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**Bill of Complaint.**

(Filed February 27, 1925.)

**In Chancery of New Jersey** 10

To his Honor, Edwin Robert Walker,  
Chancellor of the State of New Jersey:

Complainant, Commercial Trust Company of New Jersey, a body corporate of the State of New Jersey having its principal office at 15 Exchange Place, Jersey City, New Jersey, respectfully shows that:

1. On April 10, 1924, John J. Bullis died a resident of Jersey City, Hudson County, New Jersey, leaving a last will and testament which was duly admitted to probate by the Surrogate of Hudson County on April 25, 1924. In and by said last will and testament complainant was appointed executor thereof and letters testamentary were, on April 25, 1924, issued to complainant. A true copy of said will is annexed hereto and made part hereof. 20

2. On October 7, 1914, said John J. Bullis opened special deposit account No. 25130 in the Hudson Trust Company, Hoboken, New Jersey, and deposited therein on that date the sum of \$3,934.86. At the time of the death of said John J. Bullis there was due on said account the sum of \$5,429.72 with interest from January 1, 1924. Said account was opened in the names of "John J. Bullis or Lettie A. Dath" and at the time of the opening thereof said John J. Bullis and Lettie A. Dath signed and delivered to said Hudson Trust 30 40

*Bill of Complaint.*

Company a writing in which among other things was the following provision:

10            “This account is opened by us and intended to create a joint estate to us as joint tenants and not as tenants in common. Either signature to draw.”

3. On October 7, 1914, said John J. Bullis opened special deposit account No. 10444 in the Hoboken Trust Company, Hoboken, New Jersey, and deposited therein on that date the sum of \$1,267.26. Said account was opened in the names of “John J. Bullis or Lettie A. Dath.” At the time of the death of said John J. Bullis there was due on said account the sum of \$1,845.94 with interest  
20 from January 1, 1924.

4. On October 7, 1914, said John J. Bullis changed special deposit account No. 4400 in the Lincoln Trust Company of New Jersey, of Jersey City, New Jersey, which at that date was open in the names “John J. Bullis or Emma F. Bullis” so that said account should be in the names of “John J. Bullis or Lettie A. Dath,” the balance standing to the credit of said account on said date being  
30 \$2,576.20. At the time of the death of said John J. Bullis there was due on said account the sum of \$3,679.30 with interest from December 31, 1923.

5. On October 7, 1914, said John J. Bullis changed special deposit account No. 7236 in Commercial Trust Company of New Jersey, of Jersey City, New Jersey, which on that date was open in the names “John J. Bullis or Emma F. Bullis” so that said account should be in the names “John J. Bullis, Lettie A. Dath,” the balance standing to the  
40 credit of said account on said date being \$4,384.41.

*Bill of Complaint.*

At the time of the death of said John J. Bullis there was due on said account the sum of \$5,868.99 with interest thereon from January 1, 1924. At the time of the change of names on said account said John J. Bullis and Lettie A. Dath signed and delivered to Commercial Trust Company of New Jersey a writing in the following language: 10

“This account and all money to be credited to it belong to us as joint tenants and will be the absolute property of the survivor of us; either, and the survivor to draw. We do each appoint the other attorney irrevocable with power to deposit in said joint account moneys of the other and for that purpose to endorse any check, draft, note or other instrument payable to the order of the other.” 20

6. On October 7, 1914, said John J. Bullis changed special deposit account No. 1813 in Commercial Trust Company of New Jersey, of Jersey City, New Jersey, which on that date was open in the names “John J. Bullis or Emma F. Bullis” so that said account should be in the names “John J. Bullis, Lettie A. Dath,” the balance standing to the credit of said account on said date being \$7,709.51. 30  
At the time of the death of said John J. Bullis there was due on said account the sum of \$5,463.68 with interest thereon from January 1, 1924. At the time of the change of names on said account said John J. Bullis and Lettie A. Dath signed and delivered to Commercial Trust Company of New Jersey a writing in the following language:

“This account and all money to be credited to it belong to us as joint tenants and 40

*Bill of Complaint.*

10 will be the absolute property of the survivor of us; either, and the survivor to draw. We do each appoint the other attorney irrevocable with power to deposit in said joint account moneys of the other and for that purpose to endorse any check, draft, note or other instrument payable to the order of the other."

20 7. On October 7, 1914, said John J. Bullis opened an account No. 130807 in the Hoboken Bank for Savings, of Hoboken, New Jersey, and deposited therein the sum of \$3,910.24. Said account was opened in the names of "John J. Bullis or Lettie A. Dath." At the time of the death of said John J. Bullis there was due on said account the sum of \$5,633.13 with interest from January 1, 1924. At the time of the opening of said account said John J. Bullis and Lettie A. Dath signed and delivered to the Hoboken Bank for Savings a writing in which among other things there was the following provision:

30 "And we do hereby mutually and severally agree that we are joint owners of all moneys now deposited or which may be hereafter deposited to the credit of said account and all accrued or accruing interest thereon; that upon the death of either of us the moneys then on deposit shall become the property of the survivor of us; that each or either of us, or the survivor of us may at any and all times draw and receive from said Bank the whole or any part of said moneys now deposited, or which may be hereafter deposited to the credit of said ac-

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*Bill of Complaint.*

count; that each or either of us is authorized and empowered to sign his or her name to any receipt, check, draft or other voucher for the moneys so drawn; and we do severally authorize and empower the said Bank to pay said moneys or any part thereof upon the presentation to it of our bank or pass book with a receipt, check, draft or other voucher signed by either of us. And we do severally agree that any payment made by said Bank upon any such receipt, check, draft or other voucher containing such signature shall be a full and complete discharge, release and acquittance to said Bank for all moneys drawn, and from all liability by reason of such payment."

8. On January 5, 1915, said John J. Bullis opened account No. 167027 in the Provident Institution for Savings in Jersey City and deposited therein on that date the sum of \$4,724.87. Said account was opened in the names of "Lettie A. Dath and John Bullis." At the time of the death of said John J. Bullis there was due on said account the sum of \$5,975.42 with interest thereon from January 1, 1924. At the time of the opening of said account said John J. Bullis and Lettie A. Dath signed and delivered to said Provident Institution for Savings in Jersey City a writing in which among other things there was the following provision:

"This account and all moneys to be credited to it belong to us as joint tenants and will be the absolute property of the survivor of us; either, and the survivor to draw upon producing consent of any public officer required by taxation laws."

*Bill of Complaint.*

9. On January 5, 1915, said John J. Bullis opened account No. 167028 in the Provident Institution for Savings in Jersey City and deposited therein on that date the sum of \$4,881.54. Said account was opened in the names of "John Bullis and Lettie A. Dath." At the time of the death of said John J. Bullis there was due on said account the sum of \$5,975.42 with interest thereon from January 1, 1924. At the time of the opening of said account said John J. Bullis and Lettie A. Dath signed and delivered to said Provident Institution for Savings in Jersey City a writing in which among other things there was the following provision:

20 "This account and all moneys to be credited to it belong to us as joint tenants and will be the absolute property of the survivor of us; either, and the survivor to draw upon producing consent of any public officer required by taxation laws."

10. On April 12, 1916, said John J. Bullis opened special deposit account No. 9873 in Commercial Trust Company of New Jersey and deposited therein on that date the sum of \$3,500. At the time of the death of said John J. Bullis there was due on said account the sum of \$5,157.92 with interest from January 1, 1924. Said account was opened in the names of "Lettie A. Dath or John J. Bullis" and at the time of the opening thereof said John J. Bullis and Lettie A. Dath signed and delivered to said Commercial Trust Company of New Jersey a writing in which among other things there was the following provision:

40 "This account and all money to be credited to it belong to us as joint tenants and

*Bill of Complaint.*

will be the absolute property of the survivor of us; either, and the survivor to draw. We do each appoint the other attorney irrevocable with power to deposit in said joint account moneys of the other and for that purpose to endorse any check, draft, note or other instrument payable to the order of the other." 10

11. All moneys deposited in said accounts were owned by said John J. Bullis. Said Lettie A. Dath deposited no funds of her own in said accounts.

12. The pass books evidencing said deposits are in the possession of complainant, the same having been found in the safe deposit box of decedent, John J. Bullis, after his death. 20

13. Said Lettie A. Dath has refrained from drawing any money out of the accounts above mentioned pending a judicial determination of the rights and obligations of complainant with respect thereto.

14. Said Lettie A. Dath has married since the accounts above set out were opened and her name is now Lettie A. White. 30

15. The estate of decedent, excluding the accounts above mentioned, is insufficient to pay administration expenses and the legacies bequeathed in and by decedent's last will and testament.

16. Some of the legatees under decedent's will, other than said Lettie A. White, claim that the decedent at the time of the opening of the accounts above mentioned in the names of decedent and said Lettie A. White did not intend to make a then presently operating transfer of his right against 40

*Bill of Complaint.*

the depositaries; but that said accounts were opened and the above mentioned changes made as above set out as a matter of convenience in withdrawing funds from said accounts at the direction and for the use of said John J. Bullis, deceased.

10 Said legatees also claim that decedent and said Lettie A. White were not such owners of said accounts, or some of them, that title thereto was vested in said Lettie A. White prior to decedent's death, and that the opening of said accounts in the names of decedent and Lettie A. White was a disposition thereof intended by decedent to take effect and vest ownership in said Lettie A. White at or after his death and not prior thereto and such disposition amounted to a testamentary dis-

20 position and was void for non-compliance with the statute of wills.

17. Complainant is in doubt whether to claim said deposits, or any of them, as executor of said John J. Bullis, deceased.

Complainant is without adequate remedy in the Courts of law and therefore prays:

30 1. That said Lettie A. White, Hudson Trust Company, Hoboken Trust Company, Lincoln Trust Company of New Jersey, Commercial Trust Company of New Jersey, Provident Institution for Savings in Jersey City, and Hoboken Bank for Savings, who are the defendants to this suit, may answer this bill of complaint without oath and each statement therein made.

2. That complainant may be instructed by this Honorable Court as to its duty in the premises.

40 3. That it may be judicially determined to whom said respective deposits belong.

*Will of John J. Bullis, Annexed to Complaint.*

4. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

FISK & FISK,  
Solicitors for and of Counsel  
with Complainant. 10

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**Complaint.**

---

WILL OF JOHN J. BULLIS.

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Ex. C-2.

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I, John J. Bullis, (widower) of Jersey City, Hudson County, New Jersey, do make, publish and declare this my last will and testament. 20

FIRST.—I direct the payment of my debts and funeral expenses as soon as may be convenient after my decease.

SECOND.—I give and devise to my sister Lettie A. Dath, of Jersey City, New Jersey, my house and lot where I now reside at No. 341 Woodward Street, Jersey City, New Jersey, and two lots Nos. 32 and 33 located on Spring Valley Avenue, Riveredge, New Jersey, and to her heirs and assigns forever. 30

THIRD.—I give and bequeath to my sister Lettie A. Dath, of Jersey City, New Jersey, all the furniture and fittings in my residence No. 341 Woodward Street, Jersey City, New Jersey, and also all my wearing apparel and personal effects.

FOURTH.—I give and bequeath to my sister Lettie 40

*Will of John J. Bullis, Annexed to Complaint.*

A. Dath, of Jersey City, New Jersey, the sum of seven thousand dollars (\$7,000).

10 FIFTH.—I give and bequeath to my nephew, George H. Dath, of South Framingham, Massachusetts, the sum of one thousand dollars (\$1,000).

SIXTH.—I give and bequeath to my niece Mrs. Romeo Wood, of St. Albans, Vermont, the sum of one thousand dollars (\$1,000).

SEVENTH.—I give and bequeath to my niece Mrs. Carroll Wilson, of St. Albans, Vermont, the sum of one thousand dollars (\$1,000).

20 EIGHTH.—I give and bequeath to my nephew, Henry Bullis, of Franklin, Vermont, the sum of one thousand dollars (\$1,000).

NINTH.—I give and bequeath to my nephew, John Bullis, of Enosburgh, Vermont, the sum of one thousand dollars (\$1,000).

TENTH.—I give and bequeath to my nephew, William Bullis, of Enosburgh, Vermont, the sum of one thousand dollars (\$1,000).

30 ELEVENTH.—If at the time of my death there is owing to me by my brother-in-law, George M. Reynolds, any money, payment of which is secured by mortgage or otherwise on the farm owned by him in Franklin Centre, Franklin County, Vermont, I give and bequeath the amount of such indebtedness when collected to the following nephews and nieces in the respective proportions stated, viz:

To Nelson A. Reynolds, of Franklin, Vermont, one-quarter.

40 To Mrs. George H. Barnum, Mrs. Herbert S. Truax, Mrs. Edward Johnson, Mrs. Asa Moore and

*Will of John J. Bullis, Annexed to Complaint.*

Mrs. Carmine Johnson, all of Franklin, Vermont, each, one-eighth.

To Mrs. Lynford Elrick, of Franklin, Vermont, and Mrs. Wellsey Provost, of Springfield, Massachusetts, each, one-sixteenth.

In case of the death of any of my said nephews and nieces before me, then the share or portion of said debt given to those so dying shall be divided among the survivors in the same proportions. 10

TWELFTH.—In case at the time of my death there is any money owing to me from any of my nephews and nieces who are beneficiaries under this will, then the amount so owing shall be set off against the legacy they are to receive hereunder and if the amount of such indebtedness exceeds the amount of the legacy, then the balance of said indebtedness is to be cancelled and discharged. 20

THIRTEENTH.—All the rest, residue and remainder of my estate, real and personal, and wheresoever situated, I give, devise and bequeath in equal shares or portions to the following nephews and nieces, or to the survivors of them, viz:—George H. Dath, Mrs. Romeo Wood, Mrs. Carroll Wilson, Henry Bullis, John Bullis, William Bullis, Nelson A. Reynolds, Mrs. George H. Barnum, Mrs. Herbert S. Truax, Mrs. Lynford Elrick, Mrs. Edward Johnson, Mrs. Asa Moore, Mrs. Wellsey Provost and Mrs. Carmine Johnson. 30

FOURTEENTH.—I nominate and appoint the Commercial Trust Company of New Jersey, a corporation of New Jersey, having its office at Jersey City, New Jersey, executor of this will.

*Answer of Lettie A. White.*

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ninth day of December, nineteen hundred and fourteen.

JOHN J. BULLIS.

10 Signed, sealed, published and declared by the said testator as and for his last will and testament, in our presence, who, at his request, in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

Willard C. Fisk, 17 Bentley Ave., Jersey City, N. J.

Nellie P. Hamilton, 265 Cator Ave., Jersey City, N. J.

20

**Answer of Lettie A. White.**

(Filed April 20, 1925.)

IN CHANCERY OF NEW JERSEY.

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor under the  
last will and testament of JOHN  
J. BULLIS, deceased,

Complainant,

} On Bill, &c.

30

v.

LETTIE A. WHITE, *et als.*,  
Defendants.

The answer of the defendant Lettie A. White, residing in the City of Jersey City, County of Hudson and State of New Jersey, to the Bill of Complaint of the Complainant.

40

*Answer of Lettie A. White.*

This defendant answering the Bill of Complaint says that:

1. She admits the 1st, 2nd, 3rd, 4th, 5th and 6th paragraphs of the complaint.

2. As to the sums of moneys in bank mentioned in paragraphs 7, 8 and 9 of the complaint, this defendant has no knowledge or information sufficient to form a belief. 10

3. She admits paragraphs 10, 11, 12, 13 and 14 of the complaint.

4. As to paragraph 15, this defendant has no knowledge or information sufficient to form a belief as to the statement contained in said paragraph. 20

5. As to some of the statements mentioned in paragraph 16 of the complaint, this defendant has no knowledge or information sufficient to form a belief, but denies that the accounts in question were opened and the above mentioned changes made as a matter of convenience in withdrawing funds from said accounts.

6. This defendant denies paragraph 17 of the complaint. 30

This defendant joins in the prayer of the complainant that it may be determined what the rights of complainant in said deposits are; what her rights in said deposits are and that she may be protected by the order of this Honorable Court.

AUGUST G. MENGE,  
Solicitor for and of Counsel  
with Defendant, Lettie A. White.

**Answer of Hudson Trust Company.**

(Filed March 11, 1925.)

## IN CHANCERY OF NEW JERSEY.

Between

10

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor, etc.,  
Complainant,

} On Bill, etc.

and

LETTIE A. WHITE, *et als.*,  
Defendants.

20

The answer of the defendant Hudson Trust Company, a corporation of the State of New Jersey, having its principal office at Bergenline Avenue and Hackensack Plank Road, West Hoboken, Hudson County, New Jersey, answering the bill of complaint of the complainant herein, says that it is without knowledge as to all of the allegations of the bill of complaint except those contained in the second paragraph thereof, and except as to the allegations of the second paragraph thereof it leaves the complainant to its proof.

30

It admits the allegations contained in the second paragraph and joins in the prayer of the bill of complaint.

HOPKINS &amp; HERR,

Solicitors for and of Counsel with  
Defendant Hudson Trust Company.

40

**Answer of Hoboken Trust Company.**

(Filed March 19, 1925.)

## IN CHANCERY OF NEW JERSEY.

Between

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor, etc.,  
Complainant,

and

LETTIE A. WHITE, *et als.*,  
Defendants.

On Bill, etc.

10

The answer of the defendant Hoboken Trust Company, a corporation of the State of New Jersey, having its principal office at 1400 Washington Street, Hoboken, Hudson County, New Jersey, answering the bill of complaint of the complainant herein, says that it is without knowledge as to all the allegations of the bill of complaint except those contained in the third paragraph thereof, and except as to the allegations of the third paragraph thereof it leaves the complainant to its proof.

20

It admits the allegations contained in the third paragraph and joins in the prayer of the bill of complaint.

30

HOPKINS & HERR,  
Solicitors for and of Counsel with  
Defendant, Hoboken Trust Company.

40

**Answer of Lincoln Trust Company.**

(Filed March 13, 1925.)

## IN CHANCERY OF NEW JERSEY.

10	Between  COMMERCIAL TRUST COMPANY OF NEW JERSEY, executor, etc., Complainant,  and  LETTIE A. WHITE, <i>et als.</i> , Defendants.	}	On Bill, &c.
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20 The answer of the defendant Lincoln Trust Company, a corporation of the State of New Jersey, having its principal office at No. 76 Montgomery Street, Jersey City, Hudson County, New Jersey, answering the bill of complaint herein, says that:

1. It is without knowledge as to all of the allegations of the bill of complaint except those contained in the fourth paragraph thereof, and except as to the allegations of the fourth paragraph thereof it leaves the complainant to its proof.
- 30 2. It admits the allegations contained in the fourth paragraph of the complaint and joins in the prayer of the bill of complaint.

JAMES W. McCARTHY,  
Solicitor for and of Counsel with  
Defendant, Lincoln Trust Company.

**Answer of Commercial Trust Company of  
New Jersey.**

(Filed April 17, 1925.)

IN CHANCERY OF NEW JERSEY.

<p>COMMERCIAL TRUST COMPANY OF NEW JERSEY, executor under the last will and testament of JOHN J. BULLIS, deceased, Complainant,</p> <p style="text-align: center;"><i>v.</i></p> <p>LETTIE A. WHITE, <i>et al.</i>, Defendants.</p>	}	<p>10</p> <p>On Bill, etc.</p>
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Defendant, Commercial Trust Company of New Jersey, a corporation of the State of New Jersey, having its principal office at 15 Exchange Place, Jersey City, New Jersey, answering the bill of complaint herein says that: 20

1. It has no knowledge or information sufficient to form a belief as to the allegations of any of the paragraphs of the bill of complaint, except paragraphs 5, 6 and 10.

2. It admits paragraphs 5, 6 and 10. 30

3. This defendant joins in the prayer of the bill of complaint.

JOSEPH J. CARISSIMI,  
Solicitor for and of Counsel with  
Defendant, Commercial Trust  
Company of New Jersey.

**Answer of the Provident Institution for  
Savings in Jersey City.**

(Filed April 20, 1925.)

IN CHANCERY OF NEW JERSEY.

10	<p>COMMERCIAL TRUST COMPANY OF NEW JERSEY, executor of the last will and testament of JOHN J. BULLIS, deceased, Complainant,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">LETTIE A. WHITE, <i>et als.</i>, Defendants.</p>
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20        The answer of The Provident Institution for Sav-  
ings in Jersey City, defendant in the above named  
suit, respectfully shows:

1. It admits the allegations contained in para-  
graphs numbered 1, 8 and 9.

2. It has no knowledge of the statements con-  
tained in paragraphs numbered 2, 3, 4, 5, 6, 7, 10,  
11, 12, 13, 14, 15, 16 and 17, and prays proof thereof.

30        3. Further answering the bill of complaint this  
defendant says on January 5, 1915, John J. Bullis,  
the decedent, and Lettie A. Dath, his sister (who  
the bill alleges has since remarried, and whose  
name is now Lettie A. White), opened two savings  
accounts with this defendant; the first account  
which is number 167027 was opened with a deposit  
of forty-seven hundred and twenty-four dollars  
and eighty-seven cents (\$4,724.87), and there is in  
said account to its credit at this time sixty-two

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*Answer of Provident Institution for Savings in  
Jersey City.*

hundred and sixteen dollars and eighty cents (\$6,216.80); the other account number 167028 was opened on January 5, 1915, with a deposit of forty-eight hundred and eighty-one dollars and fifty-four cents (\$4,881.54), and there is now to its credit the sum of sixty-two hundred and sixteen dollars and eighty cents (\$6,216.80);

At the time of opening said accounts both the decedent and the said Lettie A. Dath entered into an agreement with this defendant as follows:

“We hereby agree to the By-laws, Rules and Regulations of The Provident Institution for Savings in Jersey City. This account and all money to be credited to it belong to us as joint tenants and will be the absolute property of the survivor of us; either, and the survivor to draw upon producing consent of any public officer required by taxation laws.”

This defendant stands ready and willing to pay the sum of money to the credit of said account in accordance with the terms of said agreement, that is to say—it will pay said sums of money to the said Lettie A. Dath, upon the production by her of the consent of the Comptroller of the State of New Jersey to such payment, or it will pay said sums of money in accordance with the Order of this Court.

INSLEY, VREELAND & DECKER,  
Solicitors and of Counsel with De-  
fendant, The Provident Institution  
for Savings in Jersey City.

**Answer of the Hoboken Bank for Savings in  
the City of Hoboken.**

(Filed April 1, 1925.)

IN CHANCERY OF NEW JERSEY.

10	Between  COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation, Complainant,  and  LETTIE A. WHITE, <i>et als.</i> , Defendants.	}	On Bill, &c.
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20 The answer of the defendant, The Hoboken Bank for Savings in the City of Hoboken, to the bill of complaint of complainant:

This defendant answering the bill of complainant says that:

1. It is not informed as to the allegations of any of the paragraphs of the bill of complaint except paragraph 7.

30 2. Paragraph 7 is admitted except as herein stated or qualified. On August 28, 1906, John J. Bullis opened an account in the bank of this defendant known as account No. 100,230 with an initial deposit of \$700. This was opened in the name John J. Bullis. By subsequent deposits and by the additions of accrued interest, this deposit on October 7, 1914, amounted to \$3,910.24. On October 7, 1914, this account was closed and a new account opened with the same amount. When this account was opened it was opened in the name of John J. Bullis and Lettie A. Dath and an agreement was  
40 signed in the agreement book of defendant bank No. 3640 as follows:

*Answer of The Hoboken Bank for Savings in the  
City of Hoboken.*

“We, the undersigned, John J. Bullis of No. 341 Woodward St., Jersey City, N. J., and Lettie A. Dath of Number, same address, having this day deposited with The Hoboken Bank for Savings in the City of Hoboken the sum of \$3,910.24, do request the said bank to open an account with us in the names of John J. Bullis of the City of Jersey City in the State of N. J., and Lettie A. Dath of the City of Jersey City and State of N. J.,” and then continued as set forth in paragraph 7 of the bill of complaint. There was in this account on January 1, 1924, \$5,476.73, there having been drawn from the amount on deposit \$78.20 January 19, 1915, and \$78.20 July 27, 1915, which withdrawals should be deducted from the amount stated in the bill of complaint as being due January 1, 1924. On April 21, 1924, an additional interest credit was added to said deposit making the amount due at the time of the death of decedent the sum of \$5,531.49 with interest to accrue from April 1, 1924. This account is No. 130,807.

3. This defendant is willing upon receiving proper receipts therefor to pay the amount on deposit in said account as this Honorable Court may direct and joins in the prayer of complainant that it may be determined what the rights of complainant in said deposit is and what the rights of the said Lettie A. Dath in said deposit is and that this defendant may be protected by the order of this court in the payment of said deposit.

PIERSON & SCHROEDER,  
Solicitors of Defendant, The  
Hoboken Bank for Savings  
in the City of Hoboken.

**Order Admitting Parties Defendant.**

(Filed May 28, 1925.)

IN CHANCERY OF NEW JERSEY.

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COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor under the  
last will and testament of JOHN  
J. BULLIS, deceased,

Complainant,

} On Bill, &amp;c.

*v.*LETTIE A. WHITE, *et al.*,

Defendants.

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It is on this 28th day of May, nineteen hundred  
and twenty-five, ordered that Etta Bullis Wood,  
Lettie Bullis Wilson, Henry Bullis, John Bullis,  
William Bullis, Nelson H. Reynolds, Sarah Rey-  
nolds Barnum, Theena Reynolds Truax, Ella Bullis  
Moore, Minnie Johnson, Marion Reynolds Elrick  
and Ida Bullis Provost be and they are hereby ad-  
mitted as parties defendant in the above entitled  
suit.

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We hereby consent to the making and entry of  
the above order.

FISK &amp; FISK,

Solicitors of Complainant,

PIERRE F. COOK,

Solicitor of Defendants, Etta Bullis  
Wood, Lettie Bullis Wilson,  
Henry Bullis, John Bullis, Wil-  
liam Bullis, Nelson H. Reynolds,  
Sarah Reynolds Barnum, Theena  
Reynolds Truax, Ella Bullis  
Moore, Minnie Johnson, Marion  
Reynolds Elrick and Ida Bullis  
Provost.

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**Appearance for Etta Bullis Wood et al.**

(Filed May 28, 1925.)

## IN CHANCERY OF NEW JERSEY.

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor under the  
last will and testament of JOHN  
J. BULLIS, deceased,

Complainant,

*v.*

LETTIE A. WHITE, *et al.*,  
Defendants.

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57-554.

On Bill, &amp;c.

Appearance entered for Etta Bullis Wood, Lettie  
Bullis Wilson, Henry Bullis, John Bullis, William  
Bullis, Nelson H. Reynolds, Sarah Reynolds Bar-  
num, Theena Reynolds Truax, Ella Bullis Moore,  
Minnie Johnson, Marion Reynolds Elrick and Ida  
Bullis Provost, defendants in the above entitled  
cause, by

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PIERRE F. COOK,  
Solicitor.

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**Answer of Defendants Etta Bullis Wood  
et al.**

(Filed June 1, 1925.)

IN CHANCERY OF NEW JERSEY.

10	COMMERCIAL TRUST COMPANY OF NEW JERSEY, executor under the last will and testament of JOHN J. BULLIS, deceased, <div style="text-align: right;">Complainant,</div>		57-554.
	v.		On Bill, &c.
	LETTIE A. WHITE, <i>et al.</i> , <div style="text-align: right;">Defendants.</div>		

20      Answer of the defendants, Etta Bullis Wood, Lettie Bullis Wilson, Henry Bullis, John Bullis, William Bullis, Nelson H. Reynolds, Sarah Reynolds Barnum, Theena Reynolds Truax, Ella Bullis Moore, Minnie Johnson, Marion Reynolds Elrick, and Ida Bullis Provost, to the bill of complaint.

30      These defendants, Etta Bullis Wood, Lettie Bullis Wilson, Henry Bullis, John Bullis, William Bullis, Nelson H. Reynolds, Sarah Reynolds Barnum, Theena Reynolds Truax, Ella Bullis Moore, Minnie Johnson, Marion Reynolds Elrick and Ida Bullis Provost, answering the bill of complaint say that:

(1) Paragraph 1 is admitted.

(2) These defendants have no knowledge or information sufficient to form a belief as to the statements in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

(3) Paragraphs 16 and 17 are admitted.

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*Replication.*

(4) These defendants say that they as well as the said complainant are desirous that complainant may be instructed by this Honorable Court as its duty in the premises, and that it may be judicially determined to whom the respective deposits specified in the bill of complaint belong.

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PIERRE F. COOK,  
Solicitor of and of Counsel  
with the Defendants, Etta  
Bullis Wood, Lettie Bullis  
Wilson, Henry Bullis, John  
Bullis, William Bullis, Nel-  
son H. Reynolds, Sarah  
Reynolds Barnum, Theena  
Reynolds Truax, Ella Bullis  
Moore, Minnie Johnson,  
Marion Reynolds Elrick  
and Ida Bullis Provost.

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**Replication.**

(Filed April 22, 1925.)

## IN CHANCERY OF NEW JERSEY.

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor, &c.,  
Complainant,

*v.*

LETTIE A. WHITE, *et al.*,  
Defendants.

(57-554)

On Bill, &amp;c.

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Complainant joins issue on the answers of defendants.

FISK & FISK,  
Complainant's Solicitors.

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**Order for Revivor.**

(Filed October 27, 1925.)

IN CHANCERY OF NEW JERSEY.

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COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor, &c.,  
Complainant,

*v.*

LETTIE A. WHITE, *et al.*,  
Defendants.

(57-554)

On Bill, &amp;c.

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This matter being opened to the Court by Fisk & Fisk, solicitors of the complainant, and it appearing that defendant, Lettie A. White, died on May 30, 1925, and that her last will and testament has been admitted to probate by the Hudson County Orphans' Court and letters testamentary thereon issued to Sidney White, the executor therein named, and that by reason of said Lettie A. White's death her said executor has become interested as a party to this suit, and that complainant has chosen to make said Sidney White, executor under said last will and testament of Lettie A. White, deceased, a party defendant hereto, and August G. Menge, Esq., solicitor of record for said decedent and for her said executor, having consented hereto,

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It is, on this 27th day of October, 1925, ORDERED that this suit stand revived against said Sidney White, executor under the last will and testament of Lettie A. White, deceased, and that said Sidney White, executor aforesaid, be made a party hereto

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*Order for Review.*

in the place and stead of said Lettie A. White, deceased.

It is FURTHER ORDERED that the answer hereto filed by said defendant, Lettie A. White, now deceased, be admitted and taken as and for the answer of said defendant, Sidney White, executor under the last will and testament of Lettie A. White, deceased.

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E. R. WALKER,  
C.

Respectfully advised,  
JAMES F. FIELDER,  
V. C.

The making and entry of the foregoing order is hereby consented to.

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AUGUST G. MENGE,  
Solicitor for Defendant Lettie A. White (deceased) and Sidney White, executor under the last will and testament of Lettie A. White, deceased.

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**Conclusions of V. C. Fielder.**

(Filed March 29, 1926.)

March 26, 1926.

## IN CHANCERY OF NEW JERSEY.

10	Between  COMMERCIAL TRUST COMPANY OF NEW JERSEY, executor, etc., Complainant,  and  LETTIE A. WHITE, <i>et al.</i> , Defendants.	}	(57-554) On Bill, &c.
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20      On bill, answers, replication and oral proofs.

30      This suit is brought to determine the ownership of nine special, or savings, accounts in banks in this State, all standing in the joint names of John J. Bullis and Lettie A. Dath. Mrs. Dath was Bullis' sister and some time after the accounts were opened she married Sidney White. Bullis died April 10, 1924, Mrs. White surviving him and the complainant is executor of his will. The bill of complaint alleges that all money deposited in the accounts was owned by Bullis and that Mrs. White deposited no money in any of them, which allegation Mrs. White, by her filed answer, admitted. The bill further alleges that some legatees under Bullis' will claim that Bullis opened the bank accounts in said joint names without intending to vest any right therein in Mrs. White and that her

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*Conclusions of V. C. Fielder.*

name was used in the accounts as a matter of convenience for Bullis in making withdrawals therefrom, which allegation Mrs. White by her answer denied. Shortly after filing her answer Mrs. White died and the suit was revived against her husband as executor of her will. The contest here is between the executor of Bullis' will and certain legatees thereunder on one side and the executor of Mrs. White's will on the other. 10

The pass books for all the accounts contain a provision to the effect that no withdrawals could be made from the accounts without production of the pass books and at Bullis' death all the pass books were found in a safe deposit box originally rented by Bullis April 16, 1914, but for three years preceding his death held in the joint names of John J. Bullis and Sidney White, under rental conditions which gave Bullis and White and each of them and the survivor, right of access to the box. No testimony was offered to show that the books had always been kept in this box, neither was there any testimony of any statement made by Bullis or Mrs. White before, at the time or after the accounts were opened, which would throw any light on the purpose or intent with which they became joint depositors. Following is a statement of the pertinent facts concerning each bank account: 20 30

*Hoboken Trust Company.*

Opened October 7, 1914, in the names of "John J. Bullis or Lettie A. Dath." Both signed the signature card, but there is nothing thereon to show the purpose with which the account was opened.

On the cover and on an inside page of the pass book are the printed words "Hoboken Trust Com- 40

*Conclusions of V. C. Fielder.*

pany in account with," following which are written the names "John J. Bullis or Lettie A. Dath" and nothing more.

There were no withdrawals.

10 Lincoln Trust Company.

Opened originally January 3, 1910, in the names of "John J. Bullis or Emma F. Bullis," by a signature card on which appear the signatures of said depositors. October 7, 1914, the name of Emma F. Bullis was inked out and the signature of Lettie A. Dath taken on a new card. No new account was opened and the balance then to the credit of the original account was carried along in the changed account. There is nothing on the old or  
 20 the new signature card to show the purpose with which the account was opened. On the cover and on an inside page of the pass book are the printed words "Lincoln Trust Company in account with," following which were written the names "John J. Bullis or Emma F. Bullis." The name of Emma F. Bullis is inked out and the name "Lettie A. Dath" written thereunder. On the cover, but separate from the other words, are stamped the words  
 "either or the survivor to draw."

30 There was one withdrawal by draft signed by Bullis, for the amount of interest previously credited.

Hudson Trust Company.

Opened October 7, 1914. The signature card contains the following:

"Either signature to draw. This account is opened by us and intended to create a

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*Conclusions of V. C. Fielder.*

joint estate to us as joint tenants and not as tenants in common.

(Signed) "JOHN J. BULLIS

or

(Signed) "LETTIE A. DATH."

On the cover and on an inside page of the pass book are written the names "John J. Bullis or Lettie A. Dath," under which, in both places, are stamped the words "as joint tenants and not as tenants in common" and on the cover and inside the book, but separate from the other words, are stamped the words "either signature to draw."

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There were two withdrawals, both on drafts signed by Bullis, in each case for an amount of interest previously credited.

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Commercial Trust Company (No. 1813).

Opened originally January 14, 1904, in the name of Bullis alone. Later the name of Emma F. Bullis was added and subsequently erased and the name of Lettie A. Dath substituted October 7, 1914. A new signature card was then made out on which appears the following:

"This account and all money to be credited to it belong to us as joint tenants and will be the absolute property of the survivor of us; either and the survivor to draw. We do each appoint the other attorney irrevocable with power to deposit in said joint account moneys of the other and for that purpose to endorse any check, draft, note or other instrument payable to the order of the other.

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(Signed) "LETTIE A. DATH.  
"JOHN J. BULLIS."

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*Conclusions of V. C. Fielder.*

The pass book shows it was issued in the name of John J. Bullis or Emma F. Bullis, "either and the survivor to sign" and that the latter name was stricken out and the name "Lettie A. Dath" substituted therefor.

10 There were four withdrawals on drafts signed by Bullis, one of which, dated April 12, 1916, for \$3,500 was used to open a new account (No. 9873) in the same bank in the names of John J. Bullis or Lettie A. Dath. There were also two withdrawals on drafts signed by Mrs. Dath, one dated June 25, 1923, and the other dated September 27, 1923.

Commercial Trust Company (No. 7236).

20 Opened originally June 27, 1911, in the names of "John J. Bullis and Emma F. Bullis." The name of Emma F. Bullis was stricken out and the name "Lettie A. Dath" substituted October 7, 1914. A new signature card was then made out on which appear the same words as in the account last above, with the signatures "John J. Bullis, Lettie A. Dath" appended.

30 The pass book shows it was issued in the names of John J. Bullis or Emma F. Bullis, "either and the survivor to sign" and that the latter name was stricken out and the name of Lettie A. Dath substituted therefor.

There were two withdrawals on drafts signed by Bullis; also two on drafts signed by Mrs. Dath, one dated January 16, 1922, and the other dated June 8, 1922. All four drafts were for amounts different from the amounts of interest credits.

Commercial Trust Company (No. 9873).

40 Opened April 12, 1916, in the names of John J. Bullis or Lettie A. Dath, by draft signed by Bullis

*Conclusions of V. C. Fielder.*

against Commercial Trust Company account No. 1813. On the signature card both names appear signed under the same words as were used in account No. 1813 of the same bank. The pass book shows it was issued in the names of John J. Bullis or Lettie A. Dath, "either and the survivor to sign." 10

There was one withdrawal on draft signed by Bullis; also one on draft signed by Mrs. Dath, dated January 16, 1922. Neither draft is for an amount of interest credit.

*Hoboken Bank for Savings.*

Opened October 7, 1914, in the names of John J. Bullis or Lettie A. Dath. Their signatures appear below an agreement which, in effect, states that they have deposited the sum with which the account was opened and that they request the bank to open an account with them in their names; that they are the joint owners of the money deposited and thereafter to be deposited and of the interest accruing thereon; that upon the death of either, the moneys then on deposit shall become the property of the survivor; that each, or the survivor, may at any time draw against the account. The pass book was issued in the names of John J. Bullis or Lettie A. Dath, payable to either or survivor. 20 30

There were two withdrawals, both on drafts signed by Bullis for the amount of interest previously credited.

*Provident Institution for Savings (two accounts).*

Both opened January 5, 1915, in the names of "John J. Bullis and Lettie A. Dath." The signature cards signed by them are identical and contain 40

*Conclusions of V. C. Fielder.*

the following: "This account and all money to be credited to it belong to us as joint tenants and will be the absolute property of the survivor of us; either and the survivor to draw upon producing consent of any public officer required by taxation laws."

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The pass books were issued in the names "Lettie A. Dath and John J. Bullis."

There were seven withdrawals from one account and eight from the other, all on drafts signed by Bullis. In each case these withdrawals, except the first one on each account, were for amounts of interest credits.

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Messrs. FISK & FISK, for Complainant.

Mr. AUGUST G. MENGE, for Defendant Lettie A. White.

Mr. PIERRE F. COOK, for Defendants Etta Bullis Wood, *et al.*

FIELDER, V. C.:

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In opening the accounts, Bullis had either a donative intention of a then present gift to Mrs. White of an interest in the moneys deposited therein, with the right to receive what remained to the credit thereof at his death in case she survived him; or an intention merely to use her as a convenience in withdrawing money for him in his lifetime, with no beneficial interest to her in the money, except perhaps after his death, in case she survived him. There being no direct testimony to show what his purpose was, the rights of the donor and donee must be determined upon the effect to be given the writings which they signed and delivered to the several banks, in connection

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with the surrounding circumstances.

*Conclusions of V. C. Fielder.*

Taking up first the accounts with the Hoboken Trust Company and the Lincoln Trust Company. The form of the deposits as appears from the signature cards is not evidence of a gift to her to take effect *in praesenti* (Schick *v.* Grote, 42 N. J. Equity, 352; Skillman *v.* Wiegand, 54 N. J. Equity, 198; Taylor *v.* Coriell, 66 N. J. Equity, 262; Gordon *v.* Toler, 83 N. J. Equity, 25; McCullough *v.* Forrest, 84 N. J. Equity, 101; Morristown Trust Company *v.* Capstick, 90 N. J. Equity, 22; affirmed 91 N. J. Equity, 152). In the case of the Lincoln Trust Company account, the words "either or the survivor to draw," stamped on the pass book, are not found in the contract entered into between Bullis, Mrs. White and the bank; they were evidently placed on the pass book by a bank official or employee. Notwithstanding that these words are in plain sight on the pass book, which is assumed to have been always in Bullis' possession, in the absence of any evidence that they were placed there by his direction or consent, I think they should not be considered for the purpose of enlarging or explaining the signature card contract signed by Bullis. Taking the signature cards, then, as showing the entire contract between Bullis, Mrs. White and these two banks, in connection with the fact that all money in both accounts originally belonged to Bullis; that it does not appear that Mrs. White ever had possession of the pass books evidencing these accounts; that she never withdrew money from either account and could not withdraw any in Bullis' lifetime without producing the pass books, I can find no donative intent by Bullis to give Mrs. White a then present interest in these two accounts. The form of these deposits

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*Conclusions of V. C. Fielder.*

10 indicates that if he had any donative intent toward her, it was confined to such balance as might remain to his credit at his death, which interest should not vest in her until that time, thus making his gift a testamentary disposition of funds without complying with the law of wills and therefore void. I reach this conclusion upon the authority of the decisions above cited and the decision in *Stevenson v. Earl*, 65 N. J. Equity, 621. The amounts standing to the credit of the accounts in the Hoboken Trust Company and the Lincoln Trust Company will be decreed to belong to Bullis' estate.

20 Taking up next the remaining accounts. The form of deposit used for these accounts is evidence of a gift to Mrs. White to take effect *in praesenti* and it is settled law in this State that under such forms, the balance to the credit of the accounts belonged to Mrs. White on the death of Bullis (*Morristown Trust Company v. Capstick, supra*; *New Jersey Title & Co. v. Archibald*, 91 N. J. Equity, 82), unless it appears from the surrounding circumstances that he had no donative intent in naming her as joint owner with him.

30 First, it is contended that the fact that all moneys deposited in these accounts originally belonged to Bullis is a circumstance to be considered. But under the forms of deposit which we are now considering, this fact is immaterial (*New Jersey Title & Co. v. Archibald, supra.*)

40 It is next contended that the provisions of Bullis' will negative the idea of an absolute gift to Mrs. White of any interest in the seven accounts now in question. His will is dated December 9, 1914, and by it he bequeathed legacies for a total of \$19,600, which includes a bequest of \$7,000 to Mrs. White

*Conclusions of V. C. Fielder.*

and he provided for distribution of his residuary estate. The inventory of his estate shows gross personalty of approximately \$10,000 (exclusive of all bank accounts involved in this suit, which total approximately \$45,000). Whether or not he left any undevised real property does not appear, but I shall assume he did not. It is argued that he would not have given Mrs. White a legacy of \$7,000 had he intended her to have his bank accounts and that he would not have provided for \$19,600 in legacies from an estate of but \$10,000. I consider this argument mere speculation and since we have in writing the plain and unambiguous things he did, I am not willing to guess that he had something in mind other than what he said. In the absence of evidence to the contrary, he is presumed to have known the effect of the agreements of deposit entered into with Mrs. White and the banks. He had opened six of his nine accounts two months prior to the date of his will and I have found that two of them, for a total of over \$9,000, were opened in such form that they could not be paid to Mrs. White as his survivor and he is presumed to have known that she would not receive the moneys in these two accounts. Why he opened two more accounts less than a month after the date of his will and a third account about sixteen months after the date of his will (the three for a total of \$17,000), in such form that he gave Mrs. White a present interest in them, with the right to receive the balances credited to them on his death, I do not know and I do not think that anyone can speculate safely that he had an intention different from what his agreements with the banks said he had. He died more than

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*Conclusions of V. C. Fielder.*

nine years after the date of his will. I might guess that when he executed his will he had an estate (exclusive of the money in bank) ample to pay the legacies provided for in the will. In fact, less than a month after the date of his will, he  
10 opened two of the bank accounts now in question for a total of nearly \$12,000, the money so deposited coming from some source other than the bank accounts involved in this suit. I might also guess that when he executed his will he hoped and expected to leave sufficient property applicable to the payment of legacies. I might also guess that after he had executed his will, he decided to give his sister, Mrs. White, a greater interest in his  
20 estate than he had already provided by bank accounts and will and therefore he opened three more bank accounts and made them payable to her, jointly with himself, with right of survivorship to her. But, as I have said, these matters of speculation cannot be used as factors in determining Bullis' intention and so I cannot use the provisions of his will as evidence that he had an intent with regard to the bank accounts contrary to the terms of his written agreements with the banks.

30 It is further contended that there being no delivery of the pass books to Mrs White, the gift to her was not complete because she was unable to draw money from the accounts without possession of these books. One of the essentials of a complete gift *inter vivos* is that there must be a delivery of the gift to the donee and in case of a chose in action, the delivery must be of such a nature as the subject matter of the gift is most capable. Where the subject matter is a certificate of stock, a bank  
40 account or other chose in action standing in joint

*Conclusions of V. C. Fielder.*

names, delivery cannot be made to and possession is usually not held by both or all joint owners at the same time and delivery to one must, in the nature of things, be a delivery to the other or others (*Dunn v. Houghton*, 51 Atl., 71; *East Rutherford B. & L. v. McKnight*, 87 N. J. Equity, 375) and since in the present case only one of the joint owners could hold the pass books (unless they were kept in a box or some place to which both could have access), the donor was the natural one of the two to hold them. After all, the gift was not of the books but of the moneys in the accounts and the books were but the written record issued by the banks of the items of debit and credit to the accounts and the provision that no withdrawals could be made without presenting the books was mainly for the protection of the banks when called on to make payments. Of course, a donor who desired to guard the accounts against unnecessary and improper withdrawals, could take advantage of and have protection under such provision, but had the pass books come into Mrs. White's possession in Bullis' lifetime and had she used them to draw against the accounts, can it be doubted, on the facts here present, that she would have been entitled to hold the amount of her drafts as against Bullis? There is no evidence that the pass books were always in Bullis' possession and if it is to be assumed that they were, it is to be noted that for the last three years of Bullis' life, a safe deposit box in which they were found was rented in the joint names of Bullis and Mrs. White's husband under terms by which both and the survivor had access and that the three Commercial Trust Company pass books were out of Bullis' possession as follows: Account No. 1813, June 25, 1923, and Sep-

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*Conclusions of V. C. Fielder.*

tember 27, 1923; account No. 7236, January 16, 1922, and June 8, 1922, and account No. 9873, January 16, 1922, because entries in the pass books of withdrawals on those dates show that they were made on drafts signed by Mrs. White. The pass book on account No. 1813 of the Commercial Trust Company was also in Mrs. White's constructive possession March 12, 1916, when she and Bullis went to the bank and \$3,500 was drawn out on draft signed by him and deposited in account No. 9873 of the same bank, opened in their joint names under the agreement signed by them on that day. The real question seems to me to be: Do the facts show that there was an intention on Bullis' part to make a present gift of the accounts to Mrs. White, which the latter accepted by signing the deposit agreements? By the agreements with the banks, under which the accounts were opened, Bullis delivered his property to the banks and procured from them a contract with and for the benefit of Mrs. White (as well as himself) and the banks became debtors to both of them. Thus a complete, valid gift or trust was made, under which the banks contracted to pay to Mrs. White and I do not consider that delivery of the pass books into her hands was necessary to complete the contracts, at least so far as her right of survivorship is concerned (*Dunn v. Houghton, supra*; *New Jersey Title &c. Co. v. Archbald, supra*; *Meriden Trust Co. v. Miller*, 88 Conn., 157; *Scott v. Berkshire Bank*, 140 Mass., 157; *Alger v. North End Bank*, 146 Mass., 418). Further, can it not be said that Bullis made delivery of the pass books to a third person for Mrs. White? If so, such a delivery would be sufficient, even if the books did not come to Mrs. White's hands until after his death. (*Hoboken Bank for Savings v.*

*Conclusions of V. C. Fielder.*

Schwoon, 62 N. J. Equity, 503.) I have said that for the last three years of Bullis' life, it is assumed that the pass books were kept in a safe deposit box to which Bullis and Mrs. White's husband and the survivor of them were to have access. Mr. White had no interest in these bank accounts or in the pass books and it seems to me that if Bullis kept the pass books evidencing accounts payable to Mrs. White after his death, in a safe deposit box to which Mr. White had access in Bullis' lifetime and after his death, Bullis said to Mr. White, in effect, "I deliver these pass books to you to hold jointly with me. If you survive me, deliver them to your wife, to whom the balances to the credit of these accounts are payable upon my death."

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Finally it is argued that retention of control of these accounts by Bullis, through possession of the pass books, shows that Mrs. White was to have no beneficial interest in the accounts until after Bullis' death; hence the gift is void as an attempted testamentary disposition of the accounts. There having been a donative intent by Bullis that the gifts should take effect forthwith, that Bullis reserved an interest therein for his life and intended that Mrs. White should not come into possession of her interest until his death, would not invalidate the gift as an attempted testamentary transaction contrary to the statute of wills (*Green v. Tulane*, 52 N. J. Equity, 169; *Sibley v. Somers*, 62 N. J. Equity, 595; *Mullen v. Mullins*, 130 Atl., 628). Further, the form of these deposits created the relation of debtor and creditor between the depositors and the banks, under which the banks contracted with Bullis and Mrs. White to pay to Mrs. White, should

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*Final Decree.*

she survive Bullis, all moneys the banks owed on the accounts, so that Mrs. White is entitled to the moneys under her contractual relation with the banks (New Jersey Title &c. Co. *v.* Archibald, *supra*).

- 10     The amounts standing to the credit of the accounts in the Hudson Trust Company, Commercial Trust Company (three accounts), Hoboken Bank for Savings and Provident Institution for Savings (two accounts) will be decreed to belong to the Estate of Lettie A. White.

**Final Decree.**

(Filed April 12, 1926.)

20                     IN CHANCERY OF NEW JERSEY.

Between	}	(57-554) On Bill, etc.
COMMERCIAL TRUST COMPANY OF NEW JERSEY, executor of JOHN J. BULLIS, deceased, Complainant,		
and		
30             LETTIE A. WHITE, <i>et al.</i> , Defendants.		

40     This cause coming on to be heard in the presence of J. Fisher Anderson of Fisk & Fisk, solicitors of the complainant Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased, August G. Menge, solicitor of the defendant Sidney White, executor of Lettie A. White (formerly Lettie A. Dath), deceased, Pierre F. Cook, solicitor

*Final Decree.*

of the defendant Etta Bullis Wood, *et al*, Joseph J. Carissimi, solicitor of the defendant Commercial Trust Company of New Jersey, Insley, Vreeland & Decker, solicitors of the defendant The Provident Institution for Savings in Jersey City, Pierson & Schroeder, solicitors of the defendant The Hoboken Bank for Savings in the City of Hoboken, James W. McCarthy, solicitor of the defendant Lincoln Trust Company of New Jersey, and Hopkins & Herr, solicitors of the defendants Hoboken Trust Company and Hudson Trust Company, and the Court having examined the pleadings and having taken proofs orally in open court, and having heard and considered the arguments of counsel thereon, and,

It appearing that John J. Bullis died on April 10, 1924, and that his sister Lettie A. White (formerly Dath) survived him and that on April 10, 1924, the date of death of complainant's testator John J. Bullis, the said John J. Bullis and Lettie A. Dath had a special or savings account with the Hoboken Trust Company, in the names of John J. Bullis or Lettie A. Dath, and had another special or savings account with the Lincoln Trust Company of New Jersey in the name of John J. Bullis or Lettie A. Dath, on the pass book for which were stamped the words "either or the survivor to draw" and that all the money deposited in or credited to said two accounts was the money of John J. Bullis, and that Lettie A. White (formerly Dath) had never withdrawn money from either account, and that the pass books for said two accounts provide that no withdrawals can be made without the production of the pass books, and that Lettie A. White could not withdraw any money in the lifetime of Bullis without producing the pass books,

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*Final Decree.*

and that said pass books were at the death of John J. Bullis in a safe deposit box held in the joint names of John J. Bullis and Sidney White, to which box each of them and the survivor of them had right of access, and it not appearing that there  
10 had ever been a delivery of the pass books to Lettie A. White, and the Court being of the opinion that the form of said two accounts is not evidence of a present gift from John J. Bullis to Lettie A. Dath, or that John J. Bullis had the intention to give to Lettie A. Dath a then present interest in the moneys in either of said accounts, and that the words "either or the survivor to draw" on the Lincoln Trust Company of New Jersey pass book were not part of the depositor's contract with said  
20 trust company, and that such donative intention as he might have had, to make a gift of the moneys in said accounts to Lettie A. Dath was confined to such balance as might remain at his death, which interest should not vest in her until that time, and that such gift was a testamentary disposition in violation of the statute of wills and void as such, and the Court being satisfied that the moneys in said accounts with the Hoboken Trust Company and Lincoln Trust Company of  
30 New Jersey are the property of the executor of John J. Bullis, deceased, and

It further appearing, that at the death of said John J. Bullis, there were special or savings accounts standing in the names of John J. Bullis and Lettie A. Dath, with Hudson Trust Company, Commercial Trust Company of New Jersey (accounts numbered 1813 and 7236 and 9873) Hoboken Bank for Savings and Provident Institution for Savings in Jersey City (accounts numbered 167027 and  
40 167028) and that all the money deposited in or

*Final Decree.*

credited to all of said accounts was the money of said John J. Bullis and that the pass books for all of said accounts provide that no withdrawals can be made without the production of the pass books, and that all of the pass books were at the death of John J. Bullis in a safe deposit box held in the joint names of John J. Bullis and Sidney White, to which box each, and the survivor of them had right of access, and it appearing that the contracts under which said accounts were opened and held between said Hudson Trust Company, Commercial Trust Company of New Jersey and Provident Institution for Savings in Jersey City, and the said John J. Bullis and Lettie A. Dath provide for joint tenancies therein, either to draw, and that the three accounts of Commercial Trust Company of New Jersey, and the two accounts of the Provident Institution for Savings in Jersey City provide that the moneys therein are to be the absolute property of the survivor with power in the survivor to draw, and that the Hoboken Bank for Savings account provides for joint ownership, the moneys therein to be the property of the survivor, each or the survivor to draw, and the Court being of the opinion that the forms of deposit used for said accounts evidence a present gift from John J. Bullis to Lettie A. Dath, and that the ownership originally in John J. Bullis of all the money deposited in said accounts is immaterial, and that the provisions of the will of John J. Bullis do not negative an absolute gift to the said Lettie A. Dath, and that it was not necessary that there should be a delivery of the pass books to Lettie A. Dath, and that Lettie A. Dath is entitled to the moneys in said accounts under her contractual relation with the said banks and trust companies, and that the gift from John

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*Final Decree.*

J. Bullis to Lettie A. Dath was not a testamentary disposition, and that the intention of John J. Bullis was to make a present gift of the moneys in said accounts to Lettie A. Dath, and the Court being satisfied that the money in said accounts is the property of Sidney White, executor of Lettie A. White, deceased,

It is on this 12th day of April, 1926, ORDERED, ADJUDGED and DECREED:

1. The amounts in the accounts of John J. Bullis or Lettie A. Dath with the Hoboken Trust Company and the Lincoln Trust Company of New Jersey belong to, are the property of and should be paid to Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased, and the said Hoboken Trust Company and Lincoln Trust Company of New Jersey are hereby ordered and directed to pay the moneys standing to the credit of their respective accounts to said Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased.

2. The moneys in the accounts of John J. Bullis and Lettie A. Dath with Hudson Trust Company, Commercial Trust Company of New Jersey (three accounts) numbered 1813-7236-9873, Hoboken Bank for Savings and The Provident Institution for Savings in Jersey City (two accounts) numbered 167027-167028, belong to, are the property of and should be paid to Sidney White, executor of Lettie A. White, deceased, and the said Hudson Trust Company, Commercial Trust Company of New Jersey, Hoboken Bank for Savings and The Provident Institution for Savings in Jersey City are hereby ordered and directed to pay the moneys

*Final Decree.*

standing to the credit of their respective accounts to Sidney White, executor of Lettie A. White, deceased.

It is FURTHER ORDERED that the following counsel fees are hereby allowed, viz.:

Fisk & Fisk, solicitors of complainant, fifteen hundred dollars, eleven hundred twenty-five dollars thereof to be paid by Sidney White, executor of Lettie A. White, deceased, out of the estate of Lettie A. White, deceased, and three hundred seventy-five dollars thereof to be included in the complainant's taxed costs and to be paid with said costs by Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased, out of the estate of John J. Bullis, deceased.

To James W. McCarthy, solicitor of Lincoln Trust Company of New Jersey one hundred dollars.

To Hopkins & Herr, solicitors of Hudson Trust Company and Hoboken Trust Company one hundred fifty dollars.

To Pierson & Schroeder, solicitors of Hoboken Bank for Savings one hundred dollars.

To Insley, Vreeland & Decker, solicitors of the Provident Institution for Savings in Jersey City, one hundred dollars.

To Joseph J. Carissimi, solicitor of Commercial Trust Company of New Jersey one hundred dollars.

The counsel fees allowed to the solicitors for the said banks and trust companies to be included in their respective taxed costs and to be paid with said costs by Sidney White, executor of Lettie A. White out of the estate of Lettie A. White, deceased.

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*Notice of Appeal.*

It is FURTHER ORDERED that the application of August G. Menge, solicitor of Sidney White, executor of Lettie White, deceased, and Pierre F. Cook, solicitor of Etta Bullis Wood for counsel fees are hereby denied.

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E. R. WALKER,  
C.

Respectfully advised,  
JAMES F. FIELDER,  
V. C.

**Notice of Appeal.**

(Filed April 16, 1926.)

IN CHANCERY OF NEW JERSEY.

20.

Between

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor of JOHN  
J. BULLIS, deceased,

Complainant,

(57-554)

On Bill, &amp;c.

and

LETTIE A. WHITE, *et al.*,

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Defendants.

The complainant, Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased, hereby appeals from so much of the final decree made in the above entitled cause on April 12, 1926, as orders, adjudges and decrees that:

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“The moneys in the accounts of John J. Bullis and Lettie A. Dath with Hudson Trust Company, Commercial Trust Com-

*Notice of Appeal.*

pany of New Jersey (three accounts) numbered 1813-7236-9873, Hoboken Bank for Savings and The Provident Institution for Savings in Jersey City (two accounts), numbered 167027-167028, belong to, are the property of and should be paid to Sidney White, executor of Lettie A. White, deceased, and the said Hudson Trust Company, Commercial Trust Company of New Jersey, Hoboken Bank for Savings and The Provident Institution for Savings in Jersey City are hereby ordered and directed to pay the moneys standing to the credit of their respective accounts to Sidney White, executor of Lettie A. White, deceased." 10

to the Court of Errors and Appeals in the last resort in all causes. 20

Dated April 13, 1926.

FISK & FISK,  
Solicitors for and of Counsel with  
Complainant, Commercial Trust  
Company of New Jersey, Execu-  
tor of John J. Bullis, deceased.

I conceive there is good cause for appeal in the above entitled cause. 30

J. FISHER ANDERSON,  
Of Counsel with Complainant,  
Commercial Trust Company of  
New Jersey, Executor of John J.  
Bullis, deceased.

**Petition of Appeal.**

(Filed April 16, 1926.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor of JOHN  
J. BULLIS, deceased,  
Complainant-Appellant,

*v.*

LETTIE A. WHITE, *et al.*,  
Defendants-Appellees.

On Appeal  
from the  
Court of  
Chancery.

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To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased, the appellant in the above entitled cause respectfully shows that:

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1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date April 12, 1926, in a certain cause in said Court of Chancery wherein the said Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased, was complainant, and the said Lettie A. White, Etta Bullis Wood, *et al.*, Hudson Trust Company, Hoboken Trust Company, Lincoln Trust Company of New Jersey, Commercial Trust Company of New Jersey, The Provident Institution for Savings in Jersey City, and Hoboken Bank for Savings were

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*Petition of Appeal.*

defendants, in this respect to wit, that the said decree in part orders, adjudges and decrees:

“The moneys in the accounts of John J. Bullis and Lettie A. Dath with Hudson Trust Company, Commercial Trust Company of New Jersey (three accounts), numbered 1813-7236-9873, Hoboken Bank for Savings and The Provident Institution for Savings in Jersey City (two accounts), numbered 167027-167028, belong to, are the property of and should be paid to Sidney White, executor of Lettie A. White, deceased, and the said Hudson Trust Company, Commercial Trust Company of New Jersey, Hoboken Bank for Savings and The Provident Institution for Savings in Jersey City are hereby ordered and directed to pay the moneys standing to the credit of their respective accounts to Sidney White, executor of Lettie A. White, deceased.”

And petitioner appeals from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the Chancellor should have ordered, adjudged and decreed that the moneys in the accounts of John J. Bullis and Lettie A. Dath with Hudson Trust Company, Commercial Trust Company of New Jersey (three accounts), numbered 1813-7236-9873, Hoboken Bank for Savings, and The Provident Institution for Savings in Jersey City (two accounts), numbered 167027-167028, belong to, are the property of, and should be paid to Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased, and that the decree of the Chancellor that the

*Answer of Sidney A. White.*

moneys in said accounts are the property of Sidney White, executor of Lettie A. White, deceased, is erroneous.

10 Petitioner therefore prays that said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

FISK & FISK,  
Solicitors for and of Counsel with  
Appellant, Commercial Trust  
Company of New Jersey, Execu-  
tor of John J. Bullis, deceased.

20 **Answer of Sidney A. White, Executor of  
Lettie A. White, to the Petition of Appeal.**

(Filed April 24, 1926.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

30	<p>COMMERCIAL TRUST COMPANY OF NEW JERSEY, executor of JOHN J. BULLIS, deceased, Complainant-Appellant, <i>v.</i> LETTIE A. WHITE, <i>et al.</i>, Defendants-Appellees.</p>	<p>On Appeal from the Court of Chancery.</p>
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40 The answer of Sidney White, Executor of Lettie A. White (formerly Lettie A. Dath) deceased, the above named appellee, to the petition of appeal of Commercial Trust Company of New Jersey, execu-

*Answer of Sidney A. White.*

tor of John J. Bullis deceased, the above named appellant.

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained for answer thereto nevertheless admits that a decree was, on April 12th, 1926, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree this appellee begs leave to refer thereto when the same shall be produced. 10

This appellee is advised and believes that the said decree is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this appellee. 20

AUGUST G. MENGE,  
Solicitor for and of Counsel  
with Appellee.

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**Answer of Hudson Trust Company to  
Petition of Appeal.**

(Filed April 17, 1926.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, as executor, etc.,  
Complainant-Appellant,

and

LETTIE A. WHITE, *et als.*,  
Defendants-Respondents.

} On Appeal

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The respondent Hudson Trust Company answering the petition of appeal of the appellant herein, neither admits nor denies the allegations thereof, being without interest in the subject matter of said appeal.

HOPKINS & HERR,  
Of Counsel with Defendant,  
Hudson Trust Company.

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**Answer of Hoboken Trust Company to  
Petition of Appeal.**

(Filed April 17, 1926.)

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

Between  COMMERCIAL TRUST COMPANY OF NEW JERSEY, as executor, etc., Complainant-Appellant,  and  LETTIE A. WHITE, <i>et als.</i> , Defendants-Respondents.	}	On Appeal	10
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The respondent Hoboken Trust Company answering the petition of appeal of the appellant herein, neither admits nor denies the allegations thereof, being without interest in the subject matter of said appeal.

HOPKINS & HERR,  
Of counsel with Defendant,  
Hoboken Trust Company.

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**Answer of Lincoln Trust Company to  
Petition of Appeal.**

(Filed April 21, 1926.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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<p style="text-align: center;">COMMERCIAL TRUST COMPANY OF NEW JERSEY, executor of JOHN J. BULLIS, deceased, Complainant-Appellant,  v.  LETTIE A. WHITE, <i>et al.</i>, Defendants-Appellees.</p>	<p style="font-size: 2em;">}</p> <p style="text-align: center;">On Appeal from the Court of Chancery.</p>
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The answer of Lincoln Trust Company, one of the above named appellees, to the petition of appeal of Commercial Trust Company of New Jersey, Executor of John J. Bullis, deceased.

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This appellee, not admitting the truth of all or any of the matters in said petition of appeal contained, for answer nevertheless admits that a decree was, on April 12, 1926, made and entered in the Court of Chancery of New Jersey in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said decree is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this appellee.

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JAMES W. McCARTHY,  
Solicitor for and of Counsel  
with Appellee, Lincoln  
Trust Company.

**Answer of Commercial Trust Company of  
New Jersey to Petition of Appeal.**

(Filed April 20, 1926.)

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor of JOHN  
J. BULLIS, deceased,  
Complainant-Appellant,

*v.*

LETTIE A. WHITE, *et al.*,  
Defendants-Appellees.

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On Appeal  
from the Court  
of Chancery.

The answer of Commercial Trust Company of  
New Jersey, a defendant-appellee, to the petition  
of appeal of Commercial Trust Company of New  
Jersey, executor of John J. Bullis, deceased, the  
above named appellant.

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This appellee, not admitting the truth of all or  
any of the matters in the said petition of appeal  
contained, for answer thereto nevertheless admits  
that a decree was, on April 12, 1926, made and en-  
tered in the Court of Chancery of New Jersey, in  
the above entitled cause, for the purposes in said  
petition mentioned and as therein set forth; but as  
to the substance and form of said decree, this ap-  
pellee begs leave to refer thereto when the same  
shall be produced.

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This appellee is advised and believes that said  
decree is agreeable to equity, and prays that the

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*Answer of Provident Institution for Savings in  
Jersey City.*

same may be affirmed with costs to be taxed in  
favor of this appellee.

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JOSEPH J. CARISSIMI,  
Solicitor for and of counsel  
with appellee Commercial  
Trust Company of New  
Jersey.

**Answer of the Provident Institution for Sav-  
ings in Jersey City to Petition of Appeal.**

(Filed April 21, 1926.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor, &c.,  
Complainant-Appellant,

*v.*

LETTIE A. WHITE, *et al.*,  
Defendants-Respondents.

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The answer of the Provident Institution for Sav-  
ings in Jersey City, one of the respondents in the  
above named suit, to the petition of appeal of the  
Commercial Trust Company of New Jersey, execu-  
tor of John J. Bullis, deceased, the above named  
appellant, respectfully says:

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This respondent, not admitting the truth of all or  
any of the matters in the said petition of appeal  
contained, for answer thereto nevertheless admits  
that a decree was on the 12th day of April, 1926,

*Answer of Provident Institution for Savings in  
Jersey City.*

made and entered in the Court of Chancery of New Jersey, in the above named cause, for the purpose in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced. 10

This respondent is advised and believes that such part of said decree that adjudges "the moneys in the account of John J. Bullis and Lettie A. Dath with \* \* \* The Provident Institution for Savings in Jersey City (two accounts) #167027-167028, belong to, are the property of and should be paid to Sidney White, executor of Lettie A. White, deceased, and the \* \* \* Provident Institution for Savings in Jersey City are hereby ordered and directed to pay the moneys standing to the credit of their respective accounts to Sidney White, executor of Lettie A. White, deceased," is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this respondent. 20

INSLEY, VREELAND & DECKER,  
Solicitors for and of Counsel with  
the Respondent the Provident  
Institution for Savings in Jersey  
City. 30

**Answer of the Hoboken Bank for Savings to  
the Petition of Appeal.**

(Filed April 17, 1926.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor of JOHN  
J. BULLIS, deceased,  
Complainant-Appellant,

*v.*

LETTIE A. WHITE, *et al.*,  
Defendants-Appellees.

On appeal  
from the  
Court of  
Chancery.

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Answer of the Hoboken Bank for Savings in the City of Hoboken, one of the appellees in the above entitled cause, to the petition of appeal of Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased, the above named appellant.

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This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless, admits that a final decree was made on April 12, 1926, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said decree was agreeable to equity and it prays

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*Answer of Etta Bullis Wood.*

that the same may be affirmed with costs to be taxed in favor of this appellee.

PIERSON & SCHROEDER,  
Solicitors for Appellee, The Hoboken Bank for Savings in the City of Hoboken. 10

JOHN D. PIERSON,  
Of Counsel with The Hoboken Bank for Savings in the City of Hoboken.

**Answer of Etta Bullis Wood, et al., to  
Petition of Appeal.**

(Filed April 20, 1926.) 20

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

COMMERCIAL TRUST COMPANY OF NEW JERSEY, executor of JOHN J. BULLIS, deceased, Complainant-Appellant,  v.  LETTIE A. WHITE, <i>et al.</i> , Defendants-Appellees.	}	On appeal from the Court of Chancery.	30
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The answer of Etta Bullis Wood, Lettie Bullis Wilson, Henry Bullis, John Bullis, William Bullis, Nelson H. Reynolds, Sarah Reynolds Barnum, Theena Reynolds Truax, Ella Bullis Moore, Minnie Johnson, Marion Reynolds Elrick, and Ida Bullis Provost, appellees, to the petition of appeal of the above named appellant. 40

*Answer of Etta Bullis Wood.*

10 These appellees acknowledging all of the mat-  
ters which in the said petition of appeal are con-  
tained, to be true, for answer thereto say and ad-  
mit that a decree was on the twelfth day of April,  
1926, made and entered in the Court of Chancery  
in the cause of that purpose mentioned in said  
petition as is therein stated, but as to the sub-  
stance and form thereof these appellees pray to  
refer thereto when the same shall be produced.  
And these appellees legatees and devisees under  
and by virtue of the last will and testament of  
John J. Bullis, deceased, are advised and believe  
that that part of the said decree recited in said  
petition of appeal is erroneous in that the Chan-  
cellor should have ordered, adjudged and decreed  
20 that the moneys in the accounts of John J. Bullis  
and Lettie A. Dath with Hudson Trust Company,  
Commercial Trust Company of New Jersey (three  
accounts) numbered 1813-7236-9873, Hoboken  
Bank for Savings, and the Provident Institution  
for Savings in Jersey City (two accounts) num-  
bered 167027-167028, belong to, are the property of,  
and should be paid to Commercial Trust Company  
of New Jersey, executor of John J. Bullis, deceased,  
and that the decree of the Chancellor that the  
30 moneys in said accounts are the property of Sidney  
White, executor of Lettie A. White, deceased, is  
erroneous.

And these appellees join in the prayer of the said  
petition of appeal that said decree of the said

*Notice of Argument.*

Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden.

PIERRE F. COOK,  
Solicitor for and of Counsel with Appellees, Etta Bullis Wood, Lettie Bullis Wilson, Henry Bullis, John Bullis, William Bullis, Nelson H. Reynolds, Sarah Reynolds Barnum, Theena Reynolds Truax, Ella Bullis Moore, Minnie Johnson, Marion Reynolds Elrick and Ida Bullis Provost.

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**Notice of Argument.**

(Filed May 28, 1926.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor of JOHN  
J. BULLIS, deceased,  
Complainant-Appellant,

and

LETTIE A. WHITE, *et al.*,  
Defendants-Appellees.

On Bill, &c.

On appeal  
from the  
Court of  
Chancery.

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To the Appellees:

TAKE NOTICE that the argument of the appeal in the above entitled cause will be brought on at the next term of the Court of Errors and Appeals to be held at the State House in Trenton on October 19,

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*Notice of Argument.*

1926, at the hour of eleven o'clock in the forenoon  
or as soon thereafter as counsel can be heard.

FISK & FISK,  
Solicitors for and of Counsel with  
Appellant.

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Service of notice of argument within time is  
hereby acknowledged.

AUGUST G. MENGE,  
Solicitor of Sidney White, Execu-  
tor of Lettie A. White, deceased.

PIERRE F. COOK,  
Solicitor of Etta Bullis Wood,  
*et al.*

20

JOSEPH J. CARISSIMI,  
Solicitor of Commercial Trust  
Co. of New Jersey.

INSLEY, VREELAND & DECKER,  
Solicitors of Provident Institution  
for Savings in Jersey City.

PIERSON & SCHROEDER,  
Solicitors of Hoboken Bank for  
Savings.

30

HOPKINS & HERR,  
Solicitors of Hudson Trust Co. &  
Hoboken Trust Co.

JAMES W. McCARTHY,  
Solicitor of Lincoln Trust Co. of  
New Jersey.

40

**Stipulation Submitting Case on Briefs.**

(Filed May 15, 1926.)

**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

Between

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor of JOHN  
J. BULLIS, deceased,  
Complainant-Appellant,

and

LETTIE A. WHITE, *et al.*,  
Defendants-Appellees.

On Bill, &amp;c.

On appeal  
from the  
Court of  
Chancery.

10

20

It is stipulated that the above cause shall be sub-  
mitted on briefs without oral argument.

FISK &amp; FISK,

Solicitors of Complainant-Appel-  
lant.

AUGUST G. MENGE,

Solicitor of Sidney White, Execu-  
tor of Lettie A. White, deceased.

PIERRE F. COOK,

Solicitor of Etta Bullis Wood,  
*et al.*

30

JOSEPH J. CARISSIMI,

Solicitor of Commercial Trust  
Co. of New Jersey.

INSLEY, VREELAND &amp; DECKER,

Solicitors of Provident Institution  
for Savings in Jersey City.

40

*Testimony.*

PIERSON & SCHROEDER,  
Solicitors of Hoboken Bank for  
Savings.

10 HOPKINS & HERR,  
Solicitors of Hudson Trust Co. &  
Hoboken Trust Co.

JAMES W. McCARTHY,  
Solicitor of Lincoln Trust Co. of  
New Jersey.

**Testimony.**

## IN CHANCERY OF NEW JERSEY.

20 Between

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor under the  
last will and testament of JOHN  
J. BULLIS, deceased,  
Complainant,

and

30 LETTIE A. WHITE, *et al.*,  
Defendants.

} On Bill, &c.

Transcript of shorthand notes of testimony taken  
on final hearing in above stated cause, at Chancery  
Chambers, Jersey City, January 21, 1926, before His  
Honor James F. Fielder, Vice Chancellor.

## APPEARANCES.

40 J. FISHER ANDERSON, Esq., of FISK & FISK,  
for the complainant.

*Richard Tennant, direct.*

JOSEPH J. CARISSIMI, Esq., for the defendant, Commercial Trust Company of New Jersey.

WILLIAM E. DECKER, Esq., of INSLEY, VREELAND & DECKER, for defendant, Provident Institution for Savings in Jersey City. 10

DOUGAL HERR, Esq., of HOPKINS & HERR, for defendants, Hudson Trust Company and Hoboken Trust Company.

JAMES W. MCCARTHY, Esq., for defendant, Lincoln Trust Company.

JOHN D. PIERSON, Esq., of PIERSON & SCHROEDER, for defendant, Hoboken Bank for Savings.

AUGUST G. MENGE, Esq., for defendant, Sidney White, executor under the last will and testament of Lettie A. White, deceased. 20

PIERRE F. COOK, Esq., for defendants, Etta Bullis Wood, Lettie Bullis Wilson, Henry Bullis, John Bullis, William Bullis, Nelson H. Reynolds, Sarah Reynolds Barnum, Theena Reynolds Truax, Ella Bullis Moore, Minnie Johnson, Marion Reynolds Elrick and Ida Bullis Provost. 30

COMPLAINANT'S CASE.

RICHARD TENNANT, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Anderson:*

Q. You are employed by the Commercial Trust Company of New Jersey, 15 Exchange Place, Jersey City? A. Yes.

Q. You have charge of the safe deposit box department? A. I have; yes. 40

*Richard Tennant, direct.*

Q. I show you some signature cards with reference to Box No. 1632. Will you tell us who had that box and when it was opened? A. The box was originally taken by John J. Bullis, April 16, 1914, in his own name. He afterwards added Emma F. Bullis, April 17, 1914, as a joint tenant.

Q. Then what happened to the box? A. She died and then it was in his name only. After that it was taken in the name of John J. Bullis and Sidney White as joint tenants.

Q. What date was that? A. That is, when White qualified?

Q. Yes. A. Second of May, 1921.

Q. Now, you say that White became a joint tenant. Is that the fact, or was he given access to the box? A. It reads here "as joint tenants." That gave him access to the box.

Q. White signed the signature card on the day that you have mentioned? A. Yes.

The Court: What is the form in which that box was taken in the name of Bullis and White?

Mr. Anderson: I will read the language of the card.

"We hereby hire as joint tenants Safe No. 1632 in the vaults of the Commercial Trust Company of New Jersey, at a rental of five dollars annually in advance, the survivor or survivors to have access thereto, in case of the death of either, but either to have power to appoint a deputy and either to have the right to surrender the safe.

"We agree to the Company's rules and regulations now in force and to such reasonable rules and regulations as it may hereafter adopt."

*Richard Tennant, direct.*

The card bears the numeral, "Safe No. 1632," and the signatures, "John J. Bullis" and "Sidney White."

No Cross Examination.

Mr. Anderson: It is admitted by the answers that the bank books in question were found in Mr. Bullis's box in the Commercial Trust Company of New Jersey at the time of his death. 10

It is also admitted that all the funds in all of these accounts were the property of Mr. Bullis.

The Court: What is that?

Mr. Anderson: That all moneys deposited in said accounts were owned by said John J. Bullis. 20

The Court: That means at the time of the deposit.

Mr. Anderson: Paragraph 11 of the bill of complaint reads: "All moneys deposited in said accounts were owned by said John J. Bullis. Said Lettie A. Dath deposited no funds of her own in said accounts."

That allegation is admitted. Of course, it is not admitted that she didn't have any title to the funds. 30

Paragraph 12 reads: "The pass books evidencing said deposits are in the possession of complainant, the same having been found in the safe deposit box of decedent, John J. Bullis, after his death."

That was also admitted.

The Court: And that this box concerning which Mr. Tennant testified was in the name of Bullis and White at the time of Mr. Bullis' death. 40

*George Letterhouse, direct.*

Mr. Anderson: At the time of Mr. Bullis' death—not in the name of Mrs. White, who had an interest in this suit, she now being dead.

10 I would like to offer in evidence the safe deposit card that Mr. Tennant testified about.  
(Marked Exhibit C-1.)

GEORGE LETTERHOUSE, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Anderson:*

Q. Did you bring with you, Mr. Letterhouse, certified copy of the will of Mr. Bullis? A. Yes.

20 Mr. Anderson: Witness produces and I offer in evidence certified copy of the last will and testament of John J. Bullis, dated December 9, 1914, and a copy of the letters testamentary issued by the Surrogate of Hudson County to the Commercial Trust Company of New Jersey, April 25, 1924.  
(Marked Exhibit C-2.)

Q. You are employed by the Commercial Trust Company of New Jersey? A. Yes, sir.

30 Q. And you have charge of the trust department?  
A. Yes, sir.

Q. And in charge of the Estate of John J. Bullis?  
A. Yes, sir.

Q. Can you tell us what there is in assets of Mr. Bullis, outside of the various bank accounts involved in this suit? A. The total amounts to about \$10,000, outside of the joint bank accounts

Q. That is, without the deduction of any executor's commissions— A. Yes.

40 Q. —or counsel fees or claims against the estate?  
A. Yes.

*Timothy J. Callahan, direct.*

*By the Court:*

Q. Have you filed an inventory of the personal estate? A. Yes.

Q. What is the total of that inventory? A. The total inventory as filed shows \$3,396.97. In addition to that there was subsequently discovered a mortgage of about \$6,600. 10

Q. In that inventory you have not listed any one of these bank accounts? A. No, sir.

*By Mr. Anderson:*

Q. When you say you have not listed any bank accounts, you mean the co-deposit accounts which are involved in this suit? A. Yes, sir.

No Cross Examination. 20

TIMOTHY J. CALLAHAN, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Anderson:*

Q. You are employed by the Commercial Trust Company of New Jersey, Mr. Callahan? A. Yes, sir.

Q. You have charge of what is known as the savings or special deposit department? A. Yes, sir. 30

Q. I show you some signature cards showing an account No. 1813 in your bank, and ask you to give us the history of these cards, what they show as to who the owners of the cards were. A. Card 1813 shows that John J. Bullis opened the account.

Q. Does it show when? A. No; it does not. There is no date here.

Q. Would it show by the pass book? A. The pass book would show that.

Q. Look at the pass book and give us the date on 40

*Timothy J. Callahan, direct.*

which 1813 was opened. A. January 14, 1904. It was opened in the name of John J. Bullis, it was later changed. The name of Emma F. Bullis was later added.

10 Q. Can you tell us when that was? A. That was added on October 7, 1914.

Q. Is that the date? A. Apparently, yes.

Q. Then what happened to it? A. Then later Emma F. Bullis' name was withdrawn and the name of Lettie A. Dath was substituted.

Q. Was that done on October 7, 1914? A. I cannot swear to that positively now. There is a date there, "October 6, 1914." I don't know what it refers to.

20 Q. When you say there is a date there, you mean on the outside cover of the book? A. Yes.

Q. Above that are red lines crossing out the name of Emma F. Bullis? A. Crossing out the name of Emma F. Bullis.

Q. That indicates that that account was changed on that date? A. October 7, 1914.

Q. Do you know in whose handwriting these numerals are in? A. It looks like mine.

*By the Court:*

30 Q. Was there a new signature card at the time the account was changed into the name of Bullis and Lettie A. Dath? A. Yes, sir.

Q. Doesn't the signature card bear any date? A. The signature card doesn't bear any date.

Mr. Anderson: I offer in evidence the three signature cards with reference to Account No. 1813 and pass book No. 1813.

40 (Cards marked Exhibit C-3, Exhibit C-4 and Exhibit C-5. Pass book marked Exhibit C-6.)

*Timothy J. Callahan, direct.*

Q. You have produced the drafts which were drawn on this account No. 1813 after October 7, 1914, have you not? A. Yes, I have.

Q. Take these drafts and the book and tell us the dates of the drafts and the amounts. A. On July 26, 1915, there was a withdrawal of \$142.75. 10

Mr. Anderson: I offer in evidence draft for that amount, that date, signed by John J. Bullis.

(Marked Exhibit C-7.)

Q. What is the next? A. April 12, 1916, \$3,500.

Mr. Anderson: I offer in evidence draft for that amount, that date, signed by John J. Bullis.

(Marked Exhibit C-8.) 20

Q. Can you tell us what was done with that \$3,500, from your records? A. Why, it was transferred. It was taken out of that account and a new joint account was opened in the name of John J. Bullis and Lettie A. Dath.

Q. You are referring to account No. — A. 9873.

Q. Next draft? A. The next was January 15, 1920, \$102.40.

Mr. Anderson: I offer in evidence draft for that amount, that date, signed by John J. Bullis. 30

(Marked Exhibit C-9.)

Q. What is the next? A. May 18, 1921, draft of \$100.

Mr. Anderson: Draft for that amount, that date, signed by John J. Bullis, offered in evidence.

(Marked exhibit C-10.) 40

*Timothy J. Callahan, direct.*

Q. Next draft? A. June 25, 1923, draft of \$250.

Q. Is that date correct? A. Yes, sir; June 25, 1923.

Q. June 25, 1923? A. Yes, sir.

10

Mr. Anderson: Draft for that amount, that date, signed by Lettie A. Dath, endorsed by Sidney White, offered in evidence. (Marked Exhibit C-11.)

The Court: To whose order is that draft payable?

Mr. Anderson: Sidney White.

Q. Now, the last draft? A. The next one is September 27, 1923, for \$200.

20

Mr. Anderson: Draft for that amount, that date, signed by Lettie A. Dath, to the order of Sidney White, offered in evidence. (Marked Exhibit C-12.)

Q. Now, you had another account, No. 7236? A. Yes, sir.

Q. I show you two signature cards on account No. 7236 and ask you what they show. A. The original card shows the account was opened in the name of John J. Bullis and Emma F. Bullis.

30

Q. Does it show the date it was opened? A. Yes, sir; June 27, 1911.

Q. Then what happened? A. The name of Emma F. Bullis was crossed out and a new signature card, joint account, John J. Bullis and Lettie A. Dath, was submitted in place of that. No date on the signature card.

40

Q. I show you deposit book No. 7236 and I ask you if that shows any date of change in the account? A. It shows it was changed October 7, 1914.

*Timothy J. Callahan, direct.*

Q. That is the date on which Mrs. Dath's name was added to the book? A. Yes.

Mr. Anderson: I offer in evidence two signature cards and the pass book No. 7236.

(Cards are marked Exhibit C-13 and Exhibit C-14 and pass book is marked Exhibit C-15.)

10

Q. Take book No. 7236 and tell us what withdrawals there were after October 7, 1914. A. There is one January 15, 1920, amount \$105.13.

Mr. Anderson: I offer in evidence draft signed by John J. Bullis, that date, for that amount.

(Marked Exhibit C-16.)

20

Q. Next one? A. November 7, 1921, draft of \$25.

Mr. Anderson: I offer in evidence draft dated November 1, 1921, signed John J. Bullis, to the order of Sidney White, endorsed Sidney White.

(Marked Exhibit C-17.)

Q. Next? A. January 16, 1922, draft of \$75.

Mr. Anderson: I offer in evidence draft of that date, that amount, signed by Lettie A. Dath, to the order of Sidney White, endorsed "Sidney White."

30

(Marked Exhibit C-18.)

Q. Next draft? A. The next one is June 9, 1922, \$250.

Mr. Anderson: I offer in evidence draft dated June 8, signed "Lettie A. Dath," to the order of Sidney White, endorsed "Sidney White."

40

(Marked Exhibit C-19.)

*Timothy J. Callahan, direct.*

Q. Now, you had a third account? A. Yes, sir.

Q. I show you a signature card No. 9873, savings account in your bank, and ask you what that shows as to who the depositors were and the date of opening the account. A. It shows the depositors were John J. Bullis and Lettie A. Dath and that the account was opened April 12, 1916.

Mr. Anderson: I offer in evidence signature card and pass book No. 9873.

(Card is marked Exhibit C-20 and pass book is marked Exhibit C-21.)

Q. Will you tell us what withdrawals that account shows? A. It shows withdrawal on January 15, 1920, \$90.60.

Mr. Anderson: I offer in evidence draft that date, that amount, signed by John J. Bullis.

(Marked Exhibit C-22.)

Q. Any other withdrawals? A. One other withdrawal April 7, 1924, \$150.

Mr. Anderson: I offer in evidence draft for that amount dated January 16, 1922, signed by Lettie A. Dath, to the order of Cash, and endorsed "Sidney White."

(Marked Exhibit C-23.)

Q. Is there any explanation of the difference between the date of the draft and the date your book shows the withdrawal? A. None that I can make other than the check was held or possibly the date stamp was wrong.

*By the Court:*

Q. The stamp on the check shows when it was paid by the bank? A. Yes; 1924.

*Edward F. Briggs, direct.*

The Court: Is there any draft that you have produced against any one of these three accounts signed by John J. Bullis to the order of Lettie A. Dath?

Mr. Anderson: There is not. I am not undertaking to prove the present balances in these accounts. The books show what the balances were up to the last credit of interest prior to Mr. Bullis' death. 10

The Court: The bill of complaint shows the amount in each account at the time the bill was filed?

Mr. Anderson: Yes, sir.

---

EDWARD F. BRIGGS, sworn as a witness on the part of the complainant, testifies as follows: 20

*Direct examination by Mr. Anderson:*

Q. You are assistant secretary of the Hudson Trust Company? A. I am.

Mr. Anderson: I offer in evidence pass book No. 25130 issued by the Hudson Trust Company, in the names of John J. Bullis—I don't know whether it is "or" or "and" Lettie A. Dath. 30

(Marked Exhibit C-24.)

Q. Now, have you produced pass book No. 17028? A. I have.

Q. Is that an open or a closed book? A. That is a closed account.

Mr. Anderson: I offer in evidence pass book No. 17028 in the Hudson Trust Company in the name of John J. Bullis or Emma F. Bullis. 40

(Marked Exhibit C-25.)

*Edward F. Briggs, direct.*

Q. Can you tell us on what date account No. 17028 was closed? A. October 7, 1914.

Q. And what was the balance in the account at the time of closing? A. \$3,934.86.

10 Q. Will you tell us on what date account No. 25130 was opened? A. October 7, 1914.

Q. What was the opening deposit? A. \$3,934.86.

Q. Can you say that when account No. 17028 was closed, the money in that account was transferred to account No. 25130? A. I see a draft—

*By the Court:*

Q. Can you say whether it was or was not? A. My evidence shows that it was, on account of the signature card.

20 *By Mr. Anderson:*

Q. You have the signature cards in both accounts? A. I have.

Mr. Anderson: I offer in evidence signature card 17028, Hudson Trust Company, in the names of John J. Bullis and Emma F. Bullis.

(Marked Exhibit C-26.)

30 Mr. Anderson: I offer in evidence signature card 25130, Hudson Trust Company, in the names of John J. Bullis or Lettie A. Dath.

(Marked Exhibit C-27.)

Q. What withdrawals were there from account 25130? A. Two withdrawals.

Q. What were they? A. One on January 19, 1915, \$74.01, signed by John J. Bullis.

40 Mr. Anderson: Draft offered in evidence. (Marked Exhibit C-28.)

*August J. Blanken, direct.*

Q. Next one? A. One dated July 27, 1915, \$74.01, signed by John J. Bullis.

Mr. Anderson: Draft offered in evidence.  
(Marked Exhibit C-29.)

Q. Neither one of these drafts has any payee or endorser, is that correct? A. That is right. It is a receipt for cash. 10

No Cross Examination.

AUGUST J. BLANKEN, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Anderson:*

Q. You are assistant secretary and treasurer of the Hoboken Trust Company? A. Secretary. 20

Q. Have you produced signature card No. 10444? A. Yes; here it is.

Mr. Anderson: I offer in evidence signature card 10444, Hoboken Trust Company, in the names of John J. Bullis or Lettie A. Dath.

(Marked Exhibit C-30.)

Mr. Anderson: I offer in evidence pass book, Hoboken Trust Company, 10444. 30

(Marked Exhibit C-31.)

Mr. Anderson: I wish to call attention to the fact that the account was opened October 7, 1914, according to the card.

Q. On or about October 7, 1914, did you have another account in the name of John J. Bullis which was closed? A. Yes, sir.

Q. Have you produced the pass book and signature on that account? A. Yes. 40

*J. Albert Van Horn, direct.*

Mr. Anderson: Witness produces pass book 5506 in the name of John J. Bullis or Emma F. Bullis and signature card on same account. I offer the book and card in evidence.

10 (Marked Exhibit C-32 and Exhibit C-33.)

Q. Can you tell us from this book or any other records you may have when account No. 5506 was closed? A. October 7, 1914.

Q. And what was the amount in that account at the time it was closed? A. \$1,267.26.

Q. And what was the amount in account No. 10444 when that account was opened? A. \$1,267.26.

Q. Same amount? A. Same amount.

20 Q. Have you produced any drafts, checks or orders showing any withdrawals on account No. 10444? A. Not from No. 10444. There has been no withdrawal on that account.

Q. And there have been no deposits except the credit of interest? A. Crediting interest. That is all.

No Cross Examination.

30 J. ALBERT VAN HORN, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Anderson:*

Q. You are employed by the Lincoln Trust Company of New Jersey? A. Yes, sir.

Mr. Anderson: I offer in evidence pass book No. 4400, Lincoln Trust Company of New Jersey.

(Marked Exhibit C-34.)

40 Q. Have you produced signature card No. 4400?  
A. I have; two of them.

*J. Albert Van Horn, direct.*

Q. Now, will you tell us the history of these cards and the history of the account? A. It looks to me as though the account was opened in the name of John J. Bullis or Emma F. Bullis and changed—

Q. When? A. According to our record, changed 10  
October 7, 1914.

Q. When was it opened? A. The account was opened—

Q. It will appear on the pass book? A. Yes; on the pass book; January 3, 1910.

Q. Then, what happened to it, that is, were there any changes in the names of the depositors? A. That change in the account was made October 7, 1914.

Q. By change in the account you mean, I suppose, that the same pass book was carried along— 20  
A. (Interrupting.) Same pass book carried along.

Q. —and some other signature put on the card?  
A. Another signature put on the card.

Q. What other signature was put on the card?  
A. Lettie A. Dath.

*By the Court:*

Q. Was a new card made out that time? A. A separate card made out. 30

*By Mr. Anderson:*

Q. That is, a separate card was taken with the name of Lettie A. Dath alone on the card? A. Alone on the card.

Q. And the card of John J. Bullis was carried along as it had previously stood? A. Right.

Q. Except that Emma F. Bullis' name was taken off? A. Taken off and a notation made on the card of the reason of the removal of Emma F. Bullis' 40  
name.

*J. Albert Van Horn, direct.*

Mr. Anderson: There is no joint language on either one of these cards.

I offer the two cards in evidence.

(Marked Exhibit C-35 and Exhibit C-36.)

10 Q. Were there any withdrawals from account No. 4400 after October 7, 1914, the date of putting Mrs. Dath's name on the account? A. One for \$52.54 on July 26, 1915.

Q. Have you the draft on which that money was taken out? A. I have not. I have been unable to find it, owing to the upset conditions at the Lincoln Trust Company and the scattering of old records previous to 1919.

20 Mr. Anderson: I offer in evidence the draft subject to its being found and produced later on by the Lincoln Trust Company.

(To be marked Exhibit C-37.)

Q. Do your records contain any information on which you could state who signed that draft? A. The only other evidence I would have would be the cash book which is misplaced at the present time.

30 Mr. Anderson: If it should develop later on that they find these records, I would like to have your Honor give me permission to put in that draft and cash book.

The Court: If there is no objection, you may do so.

Mr. Menge: No objection.

(Cash book to be marked Exhibit C-38.)

No Cross Examination.

40

*Michael F. Verasco, direct.*

MICHAEL F. VERASCO, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Anderson:*

Q. You are employed by the Hoboken Bank for Savings? A. I am.

10

Mr. Anderson: I offer in evidence pass book No. 130,807, Hoboken Bank for Savings, in the names of John J. Bullis and Lettie A. Dath.

(Marked Exhibit C-39.)

Q. Have you the signature card of account No. 130,807? A. I have.

Mr. Anderson: Witness produces signature card on account No. 100,230.

20

Q. Will you tell us what that signature card is?  
A. We had an account originally in No. 100,230. Later on—

Q. In whose name was that account? A. In the name of Emma F. Bullis and John J. Bullis.

*By the Court:*

Q. When was that account opened? A. That account was opened August 28, 1906.

30

*By Mr. Anderson:*

Q. When was it closed? A. October 7, 1914.

Q. And what was the balance in that account on the day it was closed? A. \$3,910.24.

Q. Have you the pass book on that account? A. No, sir; I have not.

Mr. Anderson: I offer in evidence signature card 100,230.

(Marked Exhibit C-40.)

40

*Michael F. Verasco, direct.*

Q. When was account No. 130,807 opened? A. October 7, 1914.

Q. And what was the amount with which that account was opened? A. \$3,910.24.

10 Q. The same amount as in the other account at the time of closing? A. Yes.

Q. Can you say that the first account was shifted into the second account—one account closed and the other one opened with the same moneys? A. Yes, sir.

Mr. Anderson: I offer in evidence signature card 130,807.

(Marked Exhibit C-41.)

20 Mr. Anderson: There is a separate agreement signed on this account—an elaborate joint account agreement.

Q. This signature card 130,807 shows only the name of Lettie A. Dath. Does that mean that John J. Bullis, as a depositor, had passed out of the picture and was no longer on the account? A. No, sir; that account stood in the names of John J. Bullis or Lettie A. Dath.

*By the Court:*

30 Q. Why do you say that? A. Why, the one account was closed by a draft and later on, on the same day, a new account was opened and the new account was opened in the name of John J. Bullis or Lettie A. Dath.

Q. How—by a signed paper of some kind? A. Yes, sir; we have an agreement signed by John J. Bullis and Lettie A. Dath.

40 Mr. Anderson: Witness produces and I offer in evidence agreement referred to by

*Michael F. Verasco, direct.*

witness, No. 3640, dated October 7, 1914,  
referring to account No. 130,807.

(Marked Exhibit C-42.)

*By the Court:*

Q. Then, this signature card, originally 100,230, 10  
and with that number crossed out and the number  
130,807 written above it, was the signature card  
on which this account was carried along after  
October 7, 1914? A. Yes, sir.

*By Mr. Anderson:*

Q. As well as the Lettie A. Dath card? A. Yes.

Q. Is the agreement which you have produced  
the original agreement? A. No, sir.

Q. Why have you not produced the original? A. 20  
It was in book form, and I didn't think it was nec-  
essary to bring it along.

Q. Did you make this copy yourself? A. I did.

Q. Is this a true and accurate copy of the agree-  
ment as it appears in book form in your bank? A.  
Yes.

The Court: This agreement that has been  
produced and marked now appears to be  
not the original but a copy. The original 30  
is in book form in the bank. The witness  
says that the copy that has been marked is  
a true copy. Is there any objection to the  
copy being used in place of the original?

Mr. Menge: If the wording is the same  
as the wording in the bill of complaint, I  
have no objection.

Mr. Anderson: It is the same.

Mr. Pierson: The bank in its answer sets  
forth the facts completely. 40

*William A. Ross, direct.*

The Court: It is only a question of proof now, whether counsel will consent to the copy being marked in evidence with the same effect as if the original were produced.

10 Mr. Anderson: It has already been marked.

The Court: There appears to be no objection.

Q. What withdrawals were there on account No. 130,807? A. Withdrawal of \$78.20, January 19, 1915.

Mr. Anderson: Witness produces draft signed by John J. Bullis, no payee and no endorser. I offer it in evidence.

20 (Marked Exhibit C-43.)

Q. Next? A. Withdrawal of \$78.20, July 27, 1915.

Mr. Anderson: Witness produces draft signed by John J. Bullis, no payee and no endorser. I offer it in evidence.

(Marked Exhibit C-44.)

30 WILLIAM A. ROSS, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Anderson:*

Q. You are employed by the Provident Institution for Savings? A. I am.

Q. You have two accounts—No. 167,027 and No. 167,028,—in the names of John Bullis and Lettie A. Dath; is that correct? A. That is right.

40 Q. Is there anything in your records, any signature cards or any closed pass books, to show that the opening of these two accounts was preceded

*William A. Ross, direct.*

by the closing of other accounts in Mr. Bullis' name or in his name with anyone else? A. Only one.

Mr. Anderson: Witness produces signature card 165,632 in the name of John Bullis and Emma F. Bullis, dated July 9, 1914, bearing the notation "Closed." 10

Q. Can you tell us on what date this account was closed? A. January 5, 1915.

Q. Can you tell us what the balance in this account was on the day it was closed? A. \$4,724.87.

Q. Now, I show you pass book No. 167,027, and I ask you what was the date and what was the amount of the opening deposit in that account? A. Opened January 5, 1915; \$4,724.87.

Q. That is, the date and the amount correspond with the date and amount on the closing of the preceding account? A. Yes, sir. 20

Mr. Anderson: I offer in evidence signature card No. 165,632.

(Marked Exhibit C-45.)

Mr. Anderson: I offer in evidence pass-book No. 167,027.

(Marked Exhibit C-46.)

Q. Have you produced the withdrawal slips on account No. 167,027, the drafts? A. Yes, sir. 30

Q. Will you give them to me in the order of dates, please? A. (Witness produces drafts.)

Mr. Anderson: Draft dated July 26, 1916, signed "John Bullis," \$14.03; no payee or endorser, offered in evidence.

(Marked Exhibit C-47.)

Mr. Anderson: Draft for \$100, January 24, 1917, signed "John Bullis"; no payee, no endorser, offered in evidence. 40

*William A. Ross, direct.*

(Marked Exhibit C-48.)

Mr. Anderson: Draft for \$100, dated July 27, 1917, signed "John J. Bullis," no payee or endorser.

(Marked Exhibit C-49.)

10 Mr. Anderson: Draft dated January 21, 1918, \$100, signed "John Bullis," no payee or endorser, offered in evidence.

(Marked Exhibit C-50.)

Mr. Anderson: Draft dated July 16, 1918, signed "John J. Bullis," \$100, no payee or endorser, offered in evidence.

(Marked Exhibit C-51.)

20 Mr. Anderson: Draft dated January 9, 1919, \$100, signed "John Bullis," no payee or endorser, offered in evidence.

(Marked Exhibit C-52.)

Mr. Anderson: Draft dated July 15, 1919, \$100, signed "John Bullis," no payee or endorser, offered in evidence.

(Marked Exhibit C-53.)

Q. These are all the withdrawals that were made on this account, are they? A. Yes, sir.

30 Q. Now, with reference to account No. 167,028, have you anything in your records which would show any preceding account in Mr. Bullis' name, which was closed when this account was opened?

A. The only thing I have is the deposit slip which is marked "Transfer," but we cannot find where the account came from.

Q. Will you let me see the deposit slip? A. (Witness produces deposit slip.)

40 Mr. Anderson: Witness produces deposit slip, Provident Institution for Savings, book No. 167,028, with the name "Bullis," for \$4,881.54, opposite the word "Check."

*William A. Ross, direct.*

Q. Now, I show you pass book 167,028, the first deposit, \$4,881.54, January 5, 1915, being the same as the deposit ticket. Is there anything on that paper which leads you to say, or can you say, that that deposit was made from some other account in your bank? A. On all the accounts that are opened from another account, on the deposit ticket, "T" is put after the check, meaning "Transfer," as appears on this ticket. 10

*By the Court:*

Q. That indicates to you that this account in question was opened by transferring moneys from some other account? A. Yes, sir.

*By Mr. Anderson:*

Q. Have you searched for the closed pass book and signature cards on this transferred account? A. We have, in the names of Bullis and Dath, but we could not find any of them. 20

Q. Have you made examination of your ledger and books if under the names of Bullis and Dath to see if you could find any such old account? A. No; all the ledgers up to late years have been destroyed. 30

Mr. Anderson: I offer the deposit slip in evidence for what it is worth.

(Marked Exhibit C-54.)

Q. Have you the signature cards on account 167,027 and account 167,028? A. Yes.

Mr. Anderson: Witness produces signature cards on account 167,027 and account 167,028, which I offer in evidence.

(Marked Exhibit C-55 and Exhibit C-56.) 40

*William A. Ross, direct.*

Mr. Anderson: Both signature cards show the names of John Bullis and Lettie A. Dath.

10 Q. What were the withdrawals on account 167,028? A. January 31, 1916, \$78.74.

Mr. Anderson: Draft offered in evidence that amount and that date, no payee, no endorser; signed John Bullis.  
(Marked Exhibit C-57.)

Q. Next? A. July 26, 1916, \$100.

20 Mr. Anderson: Draft offered in evidence that date and that amount, no payee, no endorser; signed John Bullis.  
(Marked Exhibit C-58.)

Q. Next? A. January 24, 1917, \$100.

Mr. Anderson: Draft offered in evidence, that date, that amount, no payee and no endorser; signed John Bullis.  
(Marked Exhibit C-59.)

Q. Next? A. July 27, 1917, \$100.

30 Mr. Anderson: Draft offered in evidence, that amount, that date; signed John Bullis; no endorser; no payee.  
(Marked Exhibit C-60.)

Q. Next draft? A. January 21, 1918, \$100.

Mr. Anderson: Draft offered in evidence, that amount, that date; signed John Bullis; no payee; no endorser.  
(Marked Exhibit C-61.)

40 Q. Next draft? A. July 16, 1918, \$100.

*William A. Ross, direct.*

Mr. Anderson: Draft offered in evidence, that amount, that date; signed John J. Bullis and John Bullis; no payee, no endorser.

(Marked Exhibit C-62.)

Q. Next? A. January 9, 1919, \$100.

10

Mr. Anderson: Draft that date, for that amount, signed John Bullis; no endorser; no payee, offered in evidence.

(Marked Exhibit C-63.)

Q. Next? A. July 15, 1919, \$100.

Mr. Anderson: Draft offered in evidence for that amount, that date, signed John Bullis; no payee, no endorser.

20

(Marked Exhibit C-64.)

No Cross Examination.

Mr. Anderson: I call the Court's attention to the rules and regulations of the various banks, appearing in all the books, which provide that withdrawals may not be made, except upon presentation of the pass book.

Complainant Rests.

30

The Court: Have the defendants any testimony to offer?

Mr. Cook: I have no desire to offer any. I represent the residuary legatees under the will.

Mr. Menge: I represent Mr. White. Mr. White is here and the only thing I can offer is to the effect that he has been appointed executor of the estate.

The Court: I was going to suggest that we get an admission on the record showing that Lettie A. White was the sister of John J. Bullis; that she

40

*William A. Ross, direct.*

afterwards married Sidney White, and that she died May 30, 1925.

Mr. Menge: Yes.

The Court: And that she left a last will and testament, which was admitted to probate by the Surrogate of Hudson County?

Mr. Menge: Yes.

The Court: When?

Mr. Menge: October 27, 1925.

The Court: On which letters testamentary were issued to Sidney White.

Mr. Menge: To Sidney White, the husband. I have a copy of the letters testamentary here.

The Court: I don't think we will need it if these facts are admitted.

Mr. Anderson: I would like to offer in evidence Mrs. White's will.

The Court: What bearing has it on the case?

Mr. Anderson: I don't see that it has any materiality, but I thought—

The Court: Then, don't let us get it in. Is there anything else to be offered by way of evidence or admission on the record?

Mr. Menge: We have nothing further to offer.

30

Case Closed.

40



*Exhibits.***Exhibit C-1.**Commercial Trust Company of New Jersey  
Safe Deposit Signature Card

## SAFE DEPOSIT DEPARTMENT

10 Bullis, Jno. J. Safe No. 1632

We hereby hire, as joint tenants, Safe No. 1632 in the vaults of the Commercial Trust Company of New Jersey at a rental of \$5.00 payable annually in advance, the survivor or survivors to have access thereto in case of the death of either, but either to have power to appoint a deputy, and either to have the right to surrender the safe. We agree to the Company's rules and regulations now in force and to such reasonable rules and regulations as it may hereafter adopt.

20

Dated April 16, 1914

Name John J. Bullis	Name Sidney White
Address 341 Woodward St.	Address do.
	2 May 1921
	Qualified

**Exhibit C-2.**

30 WILL OF JOHN J. BULLIS

(See copy annexed to complaint)

*Exhibits.***Exhibits C-3-4-5.**COMMERCIAL TRUST COMPANY OF NEW  
JERSEY

SIGNATURE CARDS ACCOUNT NO. 1813

Ex. C-3

10

I hereby agree to the rules and regulations of the  
Company

Account No. 1813

Signature John J. Bullis

Ex. C-4

I hereby agree to the rules and regulations of the  
Company

Account No. 1813

Signature John J. Bullis Emma F. Bullis

Residence 341 Woodward St. Jersey City

Place of Birth Concord, N. H. Date of Birth  
April 17, 1844

Husband's or Wife name Emma F. Bullis

Mother's Name May Grow Father's Name Jas.  
Stevent.

20

Ex. C-5

Account Number 1813

30

We Hereby Agree to the Rules and  
Regulations of theCOMMERCIAL TRUST COMPANY OF NEW  
JERSEYThis account and all money to be credited to it  
belong to us as joint tenants, and will be the abso-  
lute property of the survivor of us; either, and  
the survivor to draw. We do each appoint the  
other attorney irrevocable, with power to deposit

40

*Exhibits.*

in said joint account moneys of the other, and for that purpose to endorse any check, draft, note or other instrument payable to the order of the other.

10 Signature Lettie A. Dath Signature John J. Bullis  
Residence 341 Woodward St. J. C.  
Place of Birth Canada  
Husband's } name Wm. Dath  
Wife's }  
Mother's Name Sarah Partlow  
Father's Name John Bullis  
Date of Birth May 7th 1850

**Exhibit C-6.**

20 COMMERCIAL TRUST COMPANY OF NEW  
JERSEY

Book No. 1813

(cover)

DEPOSIT BOOK

No. 1813

Special Department  
Commercial Trust Company  
of New Jersey

30

~~Emma F. Bullis~~

Lettie A. Dath 10/7/14

John J. Bullis

(Rules &  
Regulations)

40

VIII—"Possession of the pass book shall be sufficient evidence of ownership thereof by such possessor, to authorize the payment of all moneys due thereon without further inquiry on the part of the company; and all payments which



*Exhibits.***Exhibits C-13-14.**

COMMERCIAL TRUST COMPANY OF NEW JERSEY  
ACCOUNT NO. 7236 SIGNATURE CARDS

*Ex. C-13.*

10 I hereby agree to the rules and regulations of  
the Company

Account No. 7236

Date Jun. 27, 1911

Signature John J. Bullis

~~Emma F. Bullis~~

Lettie A. Dath

*Ex. C-14.*

Account Number 7236

20 We Hereby Agree to the Rules and Regulations  
of the

COMMERCIAL TRUST COMPANY OF NEW JERSEY

This account and all money to be credited to it  
belong to us as joint tenants, and will be the abso-  
lute property of the survivor of us; either, and the  
survivor to draw. We do each appoint the other  
attorney irrevocable, with power to deposit in said  
joint account moneys of the other, and for that  
purpose to endorse any check, draft, note or other  
instrument payable to the order of the other.

30

Signature Lettie A. Dath    Signature John J. Bullis

40

*Exhibits.***Exhibit C-15.**

(Cover)

## DEPOSIT BOOK

No. 7236

Special Department 10  
 COMMERCIAL TRUST COMPANY  
 OF NEW JERSEY

John J. Bullis  
 Lettie A. Dath 10/7/14  
~~Emma F. Bullis~~

(Rules &amp; Regulations)

VIII } Same as Ex. C-6 Book No. 1813  
 XI } Commercial Trust Company of 20  
 New Jersey.

Dr. Commercial Trust      John J. Bullis  
 Company of New          Lettie A. Dath 10/7/14  
 Jersey in account      ~~Emma F. Bullis~~ Cr.  
 with

NOTE—The record of deposits and withdrawals is  
 not printed because it is admitted that all  
 moneys in the account were the property of 30  
 John J. Bullis—Compl't. par. 11; answer of  
 Lettie A. White, par. 3.)

**Exhibits C-16-17-18-19.**

DRAFTS ON ACCOUNT No. 7236

COMMERCIAL TRUST COMPANY OF NEW JERSEY

Exhibit	Date	Amount	Payee	Draft signed by	
C-16	1/15/20	\$105.13	Cash	John J. Bullis	
C-17	11/ 1/21	25.00	Sidney White	John J. Bullis	
C-18	1/16/22	75.00	Sidney White	Lettie A. Dath	
C-19	6/ 8/22	250.00	Sidney White	Lettie A. Dath	40

*Exhibits.***Exhibit C-20.**

Commercial Trust Company of New Jersey  
Account No. 9873—Signature Card

Account Number 9873                      Date 4/12 1916

10 We Hereby Agree to the Rules and Regulations  
of the

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY

20 This account and all money to be credited to  
it belong to us as joint tenants, and will be the  
absolute property of the survivor of us; either,  
and the survivor to draw. We do each appoint  
the other attorney irrevocable, with power to de-  
posit in said joint account moneys of the other,  
and for that purpose to endorse any check, draft,  
note or other instrument payable to the order of  
the other.

	Signature	Signature
	John J. Bullis	Lettie A. Dath
	Residence	
	341 Woodward St.	341 Woodward St.
	J. C.	
	Occupation	
30	Retired	Housekeeper
	Place of Birth	
	Canada	Canada
	Husband's } name	
	Wife's }	
	Single	Single
	Mother's name	
	Sarah Partlow	Sarah Partlow
	Father's name	
	John Bullis	John Bullis
	Date of Birth	
40	July 30, 1843	May 7, 1851

*Exhibits.***Exhibit C-21.**

(Cover)

## DEPOSIT BOOK

No. 9873

Special Department 10  
 Commercial Trust Company of New Jersey

Lettie A. Dath  
 or  
 John J. Bullis

(Rules &amp; Regulations)

VIII } Same as Ex. C-6—Book No. 1813  
 XI } Commercial Trust Company of New Jersey 20

Dr. Commercial Trust Company Lettie A. Dath  
 of New Jersey or  
 in account with John J. Bullis

(NOTE.—The record of deposits and withdrawals is not printed because it is admitted that all moneys in the account were the property of John J. Bullis—Compl't. par. 11; answer of Lettie A. White par. 3. 30

**Exhibits C-22-23.**

Drafts on account No. 9873  
 Commercial Trust Company of New Jersey

Exhibit	Date	Amount	Payee	Draft signed by
C-22	1/15/20	\$90.60	Cash	John J. Bullis
C-23	1/16/22	150.00	Sidney White	Lettie A. Dath
pd. 4/7/24				

40

*Exhibits.***Exhibits C-24-25.**

PASS BOOKS NOS. 25130 and 17028  
HUDSON TRUST COMPANY

---

10 Ex. C-24  
No. 25130

## PASS BOOK

John J. Bullis  
or Either signature  
Lettie A. Dath to draw

(as joint tenants and not as tenants  
in common and to the survivor)

HUDSON TRUST COMPANY

---

20 (Rules) "This pass book must be presented at the  
time of making either a deposit or draft  
for entry in the same."

---

HUDSON TRUST COMPANY	John J. Bullis
	or
in account with	Lettie A. Dath
	as joint tenants and not as tenants in common and to the survivor

30 (NOTE.—The record of deposits and withdrawals is  
not printed because it is admitted that all  
moneys in the account were the property  
of John J. Bullis, Compl. par. 11; answer  
of Lettie A. White, par. 3)

Ex. C-25 (Pass Book No. 17028 is not printed be-  
No. 17028 cause it is a closed account for which  
No. 25130 was substituted and because  
it is not material to the issue).

*Exhibits.***Exhibits C-26-27.**

## HUDSON TRUST COMPANY SIGNATURE CARDS

Ex. C-26

No. 17028—This card is not printed because acc't. No. 17028 was closed and acc't. No. 25130 substituted therefor. 10

Ex. C-27

No. 25130—I or we agreed to the rules and regulations now in force of the HUDSON TRUST COMPANY, and to such reasonable rules and regulations as it may hereafter adopt.

John J. Bullis                      Either signature  
or Lettie A. Dath                      to draw 20

Residence 341 Woodward St., Jersey City  
Birthplace Canada (both) Age J.J.B. 71—L.A.D. 64  
Father's Name                      Mother's Name  
Brother & Sister  
Name of Husband or Wife      Children  
Deposited by                      Date  
from a/c 17028                      Oct. 7, 1914

Oct. 7th, 1914

(Either signature to draw) 30

This account is opened by us and intended to create a joint estate to us as joint tenants and not as tenants in common.

Signed John J. Bullis  
or Lettie A. Dath

40

*Exhibits.***Exhibits C-28-29.****DRAFTS ON HUDSON TRUST COMPANY  
ACCOUNT**

Exhibit	Date	Amount	Payee	Draft signed by
C-28	1/19/15	\$74.01	None	John J. Bullis
C-29	7/27/15	74.01	None	John J. Bullis

**Exhibits C-30-31-32-33.**

The above exhibits relate to Hoboken Trust Company account No. 10444 on which no appeal has been taken.

**Exhibits C-34-35-36-37-38.**

The above exhibits relate to Lincoln Trust Company account No. 4400 on which no appeal has been taken.

**Exhibit C-39.**

(Cover)

No. 130807

Bank Book

John J. Bullis

or

Lettie A. Dath

Hoboken Bank for Savings

Payable to either or survivor

(By-laws) #5. "Drafts for money may be made personally or by order in writing of the depositor or by power of attorney but no person shall have the right to demand the whole or any part of his or her money without producing the pass book in order that such payment may

*Exhibits.*

be entered therein, and such entry is to be evidence of the payment of the money specified."

Dr. John J. Bullis	Hoboken Bank for Cr.	
or	Savings	
Lettie A. Dath	Payable to either or sur-	10
in account with	vivor.	

(Note—The record of deposits and withdrawals is not printed because it is admitted that all moneys in the account were the property of John J. Bullis. Compl't. par. 11; answer of Lettie A. White par. 3.)

**Exhibits C-40-41.**

Hoboken Bank for Savings Signature Cards	
Ex. C-40	20
130,807—I hereby agree to the by-laws and regu-	
<del>100,220</del> lations of the bank.	
Signature JOHN J. BULLIS	
Residence 341 Woodward St., J. C.	
When born July 30, 1843 Where born Canada	
Father's name John	
Mother's Maiden Name Sarah Partlow	
Husband's name	
Wife's Maiden Name Anna F. Stevens	30
100,230—I hereby agree to the by-laws and regula-	
tions of the bank.	
Signature EMMA F. BULLIS	
Residence 341 Woodward St., J. C. #2941	
When Born 1845 Where Born Vermont	
Father's name James M. Stevens	
Mother's Maiden Name Mary A. Grow	
Husband's name	
Wife's Maiden Name John J.	40

*Exhibits.*

Ex. C-41

130,807—I hereby agree to the by-laws and regulations of the bank.

Signature · LETTIE A. DATH #3640

Residence 341 Woodward St., J. C.

10 When Born May 7, 1850 Where Born Canada

Father's name John Bullis

Mother's Maiden Name Sarah Partlow

**Exhibit C-42.**AGREEMENT RELATIVE TO HOBOKEN BANK  
FOR SAVINGS ACCOUNT.

No. 3640.

20 We, the undersigned, John J. Bullis of Number 341 Woodward St. Jersey City, N. J. and Lettie A. Dath of Number same address having this day deposited with The Hoboken Bank for Savings in the City of Hoboken the sum of \$3910.24 do request the said Bank to open an account with us in the names of John J. Bullis of the City of Jersey City in the State of N. J. and Lettie A. Dath of the City of Jersey City and State of N. J.

30 And we do hereby mutually and severally agree, 130807—That we are joint owners of all moneys now deposited, or which may be hereafter deposited to the credit of said account, and all accrued and accruing interest thereon;

That upon the death of either of us, the moneys then on deposit shall become the property of the survivor of us;

40 That each or either of us, or the survivor of us may at any and all times draw and receive from said Bank the whole or any part of said moneys now deposited, or which may be hereafter deposited to the credit of said account;

*Exhibits.*

That each or either of us is authorized and empowered to sign his or her name to any receipt, check, draft or other voucher for the moneys so drawn;

And we do severally authorize and empower the said Bank to pay said moneys or any part thereof upon the presentation to it of our bank or pass book with a receipt, check, draft or other voucher signed by either of us. 10

And we do severally agree that any payment made by said Bank upon any such receipt, check, draft or other voucher containing such signature shall be a full and complete discharge, release and acquittance to said Bank for all moneys drawn, and from all liability by reason of such payment. 20

Dated October 7, 1914

JOHN J. BULLIS (L. S.)  
LETTIE A. DATH (L. S.)

Witness F. THADEN

---

**Exhibits C-43-44.**

Drafts on Hoboken Bank for Savings Account

Exhibit	Date	Amount	Payee	Draft signed by	
C-43	1/19/15	\$78.20	None	John J. Bullis	30
C-44	7/27/15	78.20	None	John J. Bullis	

---

**Exhibit C-45.**

Not printed—Signature card No. 165,632 on closed account of Provident Institution for Savings.

*Exhibits.***Exhibits C-46-65—Pass Books.**

No. 167027—167028

10 Dr. Provident Institution      Lettie A. Dath  
     for Savings                      &  
     in account with                John Bullis      Cr.

“Deposits and dividends shall be drawn out only by the depositors in person, or by their written order, or by some person legally authorized and only upon the production of the depositor’s book, that such payments may be entered therein, and all payments to persons who present the deposit book shall be valid payments to discharge the bank and its officers.”

20

Extract from By-law VIII.

(NOTE—The record of deposits and withdrawals is not printed because it is admitted that all moneys in the accounts were the property of John J. Bullis. Complt., par 11; answer of Lettie A. White, par. 3.)

**Exhibits C-47-48-49-50-51-52-53.**

30

DRAFTS ON ACCOUNT No. 167027

## PROVIDENT INSTITUTION FOR SAVINGS

Exhibit	Date	Amount	Payee	Draft signed by
C-47	7/26/16	\$14.03	None	John Bullis
C-48	1/24/17	100.00	None	John Bullis
C-49	7/27/17	100.00	None	John J. Bullis
C-50	1/21/18	100.00	None	John Bullis
C-51	7/16/18	100.00	None	John J. Bullis
C-52	1/ 9/19	100.00	None	John Bullis
C-53	7/15/19	100.00	None	John Bullis

40

*Exhibits.***Exhibit C-54.**

Not Printed—Deposit Slip Provident Institution  
for Savings.

**Exhibit C-55-56.**

10

SIGNATURE CARDS PROVIDENT INSTITUTION FOR  
SAVINGS ACCOUNTS NOS. 167027-167028

Ex. C-55

No. 167027

We Hereby Agree to the By-  
laws, Rules and Regulations of  
THE PROVIDENT INSTITUTION FOR  
SAVINGS IN JERSEY CITY.

Date Jan. 5, 1915

This account and all money to  
be credited to it belong to us as  
joint tenants and will be the  
absolute property of the survivor  
of us; either, and the survivor to  
draw upon producing consent of  
any public officer required by  
taxation laws.

20

Signature Lettie A. Dath

Signature John Bullis

Occupation Retired

B. &amp; S.

Residence 341 Woodward St.

30

Father's Name John

62 Mother's Maiden Name Sarah Partlow Age 70

Ex. C-56

No. 1670028

We Hereby Agree to the By-  
laws, Rules and Regulations of  
THE PROVIDENT INSTITUTION FOR  
SAVINGS IN JERSEY CITY.

Date Jan. 5, 1915

This account and all money to  
be credited to it belong to us as

40

*Exhibits.*

joint tenants and will be the absolute property of the survivor of us; either, and the survivor to draw upon producing consent of any public officer required by taxation laws.

10

Signature John Bullis  
 Signature Lettie A. Dath  
 Occupation Retired Brother & Sister  
 Residence 341 Woodward St.  
 Father's Name John Bullis  
 70 Mother's Maiden Name Sarah Partlow Age 62

**Exhibits C-57-58-59-60-61-62-63-64.**

20

**DRAFTS ON PROVIDENT SAVINGS INSTITUTION  
 ACCOUNT NO. 167028**

Exhibit	Date	Amount	Payee	Draft signed by
C-57	1/31/16	\$78.74	None	John Bullis
C-58	7/26/16	100.00	None	John Bullis
C-59	1/24/17	100.00	None	John Bullis
C-60	7/27/17	100.00	None	John Bullis
C-61	1/21/18	100.00	None	John Bullis
C-62	7/16/18	100.00	None	John Bullis
C-63	1/ 9/19	100.00	None	John Bullis
C-64	7/15/19	100.00	None	John Bullis

30

40

01 007.1.1920

## New Jersey Court of Errors and Appeals

---

Between

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor under  
the last will and testament of  
John J. Bullis, deceased,  
Complainant-Appellant,

and

LETTIE A. WHITE, *et al.*,  
Defendants-Respondents.

---

On Appeal  
from the  
Court of  
Chancery.

### **BRIEF FOR COMPLAINANT-APPELLANT COMMERCIAL TRUST COMPANY OF NEW JERSEY, EXECUTOR OF JOHN J. BULLIS, DECEASED.**

#### **Statement of the Case.**

Commercial Trust Company of New Jersey, the complainant-appellant, is the executor of John J. Bullis, deceased, who died on April 10, 1924.

At the time of his death there were nine accounts in various banks, all of them being savings or special deposit accounts and none of them being check accounts, standing in the names of John J. Bullis or Lettie A. Dath, who subsequent to the opening of the accounts had married Sidney White.

Commercial Trust Company of New Jersey as executor of Bullis claimed the ownership of all the

moneys in the nine accounts and filed a bill in the Court of Chancery for the determination of this question.

During the pendency of the suit Lettie A. Dath (White) died and by order for revivor the suit was revived against Sidney White, executor of Lettie A. White, and he was made defendant in her place and stead.

Vice-Chancellor Fielder, before whom the case was heard, held that the two accounts in the Hoboken Trust Company and Lincoln Trust Company were the property of Commercial Trust Company of New Jersey, executor of Bullis, and a decree was entered to that effect. No appeal has been taken by the defendant, Sidney A. White, executor of Lettie A. White, from this portion of the decree.

Vice-Chancellor Fielder held that the other seven accounts, three with Commercial Trust Company of New Jersey, one with Hudson Trust Company, one with Hoboken Bank for Savings and two with the Provident Institution for Savings, were the property of the surviving co-tenant, Lettie A. White, and a decree was entered to that effect.

Commercial Trust Company of New Jersey appeals from that part of the decree holding that the foregoing seven accounts are the property of the estate of Lettie A. White, deceased.

The complaint alleges (par. 11-12) that all moneys deposited in the accounts were owned by John J. Bullis and that Lettie A. Dath (White) deposited no funds of her own in said accounts and that the pass-books were in the safe deposit box of Bullis at the time of his death, this allegation being admitted by the answer of Lettie A. White (par. 3, p. 13).

The question before the Court is: "To whom do the moneys represented by the seven bank accounts above mentioned belong, Commercial Trust

Company of New Jersey, executor of Bullis, or Sidney White as executor of Lettie A. White?"

The facts regarding the seven accounts in question are as follows:

**Commercial Trust Company of New Jersey  
Account No. 1813**

This account was opened January 14, 1904, in the name of John J. Bullis; the name of Emma F. Bullis was subsequently added and on October 7, 1914, the name Lettie A. Dath was substituted in place of Emma F. Bullis, at which time a new signature card was made out. The pass-book is Ex. C-6, which shows the striking out of the name Emma F. Bullis, and the signature cards showing the history of the account are Exs. C-3-4-5 (Calahan, pp. 71-72). On the signature card Ex. C-5, which was signed when Lettie A. Dath's name was added to the account, the following appears:

"We Hereby Agree to the Rules and  
Regulations of the

COMMERCIAL TRUST COMPANY OF NEW JERSEY

This account and all money to be credited to it belong to us as joint tenants, and will be the absolute property of the survivor of us; either, and the survivor to draw. We do each appoint the other attorney irrevocable, with power to deposit in said joint account moneys of the other, and for that purpose to endorse any check, draft, note or other instrument payable to the order of the other" (Ex. C-5).

The pass-book itself stands Commercial Trust Company in account with John J. Bullis, Lettie A. Dath (Ex. C-6).

**Commercial Trust Company of New Jersey  
Account No. 7236**

This account was opened June 27, 1911, in the names of John J. Bullis and Emma F. Bullis; on

October 7, 1914, the name Emma F. Bullis was crossed out and a new signature card in the names of John J. Bullis and Lettie A. Dath submitted. The pass-book Ex. C-15 shows the striking out of the name of Emma F. Bullis (Callahan, pp. 74-75). On the signature card Ex. C-14 governing this account the same language appears as on Commercial Trust Company account No. 1813 set out above.

**Commercial Trust Company of New Jersey**  
**Account No. 9873**

This account was opened April 12, 1916, in the names of John J. Bullis and Lettie A. Dath (Callahan, p. 76). The original deposit in this account was \$3,500 transferred from account No. 1813 in the same bank (Callahan, p. 73). On the signature card governing this account, Ex. C-20, appears the same language as set out above on account No. 1813 Commercial Trust Company. The pass-book itself, Ex. C-21, being in the name of Lettie A. Dath or John J. Bullis.

**Hudson Trust Company**  
**Account No. 25130**

This account was opened October 7, 1914, the moneys having been transferred from account No. 17028 in the same bank which stood in the names of John J. Bullis and Emma F. Bullis (Briggs, pp. 77-78). The pass-book on account No. 25130, Ex. C-24, carries the account in the names of John J. Bullis or Lettie A. Dath, either signature to draw, as joint tenants and not as tenants in common and to the survivor, and on signature card 25130, Ex. C-27, in the names of John J. Bullis or Lettie A. Dath, either signature to draw, appears the following:

“(Either signature to draw)

This account is opened by us and intended to

create a joint estate to us as joint tenants and not as tenants in common.

Signed John J. Bullis  
or Lettie A. Dath"

**Hoboken Bank for Savings**  
**Account No. 130807**

This account was opened October 7, 1914, in the names of John J. Bullis or Lettie A. Dath, the amount for which it was opened being transferred from account No. 100230 which stood in the names of Emma F. Bullis and John J. Bullis (Verasco, pp. 83-86). The pass-book Ex. C-39 carries the words "Payable to either or survivor," and the contract between the depositors and the bank appears by a separate agreement, Ex. C-42, which is as follows:

"We, the undersigned, John J. Bullis of Number 341 Woodward St., Jersey City, N. J. and Lettie A. Dath of Number same address having this day deposited with The Hoboken Bank for Savings in the City of Hoboken the sum of \$3,910.24 do request the said Bank to open an account with us in the names of John J. Bullis of the City of Jersey City in the State of N. J. and Lettie A. Dath of the City of Jersey City and State of N. J.

"And we do hereby mutually and severally agree,

"130807—That we are joint owners of all moneys now deposited, or which may be hereafter deposited to the credit of said account, and all accrued and accruing interest thereon;

"That upon the death of either of us, the moneys then on deposit shall become the property of the survivor of us;

"That each or either of us, or the survivor of us may at any and all times draw and receive from said Bank the whole or any part of said moneys now deposited, or which may be hereafter deposited to the credit of said account;

"That each or either of us is authorized and empowered to sign his or her name to any receipt, check, draft or other voucher for the moneys so drawn;

"And we do severally authorize and empower the said Bank to pay said moneys or any part thereof upon the presentation to it of our bank or pass book with a receipt, check, draft or other voucher signed by either of us.

"And we do severally agree that any payment made by said Bank upon any such receipt, check, draft or other voucher containing such signature shall be a full and complete discharge, release and acquittance to said Bank for all moneys drawn, and from all liability by reason of such payment."

**Provident Institution for Savings  
Accounts Nos. 167027 and 167028**

Account No. 167027 was opened January 5, 1915, in the names of John Bullis and Lettie A. Dath upon the closing of a prior account which stood in the names of John Bullis and Emma F. Bullis, the opening deposit in the new account being the closing balance in the old account (Ross, pp. 86-87).

Account No. 167028 was opened January 5, 1915, in the names of Lettie A. Dath and John Bullis by the transfer of a balance from a prior account (Ross, pp. 88-89).

The pass-books carry the accounts in the name of Lettie A. Dath and John Bullis, Exs. C-46 and 65, and the signature cards C-55 and C-56 show the following language:

"This account and all money to be credited to it belong to us as joint tenants and will be the absolute property of the survivor of us; either, and the survivor to draw upon producing consent of any public officer required by taxation laws."

There was approximately \$40,000 in the seven accounts under consideration at the time Bullis died. The respective amounts on each account are given in the bill of complaint.

A summary of the appellant's points is as follows:

**POINT I.**—There was no valid present gift by Bullis because there was no donative intent, no delivery and no complete stripping of dominion and control of the donor over the subject of the gift.

- a. There was no donative intent.
- b. There was no delivery.
- c. There was no gift because the donor, Bullis, retained control of and exercised dominion over the accounts up to the time of his death.

**POINT II.**—Mrs. White did not take the funds under a completed trust by virtue of any delivery to a third person for her.

**POINT III.**—Lettie A. White did not acquire title to the funds under any trust relationship between the depositors and the banks.

**POINT IV.**—The contractual relation between the banks and the depositors was not sufficient to vest title in Mrs. White to the moneys on deposit at Bullis's death.

**POINT V.**—The attempted gift was a testamentary disposition violative of the statute of wills and therefore void.

## POINT I.

**There was no valid present gift by Bullis because there was no proof of donative intent, no delivery and no complete stripping of dominion and control over the subject of the gift.**

To effect a present gift there must be a donative intention and in conjunction therewith a delivery such as the subject-matter of the gift is capable of and complete stripping of the donor of all dominion and control over the thing given.

*Stevenson v. Earl*, 65 N. J. Eq., 721, at 725;  
*Nicklas v. Parker*, 71 N. J. Eq., 777.

In *Swayze v. Huntington*, 82 N. J. Eq., 127, aff'd. 84 N. J. Eq., 510, it was held as follows:

“The general subject of gifts has been dealt with by the courts of this state, including the court of last resort, so many times and under so many circumstances that there can be no question about the rule which prevails in this jurisdiction. I adopt in its entirety the conclusion reached by Vice-Chancellor Bergen in his opinion in *Taylor v. Coriell*, 66 N. J. Eq. (21 Dick.), 262, which holds that in order to establish a gift *inter vivos* the following factors must appear—first, a donative intention on the part of the donor; second, an actual delivery of the subject-matter of the gift except in cases where it is a chose in action, like a certificate of shares of stock or evidence of indebtedness, in which case the delivery must be of that variety of which it is most capable (*Matthews v. Hoagland*, 48 N. J. Eq. [3 Dick.], 455); third, the donor must strip himself of all ownership and dominion over the subject-matter of the gift. These requisites appear in all our cases. *Stevenson v. Earl* (Court of Errors and Appeals), 65 N. J. Eq. (20 Dick.), 721 (p. 133).”

**There was no donative intent.**

The form of the account raises no presumption of gift and is not controlling as between the co-depositors.

In *Schick v. Grote*, 42 N. J. Eq., 352, the account was in the name of Grote and wife or either, and the Court held

“The form of the account to which the deposit was made is not evidence of gift to the wife” (p. 355).

In *Skillman v. Wiegand*, 54 N. J. Eq., 198, the Court said:

“\* \* \* the presumption is that the donee of the joint tenancy holds as trustee for the creator. In all cases, however, of personalty the Courts look at the circumstances and declarations of the creator of the joint estate, made both before and after its creation, in order to determine whether it was made in trust for the creator or as a gift with right of survivorship” (p. 203).

In *Dunn v. Houghton*, 51 Atl., 71, the account was in the names of “Mary Kane or niece, Katie Pender,” and V.-C. Stevenson went into the questions of the surrounding circumstances, the effect of the change of another bank account at the same time, decedent’s declarations, the question of convenience as the reason for the form of the account, the ratio between the amount in the account and the rest of decedent’s estate and other questions before concluding that there was a donative intention.

In *Taylor v. Corriell*, 66 N. J. Eq., 262, on the question of the conclusiveness of the form of the account, the Court said:

“The complainant further claims that when

the account was opened there was a contract entered into between the savings institution, her father and herself, under which she obtained an irrevocable interest in the fund, so that all question of testamentary disposition is removed. Undoubtedly there was a contract between the father and the daughter on the one side and the institution on the other, by the terms of which the bank became their debtor to the extent of the amount due on the account, and that either presenting the book might draw the fund, *but I cannot approve the contention that such contract is, as between the father and the daughter, controlling evidence on the question of a gift inter vivos.* Their rights to the fund depend upon the character of their respective relations thereto, and if it appears that the father furnished the money making up the deposit, that the account was opened in their joint names for the convenient holding and management of the fund by one party for the other, a court of equity would declare their rights according to good conscience, and to avoid the application of the law of wills it must appear that the donor had surrendered all control over the subject matter. Upon this point my attention has been called to *Dunn v. Houghton*, 51 Atl. Rep., 71, but I do not understand that in that case Vice-Chancellor STEVENSON held that the contract entered into by the bank established *prima facie a gift inter vivos* but that a distinct donative intention on the part of the donor must appear, and he sums it up in the following language: "The question whether there was a gift or not is determined in each case solely by the purpose of the alleged donor" (p. 268).

In *Schippers v. Kempfes*, 67 Atl., 74 (E. & A.) (not officially reported) the account was in the name of "R. Herman or Eliza Kempfes." The Court went into the questions of convenience as the reason for the form of the account, retention

of control through the pass-book by the decedent and the decedent's dominion over the account, and said that under the circumstances of the case there was no presumption of gift.

"It being conceded that a deposited fund is the money of A., the mere issuing by a savings bank at the direction of A. of a pass-book to 'A. or B., either to draw,' or 'Paterson Savings Institution, in account with A. or B.,' will not constitute a present gift of the fund evidenced by the pass-book to B." (p. 74).

In *Gordon v. Toler*, 83 N. J. Eq., 25, the account was in the name of Matilda Gordon and Ella R. Toler upon a contract giving them equal and joint rights and payable to either or the survivor. In this case, notwithstanding the form of the account, the Court went into the questions of donative intention, the incompleteness of the gift and the retention of control and dominion by Mrs. Gordon, convenience as the reason for the form of the account, decedent's declarations that she had not intended to make a gift and held that the survivor was not entitled to the fund.

In *McCullough v. Forest*, 84 N. J. Eq., 101, the account was in the names of Mary McCullough or Annie Forest. V.-C. Backes held that the evidence disclosed no donative intention, the gift was incomplete by decedent's retention of the pass-book, the decedent continued to exercise dominion by drawing, and held that the survivor was not entitled to the fund.

In *Laing v. Durand*, 84 N. J. Eq., 404, the account was in the name of "E. Laing or Sarah Emily Laing," and before awarding the fund to the survivor, the Court went into the questions of donative intention, thus going behind the form of the account.

In *Hunt v. Naylor*, 84 N. J. Eq., 646, the account

was in the name of "Joseph Hunt or Elizabeth G. Hunt" either to draw, the balance at the death of either to belong to the survivor. In deciding that there had been no gift V.-C. Backes went into the questions of convenience, recognition of ownership and testamentary disposition.

In *Morristown Trust Company v. Capstick*, 90 N. J. Eq., 22, affirmed 91 Eq., 152, the Court went behind the form of the account and held that Mrs. Capstick, the survivor, was not entitled to the money.

In *Kaufman v. Edwards*, 92 N. J. Eq., 554, the account was in the name of "Mary Kaufman or Mary R. Kaufman" payable to either or the survivor. Before awarding the fund to the survivor, V.-C. Buchanan considered the questions of the intent and the act by which the intent was effected, that the account was not opened for the convenience of Mrs. Kaufman, and held,

"In cases of this kind—as indeed in all cases of attempted transfer of bank credits—there are two matters which are the subject of inquiry—one being the intent of the 'donor' and the other being the act by which such intent has been sought to be effectuated. As to intent the inquiry is, was there at the time of the act an intent to make a then presently operating transfer of the 'donor's' right against the bank or other depository?" (p. 556).

"But, clearly there is nothing expressed or implied in that contract which necessarily accomplishes a transfer of ownership in the chose in action. On its face it may deal only with transfer of possession instead of ownership" (p. 557).

The Vice-Chancellor then went on to ascertain what the actual intent was in making the contract with the bank.

In the present case under consideration there was no testimony as to any expressed intention of

the donor Bullis. The co-tenant, Lettie A. White, died before the hearing and her husband, Sidney White, her executor, did not offer any testimony on this point. The intention of the donor Bullis must be gathered from his retention of control of the pass-books, all of which contained regulations requiring the book to be produced before money could be drawn, which gave him absolute dominion and control over the accounts and from his exercise of such dominion by drawing on the accounts, both of which conclusively negative any intention on the part of Bullis to make a present gift, but on the contrary that Mrs. White was to have, at his death and then only, the balances which might remain in the accounts.

b.

**There was no delivery.**

The next essential of a gift *inter vivos* is:

“Second, an actual delivery of the subject matter of the gift except in cases where it is a chose in action, like a certificate of shares of stock or evidence of indebtedness in which case the delivery must be of that variety of which it is most capable” (p. 133).

*Swayze v. Huntington*, 82 N. J. Eq., 127;  
aff’d 84 N. J. Eq., 510.

In *Kaufman v. Edwards*, 92 N. J. Eq., 554, V.-C. BUCHANAN held as follows:

“In cases of this kind—as, indeed, in all cases of attempted transfer of bank credits—there are two matters which are the subject of inquiry—one being the intent of the ‘donor’ and the other being the act by which such intent has been sought to be effectuated.” “As to the act, the inquiry is as to whether the method employed for the attempted transfer is legally sufficient to accomplish such trans-

fer, assuming the existence of the requisite intent" (p. 556).

"Dealing first with the sufficiency of the alleged act of transfer, I conclude that the means employed by Mrs. Kaufman was sufficient to effectuate her purpose and intent, if she had the purpose of transferring an interest in the account. This conclusion is based upon both reason and authority. The act of making such a contract with the bank is as much a completed act as the execution of a formal instrument of direct assignment or assignment in trust or as a manual delivery" (p. 558).

V.-C. BUCHANAN in the above case in treating the effect of such a contract held:

"But clearly there is nothing expressed or implied in that contract which necessarily accomplishes a transfer of ownership in the chose in action. On its face it may deal only with transfer of possession instead of ownership" (p. 557).

It is to be noted that in *Kaufman v. Edwards* the Vice-Chancellor expressly refers to the fact that there was no requirement that the pass-book must be produced on withdrawals (p. 560 and p. 562).

In the present case under consideration the rules and regulations of all the banks to which the depositors expressly consented when they signed the signature cards, required the production of the pass-books before any withdrawals could be made.

It is argued later in the brief that Bullis' retention of the books with the consequent dominion and control over the accounts and the exercise of such dominion by Bullis drawing on the accounts conclusively negated any donative intent.

The requirement in the present case that the pass-books must be produced to draw is a very different thing than that mentioned by V.-C. BUCHANAN in the *Kaufman* case, viz.:

“Nor can the fact that the contract leaves Mrs. Kaufman with the power or some power of disposition of the debt due from the bank be of any controlling materiality” (p. 558).

It cannot be said in this case that the opening of the accounts is the equivalent of manual delivery because after the accounts were opened or after Mrs. White's name had been placed on the existing accounts Bullis' position with respect to his money was no different than before she became a party to the accounts. Bullis still had full and complete control over the funds by keeping possession of the books under the bank rules requiring production of the books for the withdrawal of money.

On the question of delivery V.-C. FIELDER said:

“Where the subject matter is a certificate of stock, a bank account or other chose in action standing in joint names, delivery cannot be made to and possession is usually not held by both or all joint owners at the same time and delivery to one must in the nature of things be a delivery to the other or others \* \* \*” (pp. 38-39).

We are not concerned with a delivery of the bank books by the banks to either or both the co-depositors; delivery of the books by the banks to one or the other of the depositors would not establish the right of either depositor as against the other unless done with the other's consent.

We are concerned with a delivery as between Bullis and Mrs. White.

The Vice-Chancellor further said:

“\* \* \* and since in the present case only one of the joint owners could hold the pass books (unless they were kept in a box or some place to which both could have access) the donor was the natural one of the two to hold them” (p. 39).

If there was, as the Vice-Chancellor holds, a gift of the bank accounts, what would be more natural than a turning over of the books by the donor to the donee with possession thereafter in the donee? If the donor has made a gift why is it natural for him to retain in his possession the thing, delivery of which would evidence the gift?

V.-C. FIELDER further says on the question of delivery:

“One of the essentials of a complete gift *inter vivos* is that there must be a delivery of the gift to the donee and in case of a chose in action, the delivery must be of such a nature as the subject matter of the gift is most capable” (p. 38, lines 34-38, Conclusions).

“After all the gift was not of the books but of the moneys in the accounts and the books were but the written record issued by the banks of the items of debit and credit to the accounts \* \* \*” (p. 39, lines 15-19).

While it is true that if there was a gift it was of the moneys and not the books, nevertheless the obligation of the bank to pay being a chose in action, the bank being the debtor and the depositors the creditors, delivery could only be constructive such as by delivery of the books, a delivery of such a nature as the subject-matter of the gift is most capable.

There is no evidence anywhere in the case of any delivery by Bullis to Lettie A. White of any of the bank books.

The facts of the case with reference to the safe-deposit box where the books were kept are dealt with later in the brief.

c.

There was no gift because the donor Bullis retained control of and exercised dominion over the accounts up to the time of his death.

The third essential of a gift *inter vivos* is that the donor must strip himself of all ownership and dominion over the subject matter of the gift.

*Swayze v. Huntington*, 82 N. J. Eq., 127 at 133; aff'd 84 N. J. Eq., 510.

In *Stevenson v. Earl*, 65 N. J. Eq., 721, it was held

"But in order to legalize such a gift there must be not only a donative intention but also in conjunction with it a complete stripping of the donor of all dominion or control over the thing given" (p. 725).

In the bank accounts under consideration Bullis retained control by keeping possession of the pass-books, the rules of all the banks requiring their production as a prerequisite to drawing moneys. By so doing he negated any donative intent.

On the three Commercial Trust Company of New Jersey accounts, Nos. 1813, 7236, 9873, there were printed in the pass-books, Exs. C-6, C-15, C-21, the following rules and regulations:

"Possession of the pass book shall be sufficient evidence of ownership thereof by such

"This pass book must be presented at the time of making deposits or drafts". (Ex.C-6-C-15-C-21)

shall be valid as against said depositor and a full and effectual release thereof to the Company."

The signature cards on the foregoing three accounts (Exs. C-3, 4, 5, 13, 14, 20) show the agree-

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On the three Commercial Trust Company of New Jersey accounts, Nos. 1813, 7236, 9873, there were printed in the pass-books, Exs. C-6, C-15, C-21, the following rules and regulations:

“Possession of the pass book shall be sufficient evidence of ownership thereof by such possessor, to authorize the payment of all moneys due thereon without further inquiry on the part of the company; and all payments which shall be made by the Company to any person producing the pass book of a depositor shall be valid as against said depositor and a full and effectual release thereof to the Company.”

The signature cards on the foregoing three accounts (Exs. C-3, 4, 5, 13, 14, 20) show the agree-

ment of the depositors to the rules and regulations of the company.

On the Hudson Trust Company account there was printed in the pass-book the following rule (Ex. C-24) :

“This pass book must be presented at the time of making either a deposit or draft for entry in the same.”

The signature card on the foregoing account shows the agreement of the depositors to the rules and regulations of the bank (Ex. C-27).

On the Hoboken Bank for Savings account there was printed in the pass-book (Ex. C-39) the following rule :

“Drafts for money may be made personally or by order in writing of the depositor or by power of attorney but no person shall have the right to demand the whole or any part of his or her money without producing the pass book in order that such payment may be entered therein, and such entry is to be evidence of the payment of the money specified.”

The signature cards on this account show the agreement of the depositors to the by-laws and regulations of the bank (Exs. C-40, 41).

On the two accounts with Provident Institution for Savings there was printed in the pass-books (Exs. C-46, 65) the following rule :

“Deposits and dividends shall be drawn out only by the depositors in person, or by their written order, or by some person legally authorized and only upon the production of the depositor's book, that such payments may be entered therein, and all payments to persons who present the deposit book shall be valid payments to discharge the bank and its officers.”

The signature cards on these accounts (Exs. C-55, 56) show the agreement of the depositors to the by-laws, rules and regulations of the bank.

The effect of the requirement that the pass-books must be produced to withdraw moneys has been considered in the following cases.

In *Skillman v. Wiegand*, 54 N. J. Eq., 198, the by-laws of the bank provided that the pass-book held by the depositor must be produced when money is drawn (p. 198). On the question of the effect of such a rule of the bank the Court said:

“and in the case of a savings bank the proprietor of the fund by retaining the pass book in his possession retains complete control of it” (p. 203).

In *Taylor v. Coriell*, 66 N. J. Eq., 262, the bank regulation was that “no person shall receive any part of his principal or interest without producing the original book that such payments may be entered therein” (p. 263). The Court held:

“From the inception of the fund until the day of his death the father treated it as his own having under his absolute control the pass book with power to draw whenever he saw fit” (p. 267).

“Even if we assume a donative intention proven, the other element, the stripping of the donor of all dominion or control over the gift is wanting. There is no pretense that the father lost all dominion at any time. The account stood in his name as well as his daughter; he retained the effective means of control, the pass book in his possession until his death \* \* \*” (pp. 271-272).

“Under the regulations of the savings bank above set out the power to draw money depended upon the possession and presentation of the pass book. That evidence of dominion was resolutely retained by the father until his death was found among his effects and

came in due course to the hands of his administratrix" (p. 267).

"\* \* \* and further evidence of his intention as to this particular fund is the fact that he retained until his death the possession and control of the pass book, which carried with it the absolute control and management of the fund \* \* \*" (pp. 264-265).

In *Schippers v. Kempfes*, 67 Atl., 74 (E. & A.) (not officially reported), it appears from the Chancery opinion, 67 Atl., 1043 (not officially reported), that the bank rule required that the pass-book must be presented to draw money. The Court of Errors & Appeals said in holding that the money did not belong to the survivor of the two co-tenants:

"She in no sense gave over the possession of the pass book to Herman, or ceased either her actual dominion over it or right to reduce the fund represented by it to her own possession at any time. Under such circumstances a present gift of the fund will not be established" (p. 74).

In *Gordon v. Toler*, 83 N. J. Eq., 25, the Court held that the fund did not belong to the survivor. The account was a joint account payable to either or to the survivor (p. 26). The by-laws of the bank appearing in the pass-book provided that the book had to be produced to draw money (p. 27). The Court said:

"The undisputed evidence is that the bank pass book remained in her possession up to the time of her death and the entries therein show that on eight occasions between November 1912 and December 1913 she drew out sums varying from \$10 to \$65" (p. 27).

"The contract made by the bank was therefore in effect, 'I will pay the sum deposited or any part thereof to Matilda Gordon or Ella

R. Toler and the survivor on production of the pass book.' ”

“The only reasonable inference to be drawn from the above facts is that Mrs. Gordon intended to retain and did in fact retain control of the fund during her lifetime” (p. 27).

In *McCullough v. Forrest*, 84 N. J. Eq., 101, the bank by-law required the presentation of the pass-book for the withdrawal of funds. The Court held that the fund did not belong to the survivor, holding that it could not find a donative purpose.

“The evidence disclosed no donative intention, *i. e.*, a design presently to part with the ownership of, or interest in the money, but on the contrary it appears that after the alteration in the account was made Miss McCullough retained the exclusive possession of the pass book and exercised absolute dominion over the fund until her death” (p. 102).

In *New Jersey Title Guarantee and Trust Co. v. Archibald*, 91 N. J. Eq., 82, this Court expressly exempted from its decision cases where the regulation of the bank requires the pass-book to be produced as a prerequisite to drawing money.

“At the outset it is to be remarked that we are not here concerned with the class of cases where the rights of the parties depend in part at least upon the possession of a pass book, without the possession of which the moneys could not be withdrawn. Here the rights of the parties depend upon the legal effect of the contract upon which the deposit was made, *and which contained no such provision*” (at p. 84).

In *Kaufman v. Edwards*, 92 N. J. Eq., 554, there was no requirement that the book be produced in order to draw money and the book was accessible to both:

“The production of the pass book for with-

drawals was not requisite and indeed, the intrinsic evidence of the entries of withdrawal shows that it was by no means always presented at withdrawals—but even if it had been required it was kept at the home accessible to both, or either, and for a time in a safe deposit box accessible to either” (p. 562).

The foregoing cases establish the rule that where under the rules and regulations of the banks the pass-books must be produced to draw moneys, the owner of the funds retains control of the funds by keeping possession of the books, an essential element is lacking, viz., the complete stripping by the donor of all dominion and control over the subject-matter of the gift, and the gift fails.

Bullis did retain control of the funds by keeping possession of the pass-books.

The various drafts against the accounts are shown by Exs. C-7 to 12; C-16 to 19; C-22-23; C-28-29; C-43-44; C-47 to 53; C-57 to 64. All these drafts were signed by Bullis except two on account No. 1813, two on account No. 7236 and one on account No. 9873 Commercial Trust Company, which were drawn by Mrs. White.

The pass-books were found in Bullis' safe-deposit box at the time of his death.

There is no evidence in the case on which it can be said that Bullis' possession of the books in his safe-deposit box was also the possession of Mrs. White. She had no access to the box. She was not a co-tenant of the box.

The contract under which the box was rented is Ex. C-1.

While it is in form a joint box with Bullis and Sidney A. White (husband of Mrs. White) as co-tenants the admission of paragraph 3 of the answer of Lettie A. White (p. 13) admitting the allegations of paragraph 12 of the complaint (p. 7), alleging that the pass-books were found in the

safe-deposit box of decedent Bullis establish the fact that it was Bullis' box and not the box of Sidney A. White.

There is no evidence that Sidney White kept any of his property in the safe-deposit box nor that he had any rights in the box. There is no testimony that he, White, shared in the expense of the box. Mr. White did not testify at all. If Bullis gave Mr. White access to the box as agent for Mrs. White, Mr. White would have so testified.

The box was originally taken by Bullis, April 16, 1914, in his own name; he afterwards added Emma F. Bullis, April 17, 1914, as joint tenant; she died and then it was in Bullis' name only; after that it was taken in the name of John J. Bullis and Sidney White as joint tenants, Mr. White having qualified May 2, 1921 (Tennant, 68-69).

We have then a safe-deposit box admitted by the answer above to belong to Bullis and in which at the time of Bullis' death were bank books evidencing moneys belonging to Bullis.

The fact that White was Mrs. White's husband cannot be any basis for a contention that his cotenancy of the box was equivalent to possession of the books by Mrs. White.

After White's name was added to the box on May 2, 1921, there were seven drafts drawn on the three Commercial Trust Company of New Jersey accounts, two by Bullis (Exs. C-10 and C-17) and five by Lettie A. Dath (Exs. C-11-12, C-18-19 and C-23).

Notwithstanding the fact that these books were out of Bullis' possession for the withdrawals on the five drafts signed by Lettie A. Dath, the books came back to Bullis' possession because they were in his box at his death on April 10, 1924.

Where the subject of an alleged gift remains or

is immediately replaced under the dominion of the donor the gift is not complete.

*Schippers v. Kempfes*, 67 Atl., 74 (E. & A. not officially reported);

*Parker v. Copland*, 70 N. J. Eq., 685.

There were no drafts on the other four accounts after May 2, 1921, the date on which Mr. White's name was added to the safe-deposit box.

Not only did Bullis retain control of the moneys but he also exercised dominion over them.

The facts are as follows:

**Commercial Trust Co.**

**Account No. 1813**

Lettie A. Dath's (White) name was added to this account October 7, 1914 (Ex. C-6—Testimony Callahan, p. 72, lines 15-27).

The drafts on this account show that after October 7, 1914, John J. Bullis drew four drafts (Exs. C-7-8-9-10).

Lettie A. Dath (White) drew two drafts (Exs. C-11-12).

**Commercial Trust Co.**

**Account No. 7236**

Lettie A. Dath's (White) name was added to this account October 7, 1914 (Callahan, p. 74, lines 25-40; p. 75, lines 1-2; Exs. C-13-14).

The drafts on this account show that after October 7, 1914, John J. Bullis drew two drafts (Exs. C-16-17).

Lettie A. Dath (White) drew two drafts (Exs. C-18-19).

**Commercial Trust Co.**

**Account No. 9873**

This account was opened in the names of John J. Bullis and Lettie A. Dath (White), April 12, 1916 (Callahan, p. 76, lines 1-11).

On this account John J. Bullis drew one draft (Ex. C-22).

Lettie A. Dath (White) drew one draft (Ex. C-23).

**Hudson Trust Co.**

**Account No. 25130**

This account was opened October 7, 1914 (p. 78, lines 9-14).

John J. Bullis drew the only drafts on this account (Exs. C-28-29).

Lettie A. Dath (White) did not draw any drafts on this account.

**Hoboken Bank for Savings**

**Account No. 130807**

This account was opened October 7, 1914 (p. 84, lines 3-4).

John J. Bullis drew the only drafts on this account (Exs. C-43-44).

Lettie A. Dath (White) did not draw any drafts on this account.

**Provident Institution for Savings**

**Accounts Nos. 167027-167028**

These accounts were opened January 5, 1915 (p. 87, lines 16-21; p. 89, lines 1-4).

Fifteen drafts were drawn on these accounts all signed by John J. Bullis (Exs. C-47 to 53; Exs. C-57 to 64).

Lettie A. Dath (White) did not draw any money from these accounts.

On four of the accounts Bullis exercised sole control and dominion. On three of the accounts Lettie A. Dath (White) drew five drafts; two, two and one.

Notwithstanding these five drafts by Lettie A. Dath on three of the accounts the situation with

respect to these three accounts is the same as on the other four accounts, the rule requiring that the donor Bullis must strip himself of all dominion and control.

*Stevenson v. Earl*, 65 N. J. Eq., 721, at 725;  
*Swayze v. Huntington*, 82 N. J. Eq., 127;  
 aff'd. 84 N. J. Eq., 510.

As the pass-books representing the three accounts were found in Bullis' box at his death, they had come back to his possession after being out of his possession for presentation when the drafts drawn by Mrs. White were paid.

*Schick v. Grote*, 42 N. J. Eq., 352; *Taylor v. Coriell*, 66 N. J. Eq., 262; *Schippers v. Kempfes*, 67 Atl., 74; *Gordon v. Toler*, 83 N. J. Eq., 25; *McCullough v. Forrest*, 84 N. J. Eq., 101; *Morristown Trust Co. v. Capstick*, 90 N. J. Eq., 22, aff'd. 91 N. J. Eq., 152, all hold that the exercise of dominion by the owner of the funds over the subject-matter of the gift is fatal to a present gift.

In *N. J. Title Guarantee & Trust Co. v. Archibald*, 91 N. J. Eq., 82, there was nothing to show that either of the parties ever drew any of the funds (p. 84).

In cases of gifts other than bank accounts the continuance of the dominion of the donor is fatal.

*Stevenson v. Earl*, 65 N. J. Eq., 721;  
*Nicklas v. Parker*, 71 N. J. Eq., 777;  
*Swayze v. Huntington*, 82 N. J. Eq., 127,  
 aff'd. 84 N. J. Eq., 510.

Bullis having retained control of the funds through possession of the books and having continued to exercise dominion over the subject-matter of the gift, the Court cannot find any intention to make a present gift and should hold that the moneys in the seven accounts are the property of his executor.

In his conclusions (p. 39) the Vice-Chancellor says:

“Of course, a donor who desired to guard the accounts against unnecessary and improper withdrawals, could take advantage of and have protection under such provision, but had the pass books come into Mrs. White’s possession in Bullis’ lifetime and had she used them to draw against the accounts, can it be doubted on the facts here present that she would have been entitled to hold the amount of her drafts as against Bullis.”

How could there be any unnecessary and improper withdrawals by Mrs. White if the funds were hers under a gift from Bullis?

Why should Bullis be vested with power to guard the accounts and why should he say what are or are not necessary or proper withdrawals by the donee of the alleged gift if he had parted with ownership of the funds by way of a present gift?

The recognition above of the power of Bullis to guard and control the accounts and to prevent Mrs. White from drawing except with his approval and the protection afforded Bullis by the regulations of the banks requiring the production of the books as a prerequisite to the withdrawal of moneys is an apt illustration of the soundness of the rule under the cases above quoted that such power to control by keeping possession of the pass books is fatal to the alleged gift.

As to the statement of the Vice-Chancellor quoted above that had the pass-books come into Mrs. White’s possession in Bullis’ lifetime and had she used them to draw on the accounts she could have held the money drawn as against Bullis, her power to so hold any moneys drawn would as against Bullis depend entirely on how she came into possession of the books. This question was

raised in *Taylor v. Coriell*, 66 N. J. Eq., 262, and the Court said:

“It was argued that there was a distinction to be drawn between the case of *Stevenson v. Earl* and the one under consideration, for the reason that in the former case the title to the fund never vested in the claimant; that she had no control, and could have none, over the principal fund during her husband’s life, while in the present case the claimant, if she could obtain possession of the bank book, might draw the money; but I think this argument has little weight, for if the complainant was not to be entitled to the ownership of the fund until after her father’s death, the fact that she might obtain possession of the book and draw the money would not, as between her father and herself, give her the right to hold the fund against his claim and demand; she would be bound to turn it over to him” (at p. 272).

#### POINT II.

**Mrs. White did not take the funds under a completed trust by virtue of any delivery to a third person for her.**

V.-C. FIELDER said (p. 40) that Bullis made delivery of the pass-books to a third person for Mrs. White and that such a delivery would be sufficient even if the books did not come to Mrs. White’s hands until after his death, citing *Hoboken Bank for Savings v. Schwoon*, 62 N. J. Eq., 503.

The *Schwoon* case is followed in *N. J. Title Guarantee & Trust Co. v. Archibald* and the right of survivorship there upheld on the ground of a completed trust.

The facts in *Hoboken Bank v. Schwoon* were very different from those before this Court in the *Archibald* case and in the case now under consideration.

In the *Schwoon* case Mrs. Roche, the owner of the fund, handed the bank book to an old and intimate friend who accompanied her to the bank—a Mrs. Reniger—with instructions to keep the bank book until her death and then deliver it to her nephew, Henry Schwoon. Mrs. Reniger followed the directions and after the death of Mrs. Roche delivered the bank book to Schwoon (p. 505). V.-C. PITNEY in giving effect to this arrangement on the ground of a completed trust said:

“In the present case the document signed by the donor in the books of the savings bank, the executed direction to put the account previously standing to her credit in a new account in the joint names of the donor and donee with right of survivorship and the delivery of the evidence of the indebtedness—the pass-book—to a third person for the donee makes a complete declaration of trust—one which needs no aid in equity to enforce it” (p. 509).

The decision in the *Schwoon* case rested expressly on the delivery of the pass-book to a third person in trust to deliver it after the donor's death to the other co-depositor.

There was no such situation before the Court in the *Archibald* case and none in the present case.

On the question of delivery to a third person for Mrs. White, V.-C. FIELDER further says:

“There is no evidence that the pass books were always in Bullis' possession and if it is to be assumed that they were it is to be noted that for the last three years of Bullis' life, a safe deposit box in which they were found was rented in the joint names of Bullis and Mrs. White's husband under terms by which both and the survivor had access \* \* \*” (p. 39, lines 31-37, Conclusions).

“Further can it not be said that Bullis made

delivery of the pass books to a third person for Mrs. White? If so such a delivery would be sufficient even if the books did not come to Mrs. White's hands until after his death" (p. 40, lines 35-40, Conclusions).

From this situation the Vice-Chancellor spells out a suppositious arrangement between Bullis and Mr. White whereby Bullis supposedly says to White:

"I deliver these pass books to you to hold jointly with me. If you survive me, deliver them to your wife, to whom the balances to the credit of these accounts are payable upon my death" (p. 41, lines 16-20).

The facts do not warrant any such interpretation.

The contract under which the box was rented is Ex. C-1. While it is in form a joint box, the survivor to have access, the admission of paragraph 3 of the answer of Lettie A. White (p. 13) admitting the allegations of paragraph 12 of the complaint (p. 7) alleging that the pass-books were found in the safe-deposit box of decedent John J. Bullis establish the fact that it was Bullis' box.

There is no evidence that Sidney White kept any of his property in the safe-deposit box nor that it was his box as well as Bullis'. Mr. White did not testify that he shared the expense of the box. If Bullis gave White access to the box to act as Mrs. White's agent, White would have so testified.

The safe-deposit box was originally taken by decedent John J. Bullis, April 16, 1914, in his own name; he afterwards added Emma F. Bullis, April 17, 1914, as joint tenant; she died and then it was in Bullis' name only; after that it was taken in the name of John J. Bullis and Sidney White as joint tenants, White having qualified May 2, 1921 (Tennant, pp. 68-69).

We have then a safe-deposit box admitted to belong to the decedent Bullis and in which were bank books evidencing moneys which at the time of his death belonged to Bullis. White by virtue of the contract governing the box had the right of access to it after Bullis' death.

To say that White because of the form of the contract governing the box (and without any evidence of any arrangement between White and Bullis) had power to deliver any of the contents of the box to Mrs. White, is to give White power and authority which cannot be supported by law or the facts.

The fact that White was Mrs. White's husband gave him no greater power with respect to the bank books than a stranger would have.

There was no delivery to a third person, White, for delivery to Mrs. White after Bullis' death.

If Mrs. White is entitled to the moneys it is by virtue of something more than that the books were kept in a safe-deposit box to which White had access.

The two bank books of the Hoboken Trust Company and Lincoln Trust Company which V.-C. FIELDER decided belonged to Bullis' estate and not to Mrs. White (Decree, pp. 35-36) were also in the safe-deposit box at Bullis' death (Conclusions, p. 29; Complaint, par. 12, p. 7; Answer of Lettie A. White, par. 3, p. 13). If the Vice-Chancellor's reasoning is sound it should have been applied to these accounts as well.

### POINT III.

**Lettie A. White did not acquire title to the funds under any trust relationship between the depositors and the banks.**

The conclusion of the Vice-Chancellor rested in part upon the theory that the banks held the funds in trust for Mrs. White (Conclusions, p. 40).

The relationship between the depositors on one side and the banks on the other was that of debtor and creditor and not trustee and beneficiary.

*N. J. T. G. & T. Co. v. Archibald*, 91 N. J. Eq., 82 at 85.

“The subject matter is not a trust fund but a debt due on contract from the bank to one or other or both defendants.”

*National Bank of New Jersey v. White*, 93 N. J. Eq., 109, at 110.

V.-C. FIELDER recognized this rule (Conclusions, p. 41).

In *Chester v. Hilliard*, 36 N. J. Eq., 313, a suit by several depositors of a bank against the directors for mismanaging the bank so it became insolvent, it was held that:

“The depositors are but creditors of the corporation and the moneys in question are not their moneys” (p. 316).

“There was no trust in favor of the complainant for the indispensable element, the absolute parting with that interest which had been his up to the time of the declaration is not present. In order to create a trust there must be specific property held by the trustee.”

*Taylor v. Coriell*, 66 N. J. Eq., 262, at 272.

#### POINT IV.

**The contractual relationship between the banks and the depositors was not sufficient to vest title in Mrs. White to the moneys on deposit at Bullis' death.**

The obstacles which the well-settled rules of law governing gifts *inter vivos* present in these joint bank account cases against holding that the survivor is entitled to the funds at the death of the

donor by virtue of a gift have led the banks to attempt to place the rights of the depositors upon a contractual basis, with right of survivorship by express contract.

In *Hoboken Bank for Savings v. Schwoon*, 62 N. J. Eq., 503, at 508, it was said that the courts give effect to such arrangements on the ground "that a joint estate or interest is created with an express right of survivorship which operates naturally and legally upon whatever of the fund remains unused at the death of the donor."

As shown above the decision in the *Schwoon* case rested entirely upon the fact that a completed trust was proved, there having been a delivery of the pass-book to a third person for delivery to the other depositor at the death of the donor. This case was decided upon a well-settled rule of the law of trusts.

V.-C. FIELDER followed the *Archibald* case (Conclusions, pp. 41-42).

In *New Jersey Title Guaranty and Trust Co. v. Archibald*, 91 N. J. Eq., 82, this Court held:

"We think that where, as here, moneys belonging originally either wholly to the mother, or in part to her and in part to her daughter, are deposited by them in a bank in their joint names, and at the same time they both sign and deliver to the bank a writing stating that 'This account and all money to be credited to it belongs to us as joint tenants and will be the absolute property of the survivor of us; either and the survivor to draw,' upon the death of the mother the undrawn moneys belong to the surviving daughter" (at p. 84).

In that case it was argued (p. 84) that the essentials of a joint tenancy are not present because of the right of both to draw out the entire fund. The Court said on this point:

"Whether the deposit in the case at bar cre-

ated a technical joint tenancy is beside the mark. We have pointed out that it was a deposit of moneys originally belonging either wholly to the mother or in part to her and in part to the daughter. More strictly speaking, it was a loan by the depositors to the banks upon the terms stated, since a deposit in a bank creates the relation of debtor and creditor between the depositor and the bank. *Schippers v. Kempfes*, 67 Atl. Rep., 1042; affirmed, 72 N. J. Eq., 948. The bank therefore contracted with the mother and daughter that such moneys should be held for them 'as joint tenants and will be the absolute property of the survivor; either and the survivor to draw.' That contract they had a right to make, and undrawn moneys so deposited belong to the survivor. *Dial's Administrator v. Merchants & M. Sav. Bank (Va.)*, 91 S. E. Rep., 135. In such case it is not necessary to establish the existence of a technical joint tenancy to create the right of survivorship; in other words, the incident of survivorship which exists by implication in a joint tenancy is expressly provided for by such a form of deposit" (at p. 85).

In other words, it was held that the power of one of the co-depositors to utterly destroy the estate of the other co-depositor is immaterial. This is not a joint tenancy nor any estate similar to a joint tenancy but is a contract with a contractual right of survivorship.

Under such a rule the owner of moneys could deposit them with (or strictly speaking lend them to) a bank or trust company under a contract by the terms of which such owner might have complete control and dominion over the same during his lifetime with power to use and dispose of all the funds during his lifetime and have the balance if any paid at his death to the co-depositor, who up to that time would have no possession or control except with the approval of the owner of the funds.

Such an arrangement would not involve the vesting of title to the funds in a trustee, the bank being the debtor of the depositors.

The Court in the *Archibald* case recognized that this would involve the abandonment of the settled law of gifts *inter vivos* and would amount to an approval of testamentary dispositions without the formalities of the statute of wills.

“At the outset it is to be remarked that we are not here concerned with the class of cases where the rights of the parties depend in part, at least, upon the possession of a pass book without the possession of which the moneys could not be withdrawn. Here the rights of the parties depend upon the legal effect of the contract upon which the deposit was made and which contained no such provision” (at p. 84).

“With respect to whether or not either of the parties ever drew any of the funds so deposited the bill is silent” (at p. 84).

The Court in the *Archibald* case did not entirely abandon the law of gifts.

“It is argued that there was no gift from the donor to the donee because there was no delivery. But we think that is not so. The right was contractual and was vested in both depositors jointly and the survivor. The contract entered into by the bank with the mother and her daughter exhibited a donative purpose from donor to donee (not one merely for use and convenience of the donor) and hence constituted a valid gift” (at p. 85).

Its reservation of a class of cases where the rights of the parties depend upon the possession of a pass-book without the possession of which money could not be withdrawn and its statement that the bill is silent as to whether or not either of the parties ever drew any of the funds deposited

are clear indications that where the terms of the contract between the banks and the depositors are such that control and dominion over the funds is kept by the donor by virtue of his possession of the pass-books without the possession of which no moneys can be withdrawn and that where dominion is actually exercised by the donor by drawing on the funds, that the rights of the co-depositors between themselves are to be decided by the settled rules of the law of gifts *inter vivos* and not upon a contractual right of survivorship.

As shown above under Point I-C the rules and regulations of all the banks, assented to by Bullis and Mrs. White, required the possession of the pass-book without which no money could be withdrawn, and that Bullis drew all the drafts on all the accounts except five drafts on the three Commercial Trust Company accounts and that while the pass-books on these three accounts might have been constructively in her possession for presentation on payment of such drafts the books came back to Bullis' possession because they were in his possession at his death.

The statement in the *Archibald* case that the undrawn moneys belong to the survivor by virtue of the contract should be given careful analysis. The procedure is this: Bullis says to the banks, "take my money and contract with me to pay it either to me or to my sister Lettie A. White or to whichever of us survives the other and in the meantime let either of us draw." The bank accepts the deposit and a written contract is made expressing the terms outlined by Bullis. This undoubtedly is a contract between the bank and the two depositors, enforceable by either as a matter of contract, for the bank will not be allowed to say as against either Bullis or his sister that it did not so contract. But it is not a contract between Bullis and his sister, for the reason that no con-

sideration moves from the sister to Bullis to support a contract. There is, of course, an attempted transfer to the sister of an interest of some kind in moneys that are entirely Bullis', but such transfer of interest (whatever its nature may be) is not by contract between Bullis and his sister, but is by way of gift from Bullis to his sister.

This requires a determination as to just what interest in the funds was intended to be transferred by Bullis to his sister.

Was it

- (1) A present gift of the moneys in the accounts at the times when Mrs. White's name was added to the accounts already in existence or at the times when new accounts were opened in the names of Bullis? or
- (2) A present gift of such balances as might remain in the accounts at Bullis' death? or
- (3) A gift to take effect at Bullis' death of such balances as might remain in the accounts at that time?

Following the contract form a step further Bullis and his sister sign signature cards expressing their agreement to the rules and regulations of the banks, one of which appears in all the pass-books, viz., that the pass-book must be produced to draw money. Bullis does not then deliver the pass-books to his sister, but on the contrary not only keeps possession of them (for there is no proof of delivery) but continues thereafter to draw on the accounts and the effective means of control of the funds the pass-books are in his possession at his death.

It cannot be said, in view of these facts, that

there was a present gift of the moneys in the accounts either when Mrs. White's name was added to existing accounts or when the new accounts were opened in hers and Bullis' names.

It cannot be said, in view of these facts, that there was a present gift of the balances which might remain undrawn at Bullis' death.

Normal human conduct and experience tell us that Bullis did not propose to relinquish control over approximately \$40,000 of his own money until he died.

The interest attempted to be transferred to Mrs. White was an attempted gift of what funds should be in the accounts at his death to take effect at his death and then only Bullis to have control as long as he lived.

This attempted gift violates the Statute of Wills and is void under the authorities quoted in the next point of this brief.

Notwithstanding the form of the contract the question of donative intent is still open for consideration and where the donor's actions under the contract negative any intent to make a present gift, the gift fails.

*Kaufman v. Edwards*, 92 N. J. Eq., 554.

#### POINT V.

**The attempted gift was a testamentary disposition violative of the Statute of Wills and therefore void.**

Bullis having retained absolute control and dominion over his moneys during his lifetime and having attempted at his death to pass on to his sister the balances which then remained, did not observe the provisions of the Statute of Wills and the attempted gift was invalid.

*Schick v. Grote*, 42 N. J. Eq., 352;  
*Skillman v. Wiegand*, 54 N. J. Eq., 198;  
*Taylor v. Coriell*, 66 N. J. Eq., 262;  
*Schippers v. Kempfes*, 67 Atl., 74;  
*Gordon v. Toler*, 83 N. J. Eq., 25;  
*Morristown Trust Co. v. Capstick*, 90 N. J.  
 Eq., 22; aff'd sub. nom. *Morristown  
 Trust Co. v. Safford*, 91 N. J. Eq., 152.

“Such a gift, it seems to us, is purely testamentary in its character. If it is not, then it is a perfectly easy thing for a person to retain the absolute control and dominion over his moneys and personal securities during his life and transfer that dominion to another at his death, with total disregard of the requirements contained in the statute of wills, by the simple device of depositing such moneys and securities, under an agreement with the depositary that he shall have the right to use them or deal with them as he pleases during his life, and that at his death so much of them as may remain shall be delivered to such person as is named in the agreement, who shall then become the owner thereof, and then delivering the agreement to the beneficiary with a statement of the same purport as that made by the deceased to his wife when he gave the pass-book to her. To hold that such a method of disposing of property by the owner at his death is valid, would be to practically repeal the statute of wills in its operation upon personal property, so far as its mandatory provisions are concerned.”

*Stevenson v. Earl*, 65 N. J. Eq., 721 at 725.

In *Kaufman v. Edwards*, 92 N. J. Eq., 554 V.-C. BUCHANAN comments upon the effect of this Court's decision in the *Archibald* case as follows:

“I do not understand the court of errors and appeals to have overruled its decision in *Stevenson v. Earl*, 65 N. J. E., 721, by the opinion in *Guaranty Trust Co. v. Archibald*,

*supra*. On the contrary, the opinion of that court in *Morristown Trust Co. v. Safford, supra*, was handed down on the same day as the opinion in the Archibald case, and affirms the decree in this court expressly for the reasons stated in Vice-Chancellor STEVENS' opinion, and the latter opinion expressly rests the decision there reached upon *Stevenson v. Earl*. In *Stevenson v. Earl* it is held that a deposit agreement between Earl and the depository, by the terms of which the balance remaining to the credit of Earl at his death should be paid to his wife, was invalid to pass the ownership in such balance to the wife, as being a testamentary disposition and not conforming to the requisites of the statute of wills. Obviously, if what is done by a donor is a presently effective transfer of an interest, even if that interest be a remainder at donor's death, and conditioned upon donee's survival, there is no violation of the statute of wills, for the disposition is a present disposition and not a testamentary one. The interest vests presently in the donee, though the enjoyment be only conditional and *in futuro* at the death of donor. This is not denied in the Earl case—the opinion states that the disposition which is invalid as being a testamentary disposition is one where the agreement between donor and depository is that the donor has complete right of ownership and control during his life, and that so much as shall remain at his death shall be delivered to donee, 'who shall then become the owner thereof' " (pp. 564-5).

**All the money in all the accounts belongs to Commercial Trust Company of New Jersey, executor of John J. Bullis, and it should be so decreed.**

FISK & FISK,

Solicitors for Complainant-Appellant  
Commercial Trust Company of New  
Jersey, Executor of John J. Bullis,  
deceased.

J. FISHER ANDERSON,  
Of Counsel.

## New Jersey Court of Errors and Appeals

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, Executor of John J.  
Bullis, deceased,  
Complainant-Appellant,

vs.

LETTIE A. WHITE, et al.,  
Defendants-Appellees.

On Appeal  
from the  
Court of  
Chancery.

**Brief of Appellees, Etta Bullis Wood,  
Lettie Bullis Wilson, Henry Bullis,  
John Bullis, William Bullis, Nelson H.  
Reynolds, Sarah Reynolds Barnum,  
Theena Reynolds Truax, Ella Bullis  
Moore, Minnie Johnson, Marion Rey-  
nolds Elrick, and Ida Bullis Provost.**

There is no dispute as to the facts, John J. Bullis made all the deposits, no money being added to the accounts by Mrs. Dath. Each of the pass books contained a provision that no withdrawals should be made without production of the pass book, and the books were kept under the control of Mr. Bullis during his lifetime, and were by his executor, Commercial Trust Company of New Jersey, found in his safe deposit box, to which box Mr. Bullis had access jointly with Mr. White. Mrs. White, in her lifetime, and since her death, her estate, claims all of the bank accounts upon the theory that she was a joint tenant therein with a complete right of survivorship. Mr. Bullis left a last will and testament, received in evidence, whereby he devised

to Mrs. White, then Lettie A. Dath, his residence in Jersey City and two lots at Riveredge, N. J., also the furniture and fittings of his Jersey City house, his wearing apparel and personal effects, and in addition the sum of \$7000.00. The will bears date October 9, 1914.

It will be observed that on October 7, 1914, (bill of complaint, paragraphs 2, 3, 4, 5, 6 and 7) the testator opened certain of the accounts, and changed others to the two names. On January 5, 1915 (paragraphs 8 and 9), he opened two other accounts in the two names, and on April 12, 1916, he opened the remaining account in the two names.

These appellees are legatees and devisees under and by virtue of the last will and testament of John J. Bullis, deceased, and submit that that part of the decree of the Court of Chancery, recited in the petition of appeal, is erroneous in that the Chancellor should have ordered, adjudged and decreed that the moneys in the accounts of John J. Bullis and Lettie A. Dath with Hudson Trust Company, Commercial Trust Company of New Jersey (three accounts) numbered 1813-7236,9873, Hoboken Bank for Savings, and the Provident Institution for Savings in Jersey City (two accounts) numbered 167027-167028, belong to, are the property of, and should be paid to Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased.

And these appellees by their answer to the petition of appeal, have joined in its prayer that said decree may be in the particulars aforesaid, reversed.

**POINT I.**

**There was no donative intention coupled with the delivery of which the subject matter was capable, no stripping of dominion or control, and no complete gift *inter vivos*.**

In the case of *The New Jersey Title Guarantee and Trust Company vs. Archibald*, 90 N. J. Equity, 384, affirmed on appeal 91 N. J. Equity, 82, the pass book contained no provision requiring its production before moneys could be withdrawn.

The following authorities are relied upon in support of this point:

“To constitute a valid gift *inter vivos*, the donative intent which must be proven is not a mere general intent or expectation of making a gift, but a specific intent accompanying the act alleged to constitute delivery, that then and by that act a transfer of ownership by way of gift should be accomplished and completed.

Where actual delivery of an article is essential to the completion of a valid gift *inter vivos*, the placing of the article by the donor, without the knowledge of the donee, in a safe deposit box used by and accessible to both or either, is not legally sufficient to constitute a valid delivery.

Where testator had filled out a formal transfer of stock to his daughter, and deposited the same in a deposit box accessible to both, evidence of facts relating to delivery held insufficient to constitute a valid gift *inter vivos*.”

*Reiley vs. Fulper*, 115 Atl. Rep. 661, syllabus.

“Where a fund was deposited in a bank of discount in the name of A or B, in an active account, checks being drawn thereon by both

parties, the parties are not joint tenants of the fund, and the fund does not therefore pass to the survivor on the death of one of the parties."

*Morristown Trust Co. vs. Capstick*, 90 N. J. Equity, 22, syllabus, affirmed 91 N. J. Equity, 152.

"In *Schick vs. Grote*, 42 N. J. Equity, 352, a savings bank account was opened with 'A. G. and wife or either' and Chancellor Runyon held that the form of the entry was not evidence of gift to the wife; that the money deposited remained the husband's at his death. The reason is evident. The depositor deposits his own money in such fashion that from the moment of deposit he is at liberty to draw it out when and as he pleases. This he could not do if the gift were complete.

*Ibid.*, page 26.

"In view of the way in which the money deposited through a long series of years was dealt with by Mr. Capstick, I find it quite impossible to infer an intention to make an immediate gift. As I have said before, the purpose appears to have been to let Mrs. Capstick, while he was living, draw a part of his money thus deposited, if she needed it, and then to give her what remained at his death. This brings the case directly within the rule laid down in *Stevenson vs. Earl* (65 N. J. Equity, 721), and *Cook vs. Lum*, 55 N. J. Equity, 375."

*Ibid.*, page 27.

"At the outset it is to be remarked that we are not here concerned with the class of cases where the rights of the parties depend in part, at least upon the possession of the pass book without the possession of which the moneys could not be withdrawn. Here the rights of the parties depend upon the legal effect of the contract *upon which the deposit was made and which contained no such provision.*"

*New Jersey Title Guarantee & Trust Co.*  
vs. *Archibald*, case on appeal, 91 N. J.  
equity, 82, 83, 84.

“There must be a donative intention, a delivery of the gift or what amounts to a delivery, and the donor must rid himself of all control over the subject matter.”

*East Rutherford Building & Loan Association* vs. *McKenzie*, 87 N. J. Equity  
375, 379.

“In cases of this kind as, indeed in all cases of attempted transfer of bank credits, there are two matters which are the subject of inquiry, one being the intent of the “donor”, and the other being the act by which such intent has been sought to be effectuated.”

*Kaufman* vs. *Edwards*, 92 N. J. Equity  
554, 556.

“I do not understand the Court of Errors and Appeals to have overruled its decision in *Stevenson* vs. *Earl*, 65 N. J. Equity, 721, by the opinion in *Guaranty Trust Company* vs. *Archibald*. On the contrary, the opinion of that court in *Morristown Trust Co.* vs. *Safford* (Capstick) was handed down on the same day as the opinion in the *Archibald* case, and affirms the decree in this court expressly for the reasons stated in Vice Chancellor *Stevens*' opinion, and the latter opinion expressly rests the decision there reached on *Stevenson* vs. *Earl*.” *Ibid*, page 564.

“If the right of the wife to the fund in dispute is to be sustained at all, it must be because the donative purpose of the deceased toward her, with relation to such balance of his deposits as should remain to his credit at his death, was rendered effective by the agreement entered into between himself and the company, coupled with the delivery by him to her of the pass book which he had received from the com-

pany as a voucher; in other words, because that agreement, and the delivery of the pass book, constituted a valid gift inter vivos. But, in order to legalize such a gift, there must be not only a donative intention, but also, in conjunction with it, a complete stripping of the donor of all dominion or control over the thing given (citing *Cook vs. Lum*, 26 Vr., 375, 376). As was said in the case cited, this is the crucial test, and if it be applied to the present case, the gift is not to be sustained; for neither by force of his contract with the company nor by the delivery of the pass book, did he intend to, nor did he in fact, part with his complete dominion over any part of the moneys deposited by him.

The expressed intention of the deceased was only to bestow upon his wife so much of his deposit as should remain undrawn by him at his death. Such a gift, it seems to us, is purely testamentary in its character."

*Stevenson vs. Earl*, 65 N. J. Eq. 721, 725.

"The undisputed evidence is that the bank pass book remained in her (the testatrix) possession up to the time of her death, and the entries therein show that on eight occasions between November, 1912, and December, 1913, she drew out sums varying from \$10.00 to \$65.00.

Article 7 of the by-laws as printed in the pass book provides that 'no person shall have the right to demand or receive any sum as principal or interest without producing his pass book; that the amount demanded and paid may be entered therein."

The contract made by the bank was therefore in effect 'I will pay the sum deposited or any part thereof to Matilda Gordon or Ella R. Toler and the survivor, *on production of the pass book.*'"

The only reasonable inference to be drawn from the above fact is that Mrs. Gordon intended to retain and did in fact retain control of the fund during her lifetime, and that the

above entry was made only to facilitate the drawing of the money. There was no complete gift of it inter vivos."

*Gordon vs. Toler*, 83 N. J. Equity, 25, 27.

"Giving to the word "survivor" its fullest effect the intent to make a gift is inconsistent with the repeated acts of Mrs. Gordon (the testatrix) in drawing out money, and especially with her *failure at any time to deliver the pass book to Mrs. Toler*. Not only is there no proof of its delivery *animò donandi*, but no proof of its delivery for any purpose whatever. As the contract was *to pay on the production of the book, delivery of it was under the circumstances essential to the completion of the gift*. An incomplete gift is never perfected by a court of equity."

*Ibid*, page 28.

"The question is whether this section (Section 27 of the act concerning savings banks) was intended to do anything more than to protect savings banks \* \* \*. It is not to be presumed that the Legislature under an act entitled 'An act concerning savings banks,' intended, if it could constitutionally intend, to repeal the Wills act in part and thus to dispense with those safeguards which have been so long deemed essential to protect the estate of a decedent."

*Ibid*, page 28.

"Since by the retention of the pass book \* \* \* the depositor retained in her own power complete dominion over the chose in action, it must be held that there is not sufficient evidence of a gift inter vivos."

*Nicklas v. Parker*, 69 N. J. Equity, 743, 746.

"The proofs show that the bank book was originally opened in the name of the testator alone, and that several years afterward he caused his daughter Lizzie A. King's name to

be inserted in the original book. His object and purpose in making this change was not shown by direct evidence, but the circumstances show that it was done not for the purpose of making a gift to Miss King, or creating a joint estate with the right of survivorship, but merely for convenience for drawing money. In point of fact, he retained possession of the book and treated the money on deposit as his individual, exclusive property up to at least a very short time before he died."

*Skillman vs. Wiegand*, 54 N. J. Equity, 198, 200.

"In the absence of the parental relation the presumption is that the donee of the joint tenancy holds as trustee for the creator. In all cases, however, of personalty the courts look at the circumstances and declaration of the creator of the joint estate made both before and after its creation, in order to determine whether it was made in trust for the creator or as a gift with right of survivorship."

*Ibid*, page 203.

"The effect of the creation of such joint account is, in such case, simply to make the one party the agent of the other to draw the money, and in case of a savings bank the proprietor of the fund, by retaining the pass book in his possession, retain complete control of it."

"The competency of the declaration of the creator of the joint estate, made both before and after its creation, to show his or her intention is sustained by the following cases cited."

*Ibid*, 203.

"There is no proof of any declaration of gift to the defendant or in her absence, nor of any delivery of the pass book, which, as we have seen, was in his hands up to the date of withdrawal of the money."

*Ibid*, page 207.

“under the regulations of the savings banks above set out the power to draw money depended upon the possession and presentation of the pass book. That evidence of dominion was resolutely retained by the father until his death, was found among his effects, and came in due course to the hands of his administratrix. In my judgment this evidence does not support the claim of the complainant that the fund was a gift to her inter vivos when the account was opened.”

*Taylor vs. Coriell*, 66 N. J. Equity, 262, 267.

“The complainant further complains that when the account was opened there was a contract entered into between the savings institution, her father and herself, under which she obtained an irrevocable interest in the fund, so that all question of testamentary disposition is removed. Undoubtedly there was a contract between the father and the daughter on the one side, and the institution on the other, by the terms of which the bank became their debtor to the extent of the amount due on the account, and that either presenting the book might draw the fund, but I cannot approve the contention that such contract is, as between the father and the daughter, controlling evidence on the question of a gift inter vivos. Their rights to the fund depend upon the character of their respective relations thereto, and if it appears that the father furnished the money making up the deposit, that the account was opened in their joint names for the convenient holding and management of the fund by one party for the other, a court of equity would declare their rights according to good conscience, and to avoid the application of the law of wills it must appear that the donor had surrendered all control over the subject matter. \* \* \* The question whether there was a gift or not is determined in each case solely by the purpose of the alleged donor.”

*Ibid*, page 268, citing *Dunn vs. Houghton*,  
51 Atl. Rep. 71.

"I am entirely satisfied that this evidence does not tend to prove donative intention within the rule required for such purpose, and that the only justifiable inference is that the money was first put in the joint account merely as a convenience for the father; that he did not then intend to part with his property in it, and that he always claimed and exercised a right of absolute ownership over it, and that the gift of this fund to his daughter was limited to take effect after his death. \* \* \* There is no pretense that the father lost all dominion at any time. The account stood in his name as well as of his daughter; he retained the effective means of control, *the pass book*, in his possession until his death, and during his whole life exercised exclusively the right of ownership over the whole, drawing, using and depositing according to his own will and pleasure."

*Ibid*, pages 271, 272.

"But the transaction is validated on the ground that it is possessed of the all important quality of depriving the donor of all control over the property. After the delivery of such bond or note, the donor can exercise not a single act of ownership with respect to it. He cannot sue upon it, nor collect it, nor regain its possession. And it is this absolute abnegation of power that, in a legal point of view, makes the transaction enforceable."

*Cook vs. Lum*, 55 N. J. Equity, 373, 376.

"In case of a savings bank deposit payable only upon presentation of the deposit book, a valid gift *causa mortis* cannot be made without actual delivery of the book."

*Pfeifer vs. Badenhop*, 86 N. J. Law, 492, syllabus.

**POINT II.**

**There being no present gift and delivery of the subject matter, the moneys in question were the property of John J. Bullis at the time of his death, and should be paid to his executor, the complainant, Commercial Trust Company of New Jersey.**

It is respectfully submitted that the prayer of the petition of appeal should be granted, and that the decree of the Court of Chancery should be in the particulars set forth in the said petition, reversed, and that the moneys in question should be decreed to be the property of and to be paid to the Commercial Trust Company of New Jersey, executor of John J. Bullis, deceased.

PIERRE F. COOK,  
Solicitor for and of counsel with Appellees, Etta Bullis Wood, Lettie Bullis Wilson, Henry Bullis, John Bullis, William Bullis, Nelson H. Reynolds, Sarah Reynolds Barnum, Theena Reynolds Truax, Ella Bullis Moore, Minnie Johnson, Marion Reynolds Elrick and Ida Bullis Provost.

CHAPTER II

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## New Jersey Court of Errors and Appeals

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Between

COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, executor under  
the last Will and Testament of  
John J. Bullis, deceased,  
Complainant-Appellant,

and

LETTIE A. WHITE, et als.,  
Defendants-Respondents.

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On Appeal  
from the  
Court of  
Chancery.

Brief.

### **BRIEF OF PIERSON & SCHROEDER IN BEHALF OF DEFENDANT, THE HOBOKEN BANK FOR SAVINGS IN THE CITY OF HOBOKEN.**

This is an appeal from the Court of Chancery. Suit was brought by the executor of one of two depositors against the survivor to determine the ownership of an account in defendant's bank. Pending the suit the surviving depositor died and the suit was continued against her representative. There were several other somewhat similar deposits involved, but this defendant is only interested in the one in its own bank. Its interest consists, first, in having it ascertained to whom it can safely pay the fund on deposit, and, secondly in having the effect of its agreement with the depositor when the account was opened determined in accordance with its intended purport.

It appears (pp. 83 to 86) that on October 7, 1914, John J. Bullis closed out an account in the Hoboken Bank for Savings which stood in the name of Emma F. Bullis, then deceased, and John J. Bullis. There was a balance of \$3,910.24. On that same day a new account was opened in the bank and that sum was deposited to the credit of the new account. At the time this new account was opened a signature card was issued bearing the name of John J. Bullis and Lettie Dath (See Exhibits C-40 and C-41, p. 105). On this card the parties agreed to abide by the by-laws and regulations of the bank. They also signed an agreement (See Exhibit C-42, p. 106). This was a request to open an account in the name of John J. Bullis and Lettie A. Dath and contained the following provisions:

“And we do hereby mutually and severally agree that we are joint owners of all moneys now deposited, or which may be hereafter deposited to the credit of said account, and all accrued and accruing interest thereon;

That upon the death of either of us, the moneys then on deposit shall become the property of the survivor of us;

That each or either of us, or the survivor of us may at any and all times draw and receive from said Bank the whole or any part of said moneys now deposited, or which may be hereafter deposited to the credit of said account;

That each or either of us is authorized and empowered to sign his or her name to any receipt, check, draft or other voucher for the moneys so drawn;

And we do severally authorize and empower

the said Bank to pay said moneys or any part thereof upon the presentation to it of our bank or pass book with a receipt, check, draft or other voucher signed by either of us.

And we do severally agree that any payment made by said Bank upon any such receipt, check, draft or other voucher containing such signature shall be a full and complete discharge, release and acquittance to said Bank for all moneys drawn, and from all liability by reason of such payment."

The court held that this account went to the survivor and that her representative was entitled to it.

We think that this was in accordance with the facts of the case and the law of this state.

New Jersey Title Guarantee & Trust Co.,  
executor v. Archibald (E&A), 91  
N. J. E., 82,

and cases there cited.

It will doubtless be claimed that the circumstances show that the money originally deposited was that of John J. Bullis and that he apparently retained dominion of the bank-book. In the case above cited it was distinctly held on page 84 that it was immaterial whether the moneys deposited originally belonged wholly to the deceased depositor or to both.

It is no answer to the claim that the money belonged to the survivor in case of this defendant bank, that the deceased could have drawn in his lifetime. That is also disposed of contrary to the appellant in the Archibald case. This being so the by-law (Exhibit C-39, p. 104) that money could only be demanded on production of the pass book has no materiality.

Decision in the Archibald case is based very much on the assumption that there was a contract between the depositors and the bank. Manifestly the will of John J. Bullis could have no effect on that contract. At any rate, the clearly expressed agreement between the depositors and the bank could not be set aside merely because it might be conjectured from the will that such holding might possibly be inconsistent with it. The reasoning of the vice-chancellor on this point seems conclusive (p. 36, l. 35).

There was a sufficient delivery of the pass books. This is established by the following cases:

- Dunn v. Houghton, 51 Atl., 71;  
 N. J. Title Guarantee & Trust Co. v.  
 Archibald, 91 N. J. E., 82, 85 at the  
 bottom;  
 East Rutherford S. L. & B. Assn. v. Mc-  
 Kenzie, 100 Atl., 931, 87 N. J. E., 375.

It further appeared that the bank books were at the time of Mr. Bullis's death in a safe deposit box owned jointly by him and the husband of Mrs. Dath, the other depositor (p. 69 at the bottom).

The agreement in question is found in a large bound volume in book form in the bank (p. 85, l. 30). The bank has this agreement signed by depositors who wish to open a joint account and have the balance left at the death of one go to the survivor. The law of the court is that joint accounts do go to the survivors as above indicated. For the court to hold otherwise would upset the validity of this agreement and have a different effect on them from that which the parties understood at the time the account was opened. The effect would be to overrule the case of N. J. Title

Guarantee and Trust Company against Archibald, the expression of the highest court of the State, which has stood for a number of years and has been repeatedly followed.

Kaufman v. Edwards, 92 N. J. E., 554;  
Commonwealth v. Grobel, 93 N. J. E., 78.

In none of the cases were the agreements any more elaborate or explicit than the one made when the account in this bank was opened.

It is urged that these decisions should stand and that the determination by the court of the ownership of the deposit in question should be sustained.

Respectfully submitted,

PIERSON & SCHROEDER,  
Attorneys for the respondent, The  
Hoboken Bank for Savings in  
the City of Hoboken.

JOHN D. PIERSON,  
of Counsel.

[44935]

**New Jersey  
Court of Errors and Appeals**

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COMMERCIAL TRUST COMPANY OF  
NEW JERSEY, EXECUTOR, &C.  
Appellant,

vs.

LETTIE A. WHITE, *et al.*,  
Respondents.

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} Appeal from  
} Decree of the  
} Chancellor.

**ARGUMENT FOR THE PROVIDENT  
INSTITUTION FOR SAVINGS IN  
JERSEY CITY, RESPONDENT.**

The Provident Institution for Savings in Jersey City, which is one of the respondents to the appeal in the above named case, answering the brief filed by the appellant, says:

It does not dispute the facts set forth in the state of case and in appellant's brief concerning the two accounts of John J. Bullis, deceased, and Lettie A. Deth (formerly Lettie A. White) with this respondent.

When these accounts were opened with the Provident Institution for Savings in Jersey City the depositors entered into a contract in writing, in each instance the contracts provided: "*This account and all moneys to be credited to it belongs to us as joint tenants and will be the absolute property of the survivor of us; either or the survivor to draw upon producing consent of any public officer required by taxation laws.*"

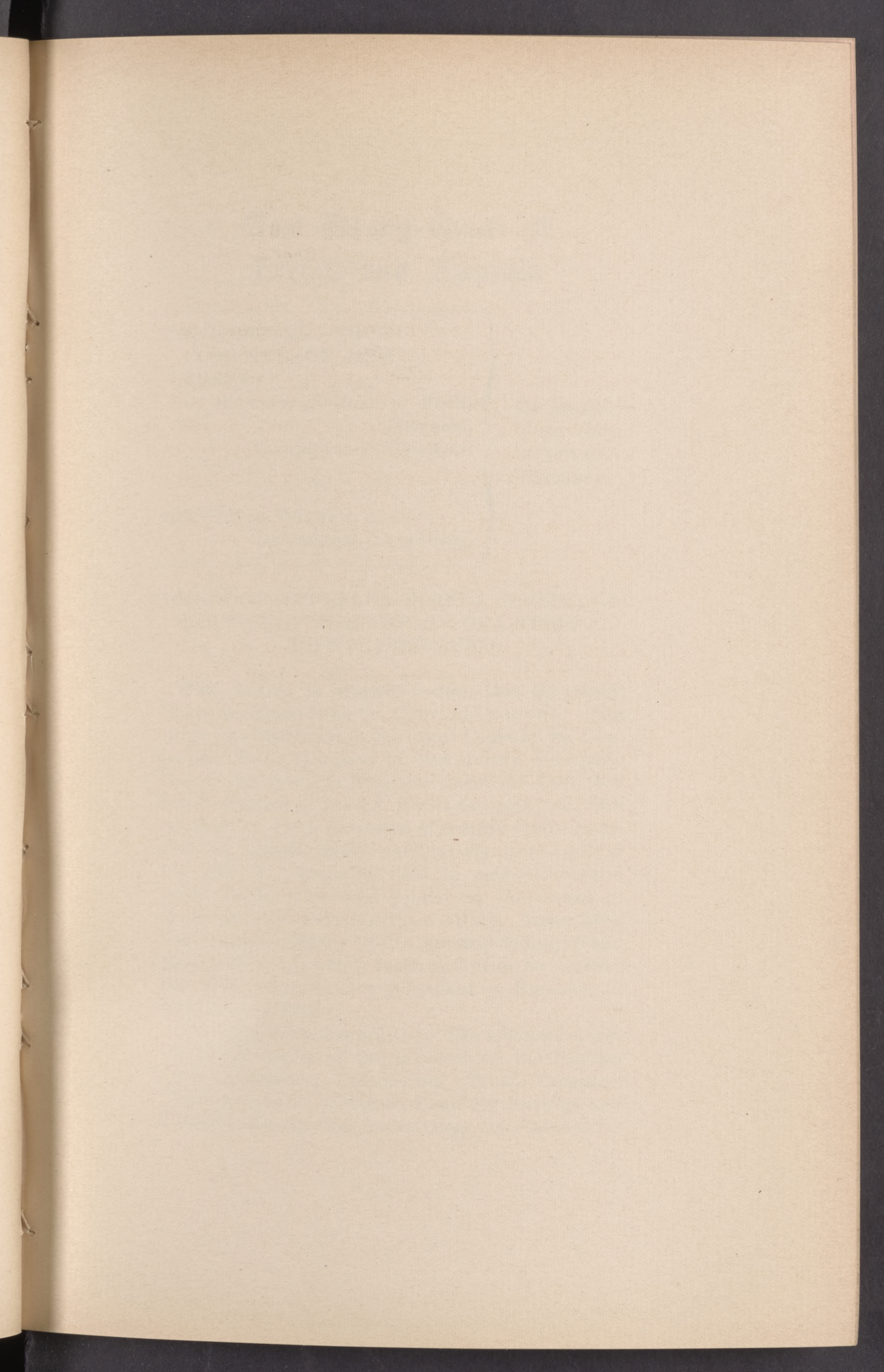
This respondent adopted this form of contract with its depositors about the year 1900. Prior to that time it had used the words "*either or the survivor to draw*" as its contract with its depositors. One or more court decisions held that persons other than the survivor were entitled to the deposit. Respondent then adopted the form of contract set out above and has used it since. It has represented to its depositors that the contract meant what it said and that in the event of the death of one whatever balance of money to the credit of the account went to the survivor upon the payment of the inheritance tax.

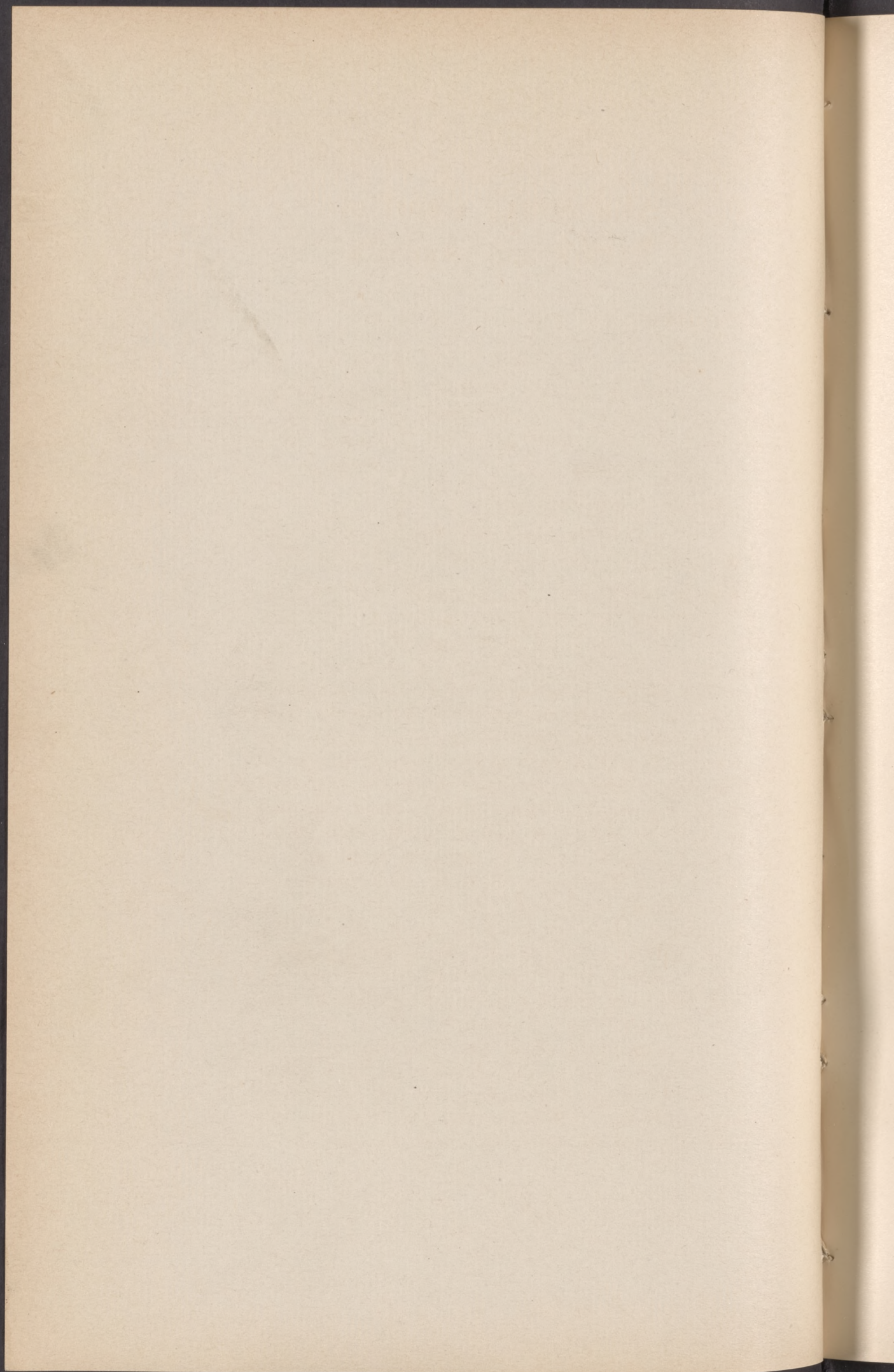
This court in the case of *New Jersey Title Guarantee & Trust Company vs. Archibald*, 91 N. J. Equity, page 82, had before it a contract between the bank and its depositors which contained the exact words of the contracts of the Provident Institution for Savings in this case. This court held in the *Archibald* case the moneys belonged to the survivor.

We submit that the decision of this court in the *Archibald* case so far as it relates to the two accounts in question is *stare decisis*.

Consequently, we submit the appeal so far as it relates to the Provident Institution for Savings in Jersey City should be dismissed.

INSLEY, VREELAND & DECKER,  
Solicitors and of counsel with  
the Provident Institution  
for Savings in Jersey City,  
Respondent.





## New Jersey Court of Errors and Appeals

COMMERCIAL TRUST  
COMPANY OF NEW  
JERSEY,

Executor of John J. Bullis  
Deceased,  
Complainant-Appellant.

vs.

LETTIE A. WHITE, et al.,  
Defendants—Appellees.

On Appeal  
from the  
Court of  
Chancery.

### BRIEF OF APPELLEE SIDNEY WHITE, EX- ECUTOR OF THE ESTATE OF LETTIE A. WHITE, DECEASED.

This matter is brought before this Honorable Court on appeal from the Court of Chancery. This cause was instituted in the lower Court by the Commercial Trust Company of New Jersey, a corporation of this State as Executor under the Last Will and Testament of John J. Bullis deceased, who died on April 10, 1924, possessed of certain funds on deposit in various banks particularly mentioned in the Bill of Complaint filed in said Court and which funds were held jointly in the names of Bullis and his sister Lettie A. Dath. Later Mrs. Dath married Sidney White, the said Sidney White shortly after his wife's death and after her answer was filed, was named a defendant as Executor of Mrs. White's Will.

The Chancellor decreed that "The amounts standing to the credit of the accounts in the Hudson Trust Company, Commercial Trust Company (three accounts) Hoboken Bank for Savings and Provident Institution for Savings (two accounts)

will be decreed to belong to the Estate of Lettie A. White", and this Appellee who is the Executor of said Estate prays that said decree may be in the particulars affirmed.

#### POINT I.

*The Form of deposits created the relation of debtor and creditor between the depositors and the banks, by which the banks contracted to pay to Mrs. White the monies on deposit, should she survive Bullis.*

In the case of *The New Jersey Title Guarantee and Trust Co. vs. Archibald et al*, 90 N. J. Eq. 384 affirmed on appeal 91 N. J. Eq. 82, the above contention is upheld.

Reference is also made to the cases supporting the Court's opinion in the Archibald case, which seems to be the leading case in this State on the question of a joint account.

In the case of *Dunn vs. Houghton* 51 Atl. 71 in the Syllabus of the Court, it is stated:

"Sec. 7. Where two persons are accepted as depositors by a Savings Bank and both sign the depositors' book kept by the bank for that purpose, and the moneys are made payable to either, the contract of the bank is with both jointly and has the incident of survivorship."

Again in the case of *Schippers vs. Kempkes* 67 Atl. page 1042, affirmed 73 Atl. page 1118, it is stated:

"The deposit of money in a Savings Bank creates the relation of debtor and creditor between the depositor and the bank."

3.

Though the funds originally belonged to Bullis the right of the White Estate now to said funds is borne out by V. C. Stevenson's Syllabus in the case of *Dunn vs. Houghton* (supra), in which it is stated:

"Sec. 2. The creation of the original contract with the Savings Bank by the testatrix vested a complete contract right in the complainant, which the complainant could use to recover money from the bank; and such right being vested with a distinct donative purpose, and not for the convenience of the testatrix, the case is presented of a complete gift *inter vivos*."

The case of *Morristown Trust Co. vs. Capstick* 106 Atl. Rep. 392 differs from the case under consideration in that Mr. Capstick gave a written order to have his account changed to include his wife Ella F. Capstick, and in this case both Bullis and Mrs. Dath (also called White) signed the agreements with the banks and created a joint tenancy in said funds, and created a contract with the banks.

This case also differs from the case of *Gordon vs. Toler* 89 Atl. Rep. 1020 in that both Bullis and Mrs. Dath signed the agreements with the various banks and thereby without question created a joint estate in the funds in question and a contract was thereby made with the banking institutions to have the monies paid to the survivor.

POINT II.

*There being a complete gift in presenti to Mrs. Dath or White the monies in question should be paid to Sidney White, Executor of the Estate of Lettie A. White Deceased.*

4.

It is respectfully submitted that the decree of the Court of Chancery be affirmed and that the monies decreed to belong to the Estate of Lettie A. White be paid to her Executor Sidney White.

AUGUST G. MENGE,

Solicitor for and of Counsel with  
Appellee Sidney White executor,  
Estate of Lettie A. White deceased.

