were entirely dependent upon whether or not the tenancy was severed. Until the death of one of the joint tenants the rights of the survivor were not conclusively fixed. In speaking of this phase of the matter the

Court of Appeals of New York in the *Matter of McKelway* states as follows:

"The undivided half of this joint property which Mr. McKelway might have effectually disposed of at any time during his life never passed into the absolute ownership of his wife until her husband's death. A transfer tax thereon does not diminish the value of a vested estate and is free from the objections to a tax on vested remainders and reversions as set forth in *Matter of Pell* (171 N. Y. 48) or to a tax on contingent remainders as set forth in the *Matter of Lansing* (*supra*).

"* * * It is taxable only to the extent of the beneficial interest arising by survivorship, which is, as we have seen, the accruer by survivorship of the whole instead of the half. To this extent it was a property right fully acquired only on survivorship, analogous to an interest created by a power of appointment under a will executed prior to the enactment of the law taxing transfers, and, therefore, one that could be cut down by the imposition of an excise tax after the joint ownership began. (*Matter of Vanderbilt*, 50 App. Div. 246; 163 N. Y. 597). The imposition of such a tax violates no contract for neither joint tenant agrees not to terminate the joint tenancy. Mrs. McKelway had no contract with her husband as to the joint property which was not as ambulatory as a will to the last moment of Mr. McKelway's life, and, for the purposes of taxation, she is deemed to have acquired his interest in the joint property at his death."

Attention is again respectfully called to the decision of Surrogate Knapp in the *Matter of Durfee*, 79 Misc. 655, where he states, what the Comptroller has always contended, is the logical conclusion in matters of this kind.

“Whatever this transaction may be called, whether it was an uncompleted gift in the nature of a trust or a joint tenancy, the fact still stands out that it was the evident intent and purpose of both the husband and the wife, and it appears by the testimony, that the accounts in these savings banks should be for the common use of both—he put his money in the accounts and she put in hers. * * * The possession was joint. The right to reduce was several. It was revocable. It became irrevocable at the death of one, and the right to reduce to possession in the lifetime of both resolved into the absolute and sole possession of the balance remaining at the death of one. * * *

“It seems to me that so much of these deposits as was the property of the decedent became transferable at his death as a gift to his wife intended to take effect in possession or enjoyment at or after his death.”

Vice-Ordinary Buchanan in writing an exhaustive and well-reasoned opinion in the present matter (Record, pages 50-60) deals with many of the features hereinbefore contended by the Comptroller. He states that the fact that technically there was an immediate transfer from Louis to William of a one-half interest in the original estate is of no significance but it is the net substantial result of the entire transaction which is to be looked at. He points out that no severance took place during their joint lives and on the death of Louis, William came into possession and enjoyment of a remainder interest, which is in the nature of an estate or interest in expectancy, contingent or defeasible. He concludes that the instrument or agreement was a transfer by bargain intended to take effect in possession or enjoyment at or after the death of Louis. This, he states, is obvious not only because the parties to the agreement must be deemed to intend the legal effect and meaning of their

agreement, but also because of the age of the two men and the fact that the incident of right of survivorship is so prominently and especially mentioned, repeatedly, in the agreement. Going further he states that there seems to be no doubt, from the facts that that was the one thing they desired most to establish and effectuate. In speaking of consideration he states that the transaction practically amounted to mutual promises to make wills in favor of each other to take effect if the beneficiaries survived the testator. The two promises being of equal value, the actual effect or result was a testamentary benefaction by one only, without any property of equal value having been received by the testator's estate in exchange for the gift. From an examination of the facts he declares that he is of the opinion that the entire transaction was essentially in the nature of a testamentary disposition, donative in intent and wherein a valuable consideration was not involved.

As stated by the Vice-Ordinary, the transfers in any event are subject to a tax by reason of the provisions of Sub-section four of paragraph one of the Transfer Inheritance Act. He concludes that William, upon the death of Louis, came into possession and enjoyment, by the original transfer to Louis of a "remainder" interest, which was an estate in expectancy, contingent or defeasible in the shares of stock of a New Jersey corporation and was transferred by an instrument taking effect after 1909.

Finally passing upon the matter the Vice-Ordinary states, as the Comptroller contends, that the *Matter of Orvis*, 223 N. Y., page 1, is a case directly in point.

It seems clear to the Comptroller, the respondent, that the facts in the case at bar bring the same clearly within the principles which determine that the transfer was made to take effect in beneficial possession and enjoyment at death.

For reasons stated it is respectfully submitted that the tax should be affirmed as assessed and the writ of certiorari dismissed.

EDWARD L. KATZENBACH,
Attorney-General of New Jersey,
Attorney for Defendant.

NEW JERSEY Court of Errors and Appeals

J. O'NEILL, FAIRLEIGH AND JOSEPH MORTON, EXECUTORS OF THE LAST WILL AND TESTAMENT OF WILLIAM HUGGINS, DECEASED, <i>Prosecutors-Appellants,</i>	} On Appeal from the Supreme Court.
<i>vs.</i>	
NEWTON A. K. BUGBEE, COMPTROL- LER OF THE TREASURY OF THE STATE OF NEW JERSEY, <i>Defendant.</i>	}

Brief of J. O'Neill Fairleigh and Joseph Morton, Executors of the Estate of William Huggins, Deceased, Prosecutors-Appellants.

This is an appeal from an order of the Supreme Court dismissing a writ of certiorari allowed to review a decree of the Ordinary affirming an assessment of transfer tax made by the Comptroller of the Treasury against the Estate of Louis Huggins, deceased, who died a resident of St. Louis, Missouri, on January 8, 1919. The tax was assessed against said estate by reason of the ownership by Louis Huggins, deceased, who died a resident of St. Louis, of two shares of American Radiator Company preferred stock, thirteen shares of American

Radiator common stock and twelve hundred shares of National Biscuit Company preferred stock, all of which corporations are New Jersey corporations.

At the time of the death of Louis Huggins these securities were held by him and his brother, William Huggins, by a joint tenancy, that is to say, the certificates were issued in the name of Louis Huggins and William Huggins and the survivor of them. (State of Case, p. 15, line 30, *et seq.*)

The prosecutors in this proceeding are the executors of the brother, William Huggins, who survived Louis Huggins, and the assessment was made upon the prosecutors' application for transfer of the securities in question from William Huggins' estate.

The Comptroller assessed the interest of Louis Huggins in these securities as one-half interest and this assessment was affirmed by the Prerogative Court on an opinion by Buchanan, Vice-Ordinary, which appears in the State of Case at page 50, *et seq.*

THE GROUNDS OF THE APPEAL.

The prosecutors, contention before the Vice-Ordinary was that these securities were held by Louis Huggins and William Huggins as joint tenants and that under the Inheritance Transfer Act in force at the time of Louis Huggins' death, no taxable transfer took place upon the death of the first joint tenant and the vesting of the entire interest in the second by survivorship. The Vice-Ordinary adopted the view that the change of interest which takes place on the death of the one joint tenant, was not taxable unless the deceased joint tenant himself created, or participated in the creation of the joint tenancy. He held, however, that a joint tenancy in the securities in question was not established and that even if it were established, it was shown that the deceased tenant, namely, Louis Huggins, participated in its creation and therefore a taxable transfer occurred upon his death.

ARGUMENT.

It is respectfully submitted, therefore, that the assessment should be set aside on the ground that no transfer, within the meaning of the New Jersey Inheritance Tax Act, took place on the death of Louis Huggins, because of the nature of the title under which Louis Huggins and William Huggins held these securities, namely, a joint tenancy and that there is no evidence that the joint tenancy was created by any transfer of a donative character in which Louis Huggins participated.

We respectfully submit that the facts as agreed upon (State of Case, pages 10 to 50), show—

First, that the securities in question were held by Louis Huggins and William Huggins as joint tenants at the time of the death of Louis Huggins;

Second, that it does not appear that the joint tenancy in question was created through participation of Louis Huggins;

Third, that the creation of the joint tenancy, so far as is shown, was supported by an adequate consideration.

The contents of the affidavits and statements annexed to the return to the Comptroller, are not denied. From them it appears that the certificates for the securities in question were held by Louis Huggins and William Huggins in the name of both jointly and of the survivor (State of Case, page 15); that dividends were payable by draft to both men jointly and to their survivor and were collected during the lives of both, by both, and that after the death of Louis Huggins, were collected by William Huggins, upon his endorsement as survivor (State of Case, page 16); that no administration was taken out upon the Estate of Louis Huggins and all of the property of the two brothers passed to the ownership of William Huggins upon the death of Louis Huggins, without question being raised by anyone. (State of Case, pages 15, 16.)

It appears, also, that on March 22, 1917, the two brothers entered into an agreement (State of Case, page 33), the effect of which was to vest all of their property in them as joint tenants. This, according to the affidavits annexed to the return, was merely a consummation of an agreement previously made, in fact of the habit of their ordinary lives by which they made joint investments out of a joint bank account, although at times the securities and properties purchased by them were held by them in their respective individual names. (State of Case, pages 14, 37, 38, 40, 44 and 47.)

It does not appear, however, that the securities in question were transferred into the joint names as a result of the making of this agreement. All that does appear is that at the time of the death of Louis Huggins the securities were held by Louis and William Huggins as joint tenants.

It is respectfully submitted, therefore, that there was no evidence upon which could be predicated ~~is~~ holding that the securities in question were not held in joint tenancy, or that, if so held, they were held by a joint tenancy in the creation of which Louis Huggins participated. The agreement itself does not refer specifically to the securities in question and was submitted as mere corroborative evidence of the fact that a joint tenancy existed.

Assuming, however, that the securities in question were transferred to the joint tenancy in consummation of the agreement between the brothers, it is respectfully submitted that the transfer is supported by an adequate consideration. If such were the case, the transfer of the securities to the joint names, was but one of a series of acts, the result of which was to vest all of the brothers' property in them as joint tenants. It must be assumed, therefore, that the transfer of these securities from the name of whichever brother had title to them to the joint name, was made in consideration of a transfer by the other brother of other property from his sole name to the joint names. The trans-

action was an exchange by which the brothers transferred all of their property from their individual names to their joint names and each brother in consideration of the relinquishment of sole ownership and control over his own property, obtained title in joint tenancy with the other to all of the property of both. It must be remembered the right of survivorship was not the only incident of joint ownership which the brothers obtained. Each obtained a right to the present enjoyment of a joint interest in all of the property, as well as the right to the entire property if he survived the other.

It is respectfully submitted that the transaction in question differs entirely from a contract by each brother to make a will in favor of the other. Such a contract would clearly affect nothing but an interest to take effect upon death. In the present case each brother was the other's sole heir at law. In the presence of other testamentary disposition the survivor would succeed to the other's interest upon the death of the first of the two. On the contrary the effect of the agreement was rather to change the present interest than the future one and was of the nature of an exchange rather than of a gift.

It is respectfully submitted that the change of interest, ownership, or possession which took place at the death of the first of two joint tenants, was not taxable under the Statute as it existed in 1917, that is to say, at the time of the death of Louis Huggins.

BRIEF OF LAW.

The tax assessed by the Comptroller in this matter was assessed under the provisions of "An act to tax the transfer of property, of resident and nonresident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases, approved April twentieth, one thousand nine hundred and nine," as amended.

The section of this Act imposing the tax reads as follows:

"1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided, in the following cases:

"First. When the transfer is by will or by the intestate laws of this State from any person dying seized or possessed of the property while a resident of the State.

"Second. When the transfer is by will or intestate law, of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations of this State, or of national banking associations located in this State, and the decedent was a non-resident of the State at the time of his death.

"Third. When the transfer is of property made by a resident, or is of real property within this State, or of goods, wares and merchandise, within this State, or of shares of stock of corporations of this State, or of national banking associations located in this State, made by a nonresident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment at or after such death.

"Fourth. When any person or corporation comes into the possession or enjoyment, by a transfer from a resident or from a nonresident decedent, when such nonresident decedent's property consists of real property within this State or of shares of stock of corporations of this State or of national banking associations located in this State, of an estate in expectancy of any kind or character which is contingent or de-

feasible, transferred by an instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act."

It is respectfully submitted that joint tenancy in personal property is recognized by both the State of Missouri, the State of the domicile of Louis Huggins at the time of his death, and the State of New Jersey, and that as an incident of joint tenancy the right of survivorship is recognized.

See *Johnston v. Johnston*, 173 Missouri, p. 91;
East Rutherford Savings Association v. McKenzie, 87 N. J. Eq., p. 375;

N. J. Title Company v. Archibald, 90 N. J. Eq., p. 384, Affirmed 108 Atl. Rep., p. 434;

Stokes v. Edwards, 113 Atl. Rep., p. 598;

Commonwealth Trust Company v. Grobel, 114 Atl. Rep., p. 353;

Morristown Trust Company v. Capstick, 90 N. J. Eq., p. 22, Affirmed 108 Atl. Rep., p. 926.

The nature of the right of survivorship is discussed by Blackstone, in Book 2 of his Commentaries, star page 184, as follows:

"From the same principle also arises the remaining grand incident of joint-estates; viz., the doctrine of survivorship; by which when two or more persons are seised of a joint-estate, of inheritance, for their own lives, or *pur auter vie*, or are jointly possessed of any chattel-interest, the entire tenancy upon the decease of any of them remains to the survivors, and at length to the last survivor; and he shall be entitled to the whole estate, whatever it be, whether an inheritance, or a common freehold only, or ever a less estate. This is the natural and regular consequence of the union and entirety of their interest. The interest of two joint-tenants is not only equal or similar, but also is one and the same.

One has not originally a distinct moiety from the other; but, if by any subsequent act (as by alienation or forfeiture of either) the interest becomes separate and distinct; the joint-tenancy instantly ceases. But, while it continues, each of two joint-tenants has a concurrent interest in the whole; and therefore on the death of his companion, the sole interest in the whole remains to the survivor. For the interest which the survivor originally had is clearly not divested by the death of his companion; and no other person can now claim to have a joint-estate with him, for no one can now have an interest in the whole, accruing by the same title and taking effect at the same time with his own; neither can any one claim a separate interest in any part of the tenements; for that would be to deprive the survivor of the right which he has in all and every part. As therefore the survivor's original interest in the whole still remains; and as no one can now be admitted, either jointly or severally, to any share with him therein; it follows, that his own interest must now be entire and several, and that he shall alone be entitled to the whole estate (whatever it be) that was created by the original grant.

"This right of survivorship is called by our ancient authors the *jus accrescendi*, because the right upon the death of one joint-tenant accumulates and increases to the survivors; or, as they themselves express it, '*pars illa communis accrescit superstibus, de persona in personam, usque ad ultimam superstitem.*' And this *jus accrescendi* ought to be mutual; which I apprehend to be one reason why neither the king, nor any corporation can be a joint-tenant with a private person. For here is no mutuality; the private person has not even the remotest chance of being seised of the entirety by benefit of sur-

vivorship; for the king and the corporation can never die."

The legal theory of the interest of a joint tenant by survivorship, is aptly expressed in *1 Washburn on Real Property, 5th Edition, page 679, paragraph 14*, as follows:

"The interest which a joint tenant has as survivor is not a new one acquired by him from his co-tenant upon the latter's death, for his own interest is not changed in amount, but only his co-tenant's is extinguished."

The cases dealing with the taxability of assets held in joint tenancy by a decedent and another, are discussed exhaustively in a note to the case of *In re. Orvis, (N. Y.) 3 American Law Reports, p. 1636 (the note occurring at page 1640)*.

In an earlier note to the case of *Attorney-General v. Clark, 1916 C Lawyers' Reports Annotated, p. 679* (the note occurring at page 682), the earlier cases on this subject are briefed, while the case bearing upon the taxability of assets held by tenants by the entirety are briefed in a note to the case of *Palmer v. Mansfield, 1916 C, L. R. A., p. 677* (the note occurring at p. 678), and the cases dealing with the taxability of the interests of tenants by dower and courtesy are briefed in a note to the case of *In re. Bullen, 1916 C, L. R. A., p. 670* (the note occurring at p. 675).

Important cases holding that the interest of a joint tenant is not taxable, are as follows:

In re. Tilley, 151 N. Y. Supp. 79, affirmed 215 N. Y. 702, 109 N. E. 1094;

In re. Thompson's Estate, 153 N. Y. Supp. 164, affirmed 217 N. Y. 619 and 111 N. E. 1101;

In re. McKelvey, 221 N. Y. 15; 116 N. E. 348; L. R. A. 1917 E. 1143;

In re. Guernsey's Estate, 170 Pac. 402;

McDougal v. Boyd, 172 Cal. 753; 159 Pac. 168;

Kennedy v. Kennedy, 160 Cal. 487; 146 Pac. 647;

Estate of Harris, 163 Cal. 725; 147 Pac. 967;

Hannon v. S. P. R. R., 12 Cal. App. 355; 107 Pac. 335;

Smith v. Douglas County, 254 Fed. 244;

Harold v. Blair (N. J.), 158 Fed. 804;

In re. Cory, 164 N. Y. Supp. 956; 117 N. E. 1065.

In *In re. Tilley*, *supra*, a joint bank deposit was made by husband and wife and upon the death of the husband the wife took the entire account as survivor. The Court in holding this "transfer" not taxable, said that the essence of a joint tenancy is that there should be unity of interest, of title, of time and of possession, that is to say, that joint tenants have one and the same interest accruing by one and the same conveyance, commencing at one and the same time and held by one and the same undivided possession, that neither is exclusively seized of any part of the property but each has an undivided moiety of the whole and not the whole of an undivided moiety. That each joint tenant is in full possession, each has full ownership as against all of the world, except the other tenant and that the incident of survivorship is not a transfer at the death of one joint tenant, but relates back to the creation of the estate and that property thus disposed of is not a transfer made in contemplation of death, nor intended to take effect in possession or enjoyment after death and therefore is not taxable.

In *In re. Dalsimer's Estate*, 153 N. Y. Supp., p. 58, a joint bank account and certain stocks and bonds survived to the widow, who had a joint tenancy therein with her husband, upon her husband's death. The Surrogate held the bank account not subject to transfer tax, but ruled that the interest of the husband, who died first, in the stocks and bonds was taxable because it was not shown how his wife contributed to the joint estate. The Supreme Court approved the Surrogate's

ruling as to the bank account but over-ruled it as to the stocks and bonds, on the ground that the amount of the respective contributions was immaterial to the creation of a joint tenancy and held the alleged transfer not taxable.

It is respectfully submitted that the effect of these cases, as well as the effect of those quoted in the notes above recited, is that estates in joint tenancy, estates by the entirety and rights of dower, courtesy and the like, are taxable as transfers upon the death of one joint tenant, or upon the taking effect of the dower or courtesy interest on the death of the wife or husband, only when the tax statute specifically provides for the taxing of such transfers.

It is submitted that the creation of a joint tenancy is certainly not a transfer by will or intestate laws, that such a transfer is not a deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after death, since by the creation of a joint tenancy a present undivided interest is created which, as has been shown, is in no wise changed in character by the death of one joint tenant.

It is further submitted that the creation of such an estate is not the creation of an estate in expectancy, contingent or defeasible, nor a transfer of property pursuant to a power of appointment. The foregoing are the transfers specifically declared to be taxable under the New Jersey Transfer Inheritance Tax Act here under construction.

In construing the act, the familiar principle that "a transfer is a special imposition to be strictly construed against the Government and in favor of the tax payer, and that all doubts as to the taxability of the particular fund should be decided in favor of the tax payer," as laid down in *Torrence v. Edwards*, 89 N. J. L., p. 507, is submitted to be applicable.

The right of a dowress has never been held to be taxable under this act. See *Hill v. Bugbee*, 103 Atl.

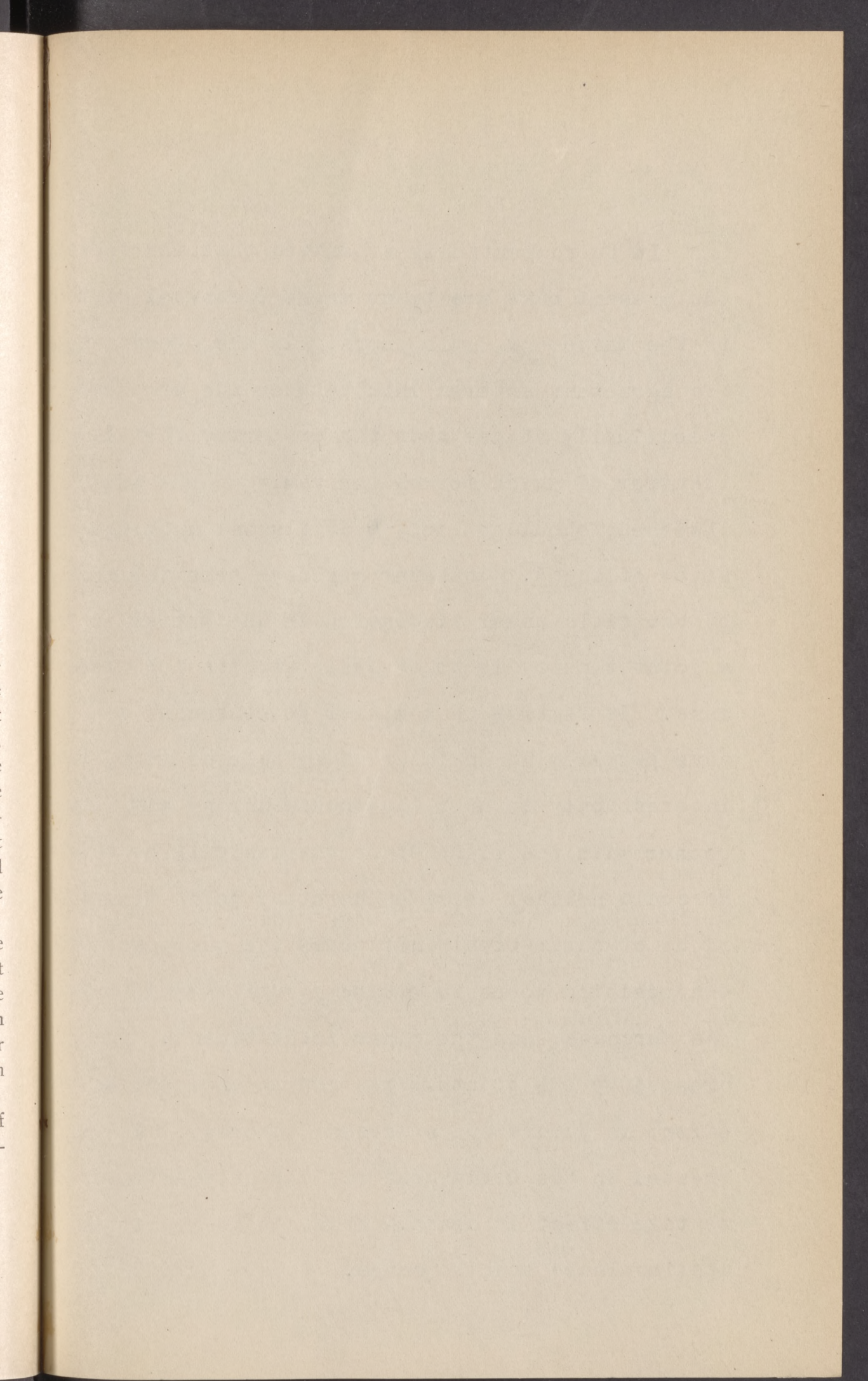
Rep. p. 861; Arnett v. Bugbee, 119 Atl. Rep. p. 763. The so-called succession of a surviving tenant by the entirety, is not held taxable in this State, nor does the Comptroller attempt to levy an assessment against it. On the same principle it is respectfully submitted that the so-called succession of a surviving joint tenant is not taxable under the act.

The case of *In re. Orvis*, above quoted, is submitted to be distinguishable from the case at bar, in that in that case an interest to take effect upon death was created. The Court's decision is submitted to be based upon this very distinction from a joint tenancy, that instead of a present estate being created, an estate to take effect upon death was there created, without the incidents of a true joint tenancy.

In *Maxwell v. Edwards, 85 N. J. L., p. 517*, and *Penfold v. Edwards, 87 N. J. L., p. 461*, the Court held that certain securities forming a part of a decedent's estate, were not taxable again on the death of the residuary legatee prior to distribution, even when the securities themselves were distributed to the legatee by the executor in place of money. The ground there was that there was but one transfer of the securities, namely, that from the decedent to his personal representative and that the interest of the residuary legatee was a mere interest in money. The fact that the securities themselves were handed over, did not make them taxable it being as though the representative of the legatee had purchased the securities from the executors with the money bequeathed.

The case at bar is submitted to be similar in principle to these two cases, in that there is but one estate, a joint tenancy which became taxable upon the death of the surviving joint tenant and then alone, that the death of the other joint tenant occasioned no taxable transfer but the estate remained continuously from the creation of the joint tenancy until the death of the survivor.

It is submitted, therefore, that when the executors of William Huggins paid the transfer tax on these securi-



It is respectfully submitted that the facts of the present case are by no means identical with those in the Matter of Orvis supra. In the present case the agreement entered into between the brothers specifically states that the property, the alleged transfer of which formed the basis of the tax assessed, should be held "jointly and unto the survivor of them". Whatever may have been the character of the title under discussion in the Matter of Orvis, a joint tenancy is to be dealt with in the present case. It is true that either joint tenant could have parted with an interest by sale or gift, but an interest only in half the income during his life, together with the right of survivorship if he survived. He could neither deprive the other joint tenant of his right of survivorship nor place the purchaser in his own position so as to create a survivorship between the purchaser and the other joint tenant. The interest created by the jointure was not an interest to take effect in future but a present interest. The interest created in the Orvis case was strictly an interest to take effect at death. This, it is submitted, distinguishes the two cases.

ties incident to the transfer from him to themselves as executors, they paid the entire transfer tax due to the State of New Jersey and that no transfer tax was assessable against the alleged transfer of the interest of Louis Huggins in these securities.

Respectfully submitted,

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Attorney for the Prosecutors.

