

Volume 4 | Issue 2

1953

Joint Tenants--Survivor's Rights--Felonious Killing of Joint Tenant by Survivor

Melvin John Strouse

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Melvin John Strouse, *Joint Tenants--Survivor's Rights--Felonious Killing of Joint Tenant by Survivor*, 4 W. Res. L. Rev. 187 (1953)
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol4/iss2/17>

This Recent Decisions is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

It is to be noted that there may have been an alternative remedy available which was not mentioned by the court. The Military Personnel Claims Act of 1945⁵ was enacted for the purpose of allowing service personnel and civilian employees of the service departments to be recompensed for loss of or damage to their personal property occurring as a reasonable incident to their service. The conclusions of fact which might have been reached by the Secretary of Navy upon application by the claimant as provided for by this Act are a matter of conjecture. However, plaintiff could probably also have recovered under this latter statute.⁶ A serviceman who suffers loss of or damage to his personal property may have alternative remedies against the United States for his injury, in each of which opposite conclusions of fact will have to be reached in order to afford relief.

RUSSELL J. SPETRINO

JOINT TENANTS — SURVIVOR'S RIGHTS — FELONIOUS KILLING OF JOINT TENANT BY SURVIVOR

The heirs of the decedent alleged that the decedent's widow had feloniously caused his death and that, therefore, she was not entitled to any part of the joint and several bank account owned by her and the decedent. *Held*: A constructive trust was imposed on the entire bank account in favor of the decedent's estate.¹

The Minnesota court based its ruling on the contract of deposit, which provided that the entire bank account could be withdrawn at any time by either owner and was payable to the survivor. Because the surviving wife's felony prevented the decedent from exercising his right of withdrawal, the court decided that all "doubt should be resolved against her" and that it should be presumed that the decedent would have withdrawn the entire bank account before his wife.

In reaching this decision, the court declined to follow the New York rule which would give the survivor no interest at all in the bank account² and also rejected the view that would give the survivor an absolute right to the entire fund.³

Other jurisdictions have developed still other rules in fact situations similar to the principal case. Some jurisdictions have given the survivor a one half interest in the property for his life. Upon his death, his interest goes to the estate of the decedent.⁴ In New Jersey the heirs of the decedent get the value of one half the income which it is estimated would have

¹ *Vesey v. Vesey*, 54 N.W.2d 385 (Minn. Sup. Ct. 1952).

² *Matter of Santourian's Estate*, 212 N.Y. Supp. 116 (1925) (joint bank account).

³ *Oleff v. Hodapp*, 129 Ohio St. 432, 195 N.E. 838 (1935) (joint bank account); *Di Lallo v. Corea*, 19 Pa. D. & C. 282 (1933) (joint bank account).

⁴ *Bryant v. Bryant*, 193 N.C. 372, 137 S.E. 188 (1927) (real property held in a