Judgment 31/2003

Macaulay & Grater v Grater & Bristol & West International Ltd
Royal Court
(Civil Action file 611)
4th April, 2003

Husband and Wife (Joint Accounts) (Guernsey) Law, 1966 – relationship between banker and customer – intentions of joint account holders – right to sever a joint interest – compelling evidence necessary to rebut statutory presumption of survivorship.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 4th day of April, 2003 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; sitting alone.

In the matter of

Between

MARGARET MAIRI MACAULAY
and
ANNE GRATER

Plaintiffs

-v-

DIANE BROWN GRATER (née Thomas)
and
BRISTOL & WEST INTERNATIONAL LTD.

Defendants

Whereas on 6th, 7th January and 14th March, 2003, the Deputy Bailiff heard Advocates J.M. Wessels and M.G.A. Dunster, Counsel for the Plaintiffs and Defendants respectively, on certain points of law he answered them this day in the terms set out at pages 27 to 29 of the judgment attached hereto:

S. M. D. ROSS
Her Majesty's Deputy Greffier

IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION

Between **MARGARET MAIRI MACAULAY** **Plaintiffs**
and
ANNE GRATER

V.

DIANE BROWN GRATER (née Thomas) **Defendants**
and
BRISTOL & WEST INTERNATIONAL LTD

Judgment of Rowland D.B.

Advocate J. M. Wessels for the Plaintiffs.
Advocate M. G. A Dunster for the First Defendants.

Hearing dates: 6th and 7th January, 14th March, 2003
Judgment handed down: 4th April, 2003

Legislation referred to:

The Husband and Wife (Joint Accounts) (Guernsey) Law, 1966

Cases and other authorities referred to:

1. Hirschorn v Evans (Barclays Bank Limited Garnishees) [1938] 2 KB 801
2. Marshall v Crutwell [1875] L.R. 20 EQ 328
3. In re Pattinson deceased (1885) 1 TLR 216
4. In re Harrison [1920] 90 LJCh 186
5. Owens v. Greene [1932] IR 225
6. McEvoy v. The Belfast Banking Co. Ltd. (1935) AC24
7. Russel v. Scott 55 CLR 440
8. Young v. Sealey [1949] Ch 278
9. Re Bishop [1965] CH 450
10. Re Figgis [1969] 1CH 123
11. O'Neil v Inland Revenue Commissioners [1998] STC 110
12. Arosa v Coutts & Co [2002] 1ALL ER
13. Jones v Maynard [1951] 1 Ch 572
14. Heseltine v Heseltine [1971] 1 ALL ER 952
15. Burgess v. Rawnsley (1975) 3 All ER 142
16. Re the Desastre of I.C. Faulkner and J.J. Faulkner, Royal Court of Guernsey 7th June 1991
17. Waterman v McCormack Guernsey Court of Appeal 14th August 2002

I have been asked to determine certain points of law before evidence is heard and factual issues determined by the Jurats.

It is appropriate to briefly outline some of the material facts of the case before referring to the arguments of Counsel.

1. Background

James Frederick Grater ("Mr. Grater") died in Scotland on 28th July, 2001. He had been married to Anne Grater on 20th July, 1956 in Glasgow. She is the second named Plaintiff. On 9th March, 1976, they were divorced but resumed co-habitation soon afterwards and lived together unmarried until about 1986. There are six children of that marriage born between 1958 and 1970. In the early 1990's, according to Mr. Grater, he met and developed a relationship with Diane Thomas whom he was to marry in July 2000. She is the first named Defendant.

In July, 1997, Mr. Grater was diagnosed as suffering from an illness which might prove to be fatal. Following that diagnosis he was visited by Anne Grater and he visited her from time to time.

On the 8th March, 1999, he made a Will on a standard form document in his own handwriting. He left to Diane Thomas Pansy Cottage, 14 Glenginnet Road, Barr, including fixtures and fittings and a piece of land known as McDonald Villa, the Avenue, Barr.

In November, 1999, he and Diane Thomas opened a joint account in the names "J. F. Grater and D. B. Thomas" ("the Joint Account") with Bristol & West International Ltd. in Guernsey ("the Bank"). The Bank is the second named Defendant.

The Bank's standard Application Form was completed. Mr. Grater was named in the box as the first account holder. Diane Thomas was named as the second account holder. The correspondence address was given as 14 Glenginnet Road, Barr, Scotland. A section in the Application Form reads as follows (emphasis supplied).

> **"Declaration**
>
> *1.1 I/We request Bristol & West International Limited to open the accounts indicated opposite and any other accounts that I/We may request in the future.*
>
> *2.1 I/we confirm that I/we have received a copy of, read understood and agree to be bound by the Terms and Conditions (both General and Specific) applicable to any account opened for me/us.*

3.1 I/we declare and agree that all monies deposited by me/us in any accounts I/we hold with Bristol & West International Limited will be held by me/us as beneficial owner(s).".

It may be that the declaration of beneficial ownership (3.1) is a declaration stemming from the bank being a subsidiary of an English Building Society governed by provisions binding on Building Societies.

The account was stated by the customers to be an Instant Access Account in Stirling. In fact it appears that the account which was opened was a Sterling Easy Access Account which is stated in the Bank's literature to be a "no notice savings account" for which the minimum opening deposit was £10,000.

Under the heading *Account Operation* there was a requirement that the account holder should specify by whom the account was to be operated. It required a tick in one of two boxes. One box was designated *"Any one signature or"* and this was ticked. The other was designated as "*Both signatures jointly".*

The form was signed by both account openers and dated 16th November, 1999.

Below the signature boxes there was a heading – *Joint Account Authority.* The standard from wording read as follows:

> *"We request and authorise Bristol & West International to rely on the number of signatures indicated above for all purposes connected with the account. We agree that such authority shall be binding on all and a good and sufficient discharge. Unless indicated the account will be operable on one signature only.".*

The General Terms and Conditions relating to the Bank's accounts ran to 10 paragraphs.

Paragraph 3 read as follows (emphasis supplied).

> **"3.0 General Terms and Conditions**
>
> *3.1 The Bank may make whatever enquiries it considers necessary to establish your identity and good standing. It may decline to open an account without giving any reason.*
>
> *3.2 The Bank shall be entitled to treat you as the absolute legal owner of your account, and accordingly it shall not, except as required by law, be bound to recognise any trust, interest or charge upon such account claimed by any other person whether or not the Bank has express or other notice thereof, nor shall the Bank be liable for omitting or neglecting to recognise any such claim.*

3.3 The contract between the Bank and you (including these Terms and Conditions) shall be governed by and construed in accordance with the laws of the Bailiwick of Guernsey.".

Paragraph 9.0 related to *Joint Accounts*. That paragraph stated as follows:-

"9.0 Joint Accounts

9.1 If your account is a joint account, all account holders are bound to these Terms and Conditions:-

(a) jointly (that is, all equally), and

(b) severally (that is, each bound as though he or she was the only account holder) and

(c) if one account holder dies, the Bank is entitled to treat the surviving account holder(s) as the legal owner(s) of the account.

The Joint Account [No. 11978400] was opened with a cheque for £113,286.13. The money paid into the account belonged solely to Mr. Grater.

There was one further credit transaction on the account before the 1st July, 2000. That was on the 24th November, 1999, soon after the Joint Account was opened, when the sum of £6,638.04 was credited. That sum also belonged solely to Mr. Grater.

There were two withdrawal transactions on the Joint Account before the 1st July, 2000. On 14th February, 1999, Diane Thomas had written to the Bank seeking the payment out of the Joint Account of the sum of £8,0000. She requested that £2,400 should be sent to Mr. Grater's Chelsea Building Society account and £5,600 made payable to Diane Thomas herself which it is said was applied to reimburse herself for dental treatment costs which she had paid on behalf of Mr. Grater.

On the 1st July, 2000, Mr. Grater was married to Diane Thomas in Dunoon, Scotland. On 17th August, 2000, Diane Grater executed a Standard Form of the Bank to effect a change of signature from Diane Thomas to Diane Grater.

On 13th November, 2000, Mr. Grater executed a new Will which had been prepared by Macaulay and Company a firm of Scottish solicitors of which Margaret Macaulay the first named Plaintiff is the principal. Diane Grater was appointed a joint executor with Margaret Macaulay. Mr. Grater gave to Diane Grater his interest in any dwelling-house owned by him at the date of his death free of all debts and taxes. He gave to his six children an amount equal to the value of any legal rights which they might have in his estate on his death. There were representation provisions in the event that any child

had pre-deceased him. He gave the residue of his estate to Diane Grater if she should survive him for 30 days. Should she not survive him for 30 days then the Will directed that the residue of the estate should pass to his grandchildren. There was no provision in that Will for his first wife Anne Grater.

On the 28th November, 2000, a sum of £10,000 was withdrawn by Diane Grater. It was used it is said to pay off the mortgage of Diane Grater's flat – 43 Friendship Way, Renfrewshire, Scotland. On 2nd April, 2001, a further sum of £10,000 was withdrawn by Diane Grater.

On or about 23rd April 2001 it appears that Mr. Grater went to live with his first wife Anne Grater at Pansy Cottage, Barr, Ayrshire, a property which he owned and which before his death it is said he transferred to Anne Grater.

On 23rd April his solicitors faxed a letter to the Bank with reference to the Joint Account. The letter referred to the account number. It continued:

> *"We act for Mr. James Frederick Grater, residing at 43 Friendship Way, Renfrew, PA4 ONY, Scotland. We understand that the above account was put in joint names with his wife, Diane Brown Grater also of 43 Friendship Way. Mr. Grater instructs us to ask you to freeze the Account. There is a marital dispute.*
>
> *Please confirm that the Account has been frozen. If you require any signatures please send us details of what is required.".*

On the 24th April Clark Boyle & Co., solicitors acting on behalf of Diane Grater, sent a fax to the Bank in the following terms:-

> *"We act for Mrs. Grater. We understand from our client that Mr. Grater is terminally ill and is physically and mentally unstable. Accordingly, we would suggest that if any attempt is made by any party to intromit funds from the account this should be treated with the utmost suspicion.*
>
> *We understand that Mr. Grater may not have the necessary mental capacity to operate the account and we would suggest that you obtain independent medical confirmation of this before allowing any dealings with the account.".*

On 25th April, 2001, Margaret Macaulay faxed another letter to the Bank. The letter referred to the account and to Mr. Grater. It reads as follows:-

> *"We refer to our letter dated 23rd April, 2001. Please note that Mr. Grater's address now is Pansy Cottage, 14 Glenginnet Road, Barr, Ayrshire, KA26 9TU Scotland.*
>
> *Please send us a Statement of the account showing all dealings on the account since 01.01.01".*

Also on 25th April, 2001, Mr. Grater made a new Will prepared by Margaret Macaulay. It revoked the Will dated 13th November, 2000. He appointed his first wife Anne Grater to be a joint executor with Margaret Macaulay and gave the residue of his estate to his first wife Anne Grater thereby excluding his wife Diane Grater and also his grandchildren from the benefits they would have received under the revoked Will.

On 27th April, 2001, the Bank in response to correspondence of 24th April wrote a letter addressed jointly to Mr. Grater and Diane Grater advising that they were unable to process the request as the Bank required two signatories to operate the account. They enclosed a mandate to enable the transaction to be processed.

On 27th April, 2001, Mr. Grater signed a letter to the Bank requesting the Bank to supply to his solicitors all information requested by them concerning the account. This was sent to the Bank by Margaret Macaulay by letter of 9th May, 2001.

On 16th May, 2001, Mr. Grater was admitted to Ayr Hospital with bowel problems. He suffered a fall whilst in hospital and apparently broke his hip. Nevertheless on 21st May, 2001, he was returned home but subsequently readmitted to hospital.

On 23rd May 2001 the Bank wrote to Mr. Grater in the following terms:-

> *"Thank you for your letter requesting us to close your Sterling Easy Access Account Issue 2. Unfortunately it would appear that there appears to be a dispute between you an your wife and as such no funds may be withdrawn without both signatures.".*

On 24th May 2001 Margaret Macaulay wrote again to the Bank. She stated that she understood that unknown to Macaulays Mr. Grater had written direct to the Bank seeking to close the account and to have the funds transferred to him. Macaulays enquired as to the terms and conditions applying to the account and asked whether the balance would be paid to surviving account holder or would remain frozen pending resolution of the dispute. She referred to the fact that Mr. Grater was very ill.

On the 23rd May 2001 the Bank wrote to Clark Boyle & Co. under the heading 'Mr. J.F. Grater and Mrs. D.B. Grater' advising that Mr. Grater had requested the closure of the Joint Account. The Bank referred to the fact that it had indicated that it would require two signatures to make withdrawals.

On 29th May 2001 Clark Boyle & Co wrote to the Bank stating that "our client does not wish the joint account to be closed" and requesting confirmation that the joint account would not be closed.

On 6th June 2001 the Bank advised Clark Boyle & Co that it had placed warnings on the account and each transaction request would be dealt with at a senior level and no transactions would be allowed unless the Bank had received both parties valid original signatures. It stated that the account had a capital balance of £96,839.29 and that accrued interest of £4,726.46 had been credited to the account..

On 3rd July, 2001, Mr. Grater was transferred to the Ayrshire Hospice where he remained until his death. On 28th July, 2001, he died at the Hospice. Diane Grater was with him at the time of his death.

During the joint lives of Mr. Grater and Diane Grater the Bank sent all statements on the accounts to their nominated address and both of them were named as account holders on bank statements.

2. The dispute and proceedings to date

In light of what had happened in April and May 2001 there exists a dispute which has not been resolved. It is a dispute as to whether Diane Grater is entitled as survivor to the balance standing to the credit of the joint account as she claims or whether the credit balance is payable to the executors of the estate of Mr. Grater to be dealt with under the law of Scotland where he was domiciled.

On 17th August 2001 an ex parte injunction was granted by Day D.B. on application by Mr. Wessels acting on behalf of Anne Granter and Margaret Macaulay. The purpose of the order was to prevent the Bank from paying the credit balance to Diane Grater on a survivorship basis until judgement or further order. On 28th August 2001 Margaret Macaulay and Anne Grater were sworn as Executors of Mr. Grater's Estate. On 5th October, 2001, the Executors instituted proceedings in the Royal Court seeking the following orders:-

(a) A declaration that the Applicants are entitled to the proceeds now held in the Joint Account on behalf of the Estate of the Deceased; and
(b) For such further or other relief as may be necessary; and
(c) For an order for costs.

On the 9th November 2001 Mrs. Diane Grater filed her Defences. The Bank agreed to abide by the outcome of the proceedings.

Diane Grater claimed that the proceeds held in the Joint Account should not be paid to the estate of Mr. Grater. She relied principally on section 1.1(1) of The Husband and Wife (Joint Accounts) (Guernsey) Law, 1966. ("the 1966 Law") to which I shall refer later.

The case had been set down for a hearing commencing on 6th January, 2003. However, at a pre-trial review on the 2nd January, 2003 it was apparent that Counsel held substantially differing views as to the law. After hearing from Counsel I ruled that matters of law be argued before me. Determination of some relevant legal issues might impact significantly on the relevance of the evidence to be given by some witnesses. Argument on legal issues was heard by me sitting alone on the 7th and 8th January, 2003.

3. The issues

Counsel put forward the issues which they believed will or may need to be determined at the hearing in the following order:-

1. Can the presumption of survivorship in section 1(1) of the 1966 Law be rebutted only by proof of an intention of Mr. Grater at the time of opening the joint account not to make provision for Diane Grater or can his intentions thereafter have any legal significance?
2. In the light of the answer to Question 1:

   On the facts of the case has the presumption of survivorship been rebutted by the Plaintiffs?

3. If the presumption of survivorship has been rebutted:
   a) Did Diane Grater have an interest in the joint account sufficient to affect a severance of the joint account pursuant to the maxim *"nul n'est tenu de rester dans l'indivision"* or otherwise?

      (If Diane Grater did not have an interest in the joint account sufficient to effect a severance of the joint account then the proceeds of the joint account would belong to the estate).

   b) If Diane Grater did have an interest in the joint account sufficient to effect a severance of the joint account then on the facts of the case did either Diane Grater or Mr. Grater sever the joint account?
4. If there was a severance of the joint account then in what shares are the proceeds held by the Bank?

   (If there was no severance of the joint account then the proceeds of the joint account belong to the estate of Mr. Grater).
5. If the presumption of survivorship has not been rebutted:

a) Did either Diane Grater or Mr. Grater sever the joint account?

(If there was no severance of the joint account then the proceeds of the joint account belong to Diane Grater).

b) If there was a severance of the joint account, in what shares are the proceeds held?

4. Legal argument

In argument before me both Counsel developed their submissions acknowledging that in so doing they were going beyond their written pleadings.

(1) Submissions made by Mr. Wessels on behalf of the Plaintiffs

Mr. Wessels argued that the relationship between a banker and its customer is that of debtor and creditor. A joint account is simply a debt owed to the account holders jointly. The mandate is a contract of the bank with each of the account holders separately that the bank will only honour instructions in relation to the account in accordance with the mandate itself.

Section 1(1) of the Husband and Wife (Joint Accounts) (Guernsey) Law, 1996 ("the 1966 Law") establishes a presumption of survivorship that is rebuttable by evidence to the contrary according to the normal civil standard of proof on a balance of probabilities; the recommendation of the Committee for the Revision of the Law of Inheritance in Billet d'Etat of 22 February 1949 at p. 131 that there should be an automatic absolute right of ownership in the survivor was not enacted. The presumption of survivorship can be rebutted by proof of an intention, particularly on the part of the principal depositor, (with regard being had to all the surrounding facts and circumstances) that the account was not intended to be a provision for the survivor at the depositor's death. If after a joint account is opened the depositor changes a former intention to make the account a provision for the survivor at the depositor's death, effect can be given to that change of intention. This is because the true analysis of the opening of the joint account is that it is at best an immediate gift of a fluctuating and defeasible asset consisting of the chose in action for the time being constituting the balance in the bank account. The survivor's interest in the joint account is "amorphous" and so can be "undone" at any time by the principal depositor acting unilaterally.

If the joint account holders' interests in the joint account are in the nature of joint property in the debt due to them by the bank then the maxim "*nul n'est tenu de rester dans l'indivision"* must apply and either account holder can call for the joint ownership to be divided or terminated.

Even if this analysis is incorrect he argued that in any event, the dispute between the joint account holders that arose in connection with the joint account in this case had (and has) the effect of conferring jurisdiction on the Court to resolve the question of the ownership of the proceeds of the joint account and, as a result thereof, there can be no question of survivorship.

In determining the ownership of the proceeds of the joint account the Court can determine in what shares the proceeds are held by the joint account holders.

(2) Submission made by Mr. Dunster on behalf of the Defendant.

Mr. Dunster in argument accepted the nature of the banking relationship between banker and customer as put forward by Mr. Wessels. However, in relation to other key legal issues his submissions were fundamentally different.

He argued that the account opening documentation can evidence the joint legal interest. There can also be a joint beneficial interest in the sense that they can agree that monies can be held for themselves "jointly and for the survivor". Whether a joint beneficial ownership was, in fact, established will be a question of fact in each case. The 1966 Law is simply one of the factors to be taken into account when assessing whether a joint beneficial interest had been established. Other factors may include, inter alia, declarations on the account opening documentation and the nature of the parties relationship at the time the account was opened. Inferences can also be drawn from the decision of a sole depositor not to open an account solely in his name thereby conferring no legal interest nor beneficial survivorship interest in the account but giving to another a power to sign on the account.

The account opening documentation, and particularly any specific declaration of trust contained therein, is of freestanding significance in determining whether there is a joint beneficial interest. If the Court determines that there was an express declaration of a joint beneficial interest, then Section 36 of the Loi relative au Preuves 1865 (The 1865 Evidence Law) prevents evidence being admitted to contradict this express declaration of joint beneficial interest.

Once an immediate joint and survivorship interest has been created it cannot thereafter be unilaterally changed by one party or the other – a gift of an immediate property interest once given can be enhanced but cannot without consent be taken away.

In support of the contention that the only time relevant for considering the intention of the parties is when the account is opened he cited Aroso v Coutts (245 c-h).

Actions required of the parties to change a "jointly and for the survivor" interest must be mutual. They must be clear and unequivocal especially in the case of husbands and wives.

If a "jointly and for the survivor" interest is dissolved then in the absence of an agreement (either at the time the account was opened or subsequently) as to what would happen on such dissolution the Court should not seek to impose its own view of what the parties' intentions were or might have been had they addressed their mind to that issue. The only way to achieve justice and certainty is for a 50/50 division. He cited in Re Faulkener (a Guernsey désastre case) as authority for his proposition in relation to severance of joint interests in personalty.

In Waterman v. McCormack the Guernsey Court of Appeal (paragraph 18) emphasised the need for certainty in the law relating to joint interests in Guernsey realty, this is relevant by analogy.

5. Questions of Law

After hearing the arguments of Counsel I concurred with their view that it was appropriate for me to consider a number of questions:

1. Can the presumption of survivorship in section 1(1) of the 1966 Law be rebutted only by proof of the intention of the parties at the time of opening the joint account or can the intentions thereafter of a person who alone has deposited monies in the account have any legal significance.

In light of the answer to this question and the application of the answer to the facts of this case the following questions of law may fall to be considered in the resolution of mixed questions of law and fact:

2. What interests does the law recognise in a joint account.
3. What acts does the law recognise as being capable of effecting severance in a joint account.
4. What principles are to be applied in determining the issues of ownership in a joint account upon severance?

This case has raised a number of points of some difficulty, interest and importance. They relate to joint bank accounts and also the 1966 Law. Involved are fundamental questions concerning the legal relations arising from a joint account and particularly legal issues arising if spouses who are joint account holders fall out temporarily or permanently and do not resolve their differences through a matrimonial property order before the death of one of them.

I am conscious of the need for confidence in bank deposits made in joint names whether by spouses or persons who are not married. I confine my determination to points of law which are essential for me to consider in order to give appropriate directions on issues which will or may arise in this case.

6. The 1966 Law

The 1966 Law came into force on the 5th April, 1966. It is a short Law of only three sections of which two are Extent and Citation provisions. The legislative purpose is contained in section 1.

> *"1.(1) For the avoidance of doubt it is hereby declared that any deposit in any post office or other bank, an annuity, sum, share, stock, debenture, debenture stock or other interest standing in the joint names of a husband and wife at the time of death of either of them shall, unless and until the contrary be proved, be deemed to be the absolute property of the survivor of them.*
>
> (2) *Nothing in subsection (1) of this section shall be construed so as to derogate from any provision contained in or made under any other enactment."*

Section 1(1) addresses the situation where a bank account is standing in the name of a husband and wife at the time of death of either of them. It will apply even if the account was opened before the parties had married.

Prima facie the survivor will be entitled to the balance standing to the credit of the account but this can be rebutted by evidence of another intention but not until then. For there to be certainty in the banking relationship the presumption should only be displaced by clear and satisfactory evidence. The fact that the joint account was opened before the parties married may nevertheless be of material significance. In this case the banking contract was stipulated to be governed by Guernsey law, the place where the account was kept. Counsel submitted that the Royal Court should have regard to English banking principles because Guernsey's banking system developed on these principles. I agree.

7. The relationship between banker and customer

1. *The general contractual relationship*.

As a backcloth to the issues which have arisen in this case it is appropriate to note that the relationship of banker to customer is contractual. When a bank account is opened and monies are received by the bank it is constituted as a borrower. Monies are paid into an account the customer parts with control over them; they belong to the bank. The bank undertakes to repay the monies. The debt owed by one

to the other is a legal chose in action. If this needed judicial authority it can be found in Hirschorn v. Evans (Barclays Bank Ltd. garnishees) and Catlin v. Cyprus Finance Coporation (London) Ltd.

An account is a continuing contract. There is not a new contract every time money is paid in, unless the fresh deposit is made the subject of a fresh contract. A banker maintaining records of a joint account will often have no idea of what understandings exist between the joint account holders.

2. *Joint bank account contractual relationship*

In his speech in McEvoy v. The Belfast Banking Co., Lord Atkin gave his analysis of one aspect of the banking relationship with regard to joint account holders where only one account holder has deposited monies:

> *"The suggestion is that where A deposits a sum of money with his bank in the names of A and B, payable to A or B, if B comes to the bank with the deposit receipt he has no right to demand the money from the bank or to sue them if his demand is refused. The bank is entitled to demand proof that the money was in fact partly B's, or possibly that A had acted with B's actual authority. For the contract, it is said is between the bank and A alone. My Lords, to say this is to ignore the vital difference between a contract purporting to be made by A with the bank to pay A or B and a contract purporting to be made by A and B with the bank to pay A or B. In both cases of course payment to B would discharge the bank whether the bank contracted with A alone or with A and B. But the question is whether in the case put B has any rights against the bank if payment to him is refused. I have myself no doubt that in such a case B can sue the bank. The contract on the face of it purports to be made with A and B, and I think with them jointly and severally. A purports to make the contract on behalf of B as well as himself and the consideration supports such a contract. If A has actual authority from B to make such a contract, B is a party to the contract ab initio. If he has not actual authority then subject to the ordinary principles of ratification B can ratify the contract purporting to have been made on his behalf and his ratification relates back to the original formation of the contract. If no events had happened to preclude B from ratifying, then on compliance with the contract conditions, including notice and production of the deposit receipt, B would have the right to demand from the bank so much of the money as was due on the deposit account."*

When A or B deposits money into an account the bank will not know or need to know the background as to why the monies were deposited by A or B. Reasons may include inter alia the discharge by the depositor of contractual obligations to the other account holder, love and affection and a host of other reasons or purposes. When monies are withdrawn by one joint account holder or another the bank will not normally know nor need to know the reason nor the ultimate destination of the monies. In all

likelihood the banker will not know nor need to know whether the parties are keeping a reconciliation statement of their own reflecting any special understanding. If it were otherwise the bank could be involved in the resolution of horrendously complicated differences between the account holders as to the underlying reasons and purposes of A and B in opening the account, placing deposits and making withdrawals. The bank is entitled, in the absence of special considerations such as criminality on the part of A and B, to look to pay monies to A and B in accordance with their directive during their joint lives and in accordance with any court order. In the event of the death of an account holder the bank will look to the survivor unless and until the presumption is displaced.

In order to protect their position banks will invariably, at the time a joint bank account is opened, impose upon A and B detailed standard terms and conditions governing the operation of the account. These conditions will in all likelihood be of some significance and evidential importance in determining the intentions of the joint account holders although they may not necessarily be decisive.

8. The intentions of the joint account holders – legal and beneficial interests

In the majority of banking relationships there will be no dispute between the surviving account holder and the heirs to the estate of a deceased because the evidence of the intentions of the joint account holders are clear. In other cases there will be no clarity but interested parties are either in agreement as to the intention or come to a compromise. A minority of cases will result in court action and some of those cases are reported.

After the account holder who alone had deposited monies in the account has died there will be an understandable difficulty in ascertaining the full facts and it is incumbent on the interested parties to do all that is possible to elicit the facts. It may be necessary to have regard not only to the joint bank account in dispute but also to other bank accounts maintained by the parties at the material time in order to construe the intention of the sole depositor. It will also be necessary to have regard to any documentation executed when the joint account was opened, any notes on the bank's file or recollections of bank officers concerned with the account. It may also be relevant to establish whether the account holders treated the account as principally a deposit account, to be diminished only exceptionally by withdrawals or whether it was to be regarded more as a current account. The relationship between the parties, their ages and health at the material time and any understanding between them as to future marital intentions may also be of some relevance. Admissible evidence of transactions on the account and communications between the parties, with their bankers and with third parties may assist in shedding light on the intention when the account was opened. The evidential relevance and weight to be attached to relevant evidence will be for the Court to decide. Evidence of what may have been said or communicated after the breakdown of the relationship may need to be treated with appropriate caution. Issues of admissibility will arise. Many of the above-mentioned

factors will be relevant if it is alleged that the intention at the time an account was opened was subsequently changed. Compelling admissible evidence will be necessary to rebut the statutory presumption of advancement to the surviving spouse.

The reported cases illustrate the range of factual matrices which can give rise to litigation. Each case is determined on its facts. At the heart of many cases are tax issues and issues as to whether gifts which are effective only at the time of death are in breach of testamentary capability or not in conformity with the execution requirements of a will. Judgments may also mirror the social norms of the time. Counsel drew to my attention a number of cases. I refer in particular to Marshall v. Crutwell, In re. Pattinson, In re. Harrison, Owens v. Greene (in the Supreme Court of the Irish Free State), Russel v. Scott (in the High Court of Australia), In re Reid (in the Court of Appeal of Ontario), Young v. Sealey, In re Figgis, O' Neill and Others v. Inland Revenue and Aroso v. Coutts & Co.

The cases drawn to my attention by Counsel were concerned with joint bank accounts where only one joint account holder had deposited monies into the account and subsequently died. In some cases the joint account holders were spouses whilst in others they were close relatives. In Young and Another v. Sealey, Romer J. reviewed a number of cases including In re. Harrison, Marshall v. Crutwell, Owens v. Greene and In re. Reid. These cases are instructive in that the Courts are considering whether the account holder who alone was depositing monies:-

1. intended to create an immediate absolute gift of an interest in the chose in action such that the other account holder would be entitled beneficially to the balance of monies if he was the survivor.
2. intended to create a voluntary settlement reserving to himself a power of revocation during his lifetime, or
3. intended that the gift be postponed until his death so that only on his death would the gift of monies standing to the credit of the account pass for the first time.

Meggary J (as he then was) in Re Figgis, Decd. expressed himself satisfied that the presumption of advancement applies to bank accounts (126 G and 144 C). He did not consider it necessary on the facts of that case to determine whether when the account was opened the husband intended at that time to make an immediate absolute gift of an interest.

He noted that the husband and wife had each signed the bank's printed forms and that severally they could operate the account. The husband did not consider women capable of dealing with business matters and he had attempted to induce his wife to let him manage her financial affairs. Even during his last illness he persisted in trying to make out and sign all cheques. Meggary J was satisfied that the husband had operated the joint current and joint deposit accounts as if they were his own. The wife

had left them severely alone save that when the husband was away on active service in World War I it seemed probable that the wife operated the current account. There were also three cheques for household expenses he was unable to sign when close to his death. When his adopted daughter took them to the bank the manager pointed out that the wife could sign them. The wife then did so.

Meggary J, in reviewing the law, referred to Marshall v. Crutwell, In re Harrison, In re Pattinson, Russel v. Scott, In re Reid and Owens v. Greene. He had no trouble in holding that the wife's claim was not displaced in respect of the deposit account. In relation to the joint current account he stated as follows (145 F) (emphasis provided):-

> *"I will add this: even if initially the joint current account was opened merely for convenience, I do not think that this character is stamped on the account immutably. Whatever may be the position with an unchanging asset, a current account fluctuates from day to day, and the wife can be advanced only to the extent of what remains after the husband has drawn his last cheque. If after the account is opened the husband changes his intention, I see no reason why effect should not be given to the change. An account initially opened for mere convenience may thus later become an advancement for the wife. Here, as the years slip by and there was no longer any convenience to serve, I think that any considerations of convenience that there were in the initial opening faded into insignificance.".*

He continued (146 C):-

> *"Long before his death, in my judgment, the main or only reason for the account standing in the joint names of the husband and wife was to benefit the wife.".*

That decision made it necessary for Meggary J to consider the consequent liability of the husband's executors to pay tax. He had not needed thus far to state the date when the advancement of a joint beneficial interest to the wife had occurred nor would he have found it easy to do so. That fact and the fluctuating balance in a bank account also created difficulties in calculating the tax which might be payable.

Meggary J found some difficulty in defining the precise way in which the doctrine of advancement operates in the case of joint bank accounts (149 C/D). He was of the opinion (obiter) that it was unreal to regard each deposit in the account as an advancement, subject to diminution by the drawing of subsequent cheques. On the other hand he acknowledged that a gift of the credit balance at the husband's death ran the peril of being accounted testamentary in nature, so as to require due execution as a will. He speculated in the following terms (149 F) (emphasis provided):-

> *"It may be that the correct analysis is that there is an immediate gift of a fluctuating and defeasible asset consisting of the chose in action for the time being constituting the balance in the bank account. But whether that is right or wrong (and the subject is worthy of academic disputation), I am happy to regard it as a problem that I need not attempt to resolve in this case.".*

Meggary J was not inferring that if an immediate and absolute gift is made by the sole depositor he can thereafter revoke his gift. In my judgement if a sole depositor seeks to exercise a power to revoke his intention then he must have reserved that power. Alternatively, a sole depositor intent on protecting his position may have retained absolute dominion over the account on the basis that the beneficial interest in the account is not to pass to the other account holder until the sole depositor has died.

In Aroso v. Coutts & Co. the deceased had opened a joint investment account with a bank in the names of himself and a son of a distant cousin, referred to in his native country of Portugal as a nephew (and hereafter referred to as such). The deceased's relationship with his wife and children was often difficult. He had at times fallen out with his children. Three years before his death the deceased had transferred some monies and investments into a new investment account with his banker. It was an account opened in the joint names of himself and his nephew. The mandate contained provisions that:-

> *"Funds and assets deposited with you and which may hereinafter be deposited shall be in our beneficial ownership and shall not be held by us on trust for any other person or persons whatsoever… We fully understand that in the event of the death of one or more of us the survivor or survivors shall remain and be entitled to the entire assets deposited with you for the account.".*

The bank manager who dealt with the deceased's affairs gave evidence in accordance with the documentation and that he had been told by the deceased that the deceased intended to transfer the beneficial interest in the funds and assets in the joint account to himself and his nephew jointly and that the nephew should take by survivorship if, as was expected, the deceased died first.

Lawrence Collins J (249 – 252) reviewed the nature of joint accounts. He reviewed the English, Irish, Canadian and Australian authorities. He affirmed the statement of principle by Jessel MR in Marshall v. Crutwell that whether or not the presumption of advancement applies, the Court is entitled to take "surrounding circumstances" into consideration to determine whether or not the transferee takes beneficially (249 [para 26] e/f). He also endorsed the principle that notwithstanding that one of the joint account holders had not contributed to, nor drawn upon the joint account that does not prevent

that person from having a beneficial interest (249 [para 27] g). Nor did the fact that the non depositing account holder was never intended to use the account while the depositor was alive prevent the former from succeeding to the whole account by survivorship (249 [para 27] h).

He also cited with approval a statement by Dixon and Evatt JJ in the High Court of Australia in Russel v. Scott (451, 453) dealing with a number of cases in some of which the joint account holders were not married:-

> *"The fact that those cases arose between husband and wife affects only the burden of proof. In a case where there is no presumption of advancement, satisfactory affirmative proof of an intention to confer a beneficial ownership supplies the place of the presumption.".*

Lawrence Collins J (252 [para 3]) also appeared to endorse the obiter observation of Meggary J In re Figgis subject to only one qualification. He noted that Meggary J had concluded that it might be the correct analysis that there is an immediate gift of a fluctuating and defeasible asset consisting of the chose in action for the time being constituting the balance in the account. That analysis in the view Lawrence Collins J could apply to the cash deposits, but it would be harder to apply it to a changing portfolio of assets.

In relation to subsequent conduct which may be inconsistent with the intention to confer a beneficial interest the conclusion of Lawrence Collins J was in the following terms (254 c-d):

> *"Sixth, I do not consider that there is any subsequent conduct which is inconsistent with the intention to confer a beneficial interest, and even if there had been, the subsequent conduct of the deceased (except perhaps to the extent that it may relate to property acquired after that conduct) is of little or no relevance: cf Standing v. Bowring (1885) 31 Ch D 282, (1881 – 5) All ER Rep 702, where the plaintiff, a widow aged 86, transferred £6,000 of stock into the joint names of herself and her godson without informing him of the transfer. When she remarried at the age of 88 she asked her godson to retransfer the stock, which was when he first became aware of the transfer to himself and Mrs. Standing. But when she made her request for the return of the stock what she said showed that she had originally intended to confer a benefit on him, but that in consequence of something he had done which had displeased her she desired to take back something which she had intended to be a benefit to him."*

9. The right to sever a joint interest in a bank account

1. The right to severance

If an immediate beneficial interest has been conferred by one account holder on another and the account holders fall out, the question arises as to how the account can be severed (in the sense of removal of survivorship and the division of the chose in action) in the absence of an agreement between them or the resolution of their differences as part of a matrimonial property order. At that time, of course, it is not known who will survive.

I accept Mr. Wessel's submission that either account holder could, in such circumstances, call for the joint ownership to be severed or otherwise terminated. If a sole depositor has reserved a power to revoke a gift or intended a gift only to be operative on death then he can institute proceedings to seek a declaration from a Court that he alone is entitled to the monies in the joint account. However, if Mr. Wessels was contending that a sole depositor having made an immediate absolute gift of an interest in a joint bank account to the other account holder can simply change his intention at a later date other than to enhance the gift and require a Court to enforce his changed intentions then I reject that contention.

Mr. Wessels, without providing any banking authority to support his proposition, maintained that one account holder in the absence of mutual agreement or concurrence of the other account holder can by some unilateral act sever the joint beneficial interest. He could, he asserted, subsequently institute proceedings to request a Court to declare the portions in which the monies standing to the credit of the account which he had unilaterally severed were to be divided. I indicated that I was unable to accept this bold two step proposition without the benefit of further argument and hopefully banking authorities to support it. He subsequently relied upon the case of Burgess v. Rawnsley (1975) All ER 142, a case concerned with severance of realty in England held jointly by a man and woman who were unrelated. I do not consider that case to be authority for the severance proposition which he asserts in respect of joint bank accounts although the case is instructive in reviewing the legal position in regard to severance where there is evidence of agreement or a course of conduct indicating an intention to sever.

I now turn to the position of a bank. A bank may not sever a joint account without the consent of the parties or a court order. The bank will in all likelihood not know with certainty, or even at all, whether there has been an immediate gift of a beneficial interest. It would not be appropriate for the bank to make that determination. The bank will wish to rely upon a court order. Notification of a dispute between account holders will almost inevitably result in the revocation of a mandate permitting either to sign on the account. Notification to the bank by a joint account holder of the existence of a dispute

or revocation of a mandate, without more, cannot constitute an act of severance of the legal ownership of the account. I am not aware of any banking principle nor banking practice to that effect. None have been drawn to my attention by counsel. To hold otherwise would place the bank in an impossible position, and severance without the notification of agreement of the parties so to do may in light of prevailing tax laws at the material time give rise to unforeseen and unfortunate tax liabilities and potential testamentary or succession complications. It would also give rise to uncertainty.

In Aroso v. Coutts Lawrence Collins J in his conclusions (253 [para 34] f-g) refers to the assertion of the bank's counsel that each of the account holders had in theory the immediate right to sever the beneficial joint tenancy. He did not reject Counsel's argument that such a right existed nor did he explore how the right to sever might be exercised. He observed that severance in that case would not have been necessary because some or all of the assets could be dealt with by either account holder in accordance with the mandate.

If joint account holders, who are spouses, fall out and there is no court order in force severing the account or conferring sole title to the account before the death of either of the account holders, then the monies standing in the account will on the first death pass to the survivor unless the presumption of survivorship is rebutted.

2. Severance principles

In the event of severance the question arises as to the principles to be applied. The following questions may put the issue in some perspective: Should a court review the entire history of deposits and withdrawals in order to make a just division of the chose in action? Should the court hear evidence as to the history of the monies which were deposited and the purpose of the parties in relation to each deposit? Should the court hear evidence as to the ultimate destination of monies which are withdrawn by each of the account holders? What is the position if the account has been in place for decades and the bank and the parties do not have records other than for recent years. These questions highlight the problems if just and equitable principles were to be applied with a view to analysing finely how the chose in action should be divided between the account holders.

Counsel referred me to Jones v. Maynard, heard in 1951. The court observed that although there were many authorities as to what is to happen to a joint account on survivorship between husband and wife counsel in that case had not been able to call the court's attention to any relevant case which dealt with the legal position which arises when the disruption of the marital tie is caused not by death but divorce. The court was concerned with a joint bank account into which each party had made payments. The husband's payments into the account had exceeded those of the wife. According to the evidence the parties had made no clear agreement as to their respective rights in the account.

Investments had been bought with monies from the account by the husband and registered in his own name. The plaintiff wife claimed one-half of the final balance in the joint account and one-half of the value of the investments existing at the time when the account was closed. The defendant husband claimed that the balance and investments should be divided proportionately to the payments in made by the parties. The Court held that the principle of equality ought to be applied, and that the wife was entitled to one-half of the final balance in the joint account and to one-half of the value of the investments existing at the date when the account was closed. It was stated per curiam in the headnote*: "when there is a joint account between husband and wife, it is not consistent with that conception, that in events such as those in the present case, the account should thereafter be picked apart and divided up proportionately to the respective contributions of the spouses."*. In relation to the division of the investments Vaisey J in the absence of a clear agreement said this (575):-

> *"I think that the principle which applies here is Plato's definition of equality as a 'sort of justice': if you cannot find any other, equality is the proper basis. When monies were taken out of the joint account for the purpose of making an investment, the intention which I attribute to the parties is equality, and not some proportional entitlement to be arrived at by an inquiry as to the amount contributed respectively by the husband and wife to the common purse. Where one is searching for justice, as one must, and cannot find any other secure and sound basis, I think that equality is the best rule."*.

In Heseltine v. Heseltine, heard in 1970, the marriage of the parties had broken down. They were living apart. There had been no divorce. I need not refer other than generally to the facts of the case. The wife (who had considerable means of her own whereas the husband was not well off) had trasferred monies to her husband and also into a joint account with her husband. In making transfers of monies the wife was actuated by a desire to benefit her family and not solely her husband. In the circumstances the Master of the Rolls and his fellow Court of Appeal judges imputed a trust of the assets which had been bought from monies withdrawn by the husband from the joint account and registered in his sole name. The trust imputed by the court was for the benefit of the wife. In the course of his judgment Denning MR (956 at D-G) said this:-

> *"In some cases where the husband and wife each contribute to joint account, the proper inference is that they are putting their moneys into the account with the intention that they should belong to them jointly. If the marriage breaks down, investments made out of that account belong to them jointly, usually half and half, although in the name of one party only: see Jones v. Maynard. But there are other cases where one party provides all the money in the joint account and it is only opened and used as a matter of convenience of administration. In such cases, if the marriage breaks down, the moneys belong to the one who provided them.*

> *So do any investments made with those moneys. Such a case was Thompson v. Thompson. This case falls within that latter category. The moneys in this joint account belong to the wife. It was operated by the husband for convenience of administration for the family purposes. It was supplied largely from capital, the wife's capital, for they were living on capital. Seeing that it was the wife's money, the court will impose a trust whereby the houses which were bought with it are held by the husband on trust for the wife. It falls within the principle I have already stated.".*

The case reaffirms that usually the court will consider it appropriate to divide a spouses' joint account on the basis of equality. In this case the court concluded that the intention was that the wife did not intend to gift an immediate beneficial interest to her husband. It was a case where the intention of the wife was that the joint account be opened and used only as a matter of convenience of administration and so the money belonged to the wife. The court, therefore, imposed a trust in respect of the assets (bought with monies out of the joint account) for the benefit of the wife.

Mr. Dunster referred me to Waterman v. McCormack in the Civil Division of the Guernsey Court of Appeal. The Royal Court certified a preliminary question whether the interests of parties who purchase a property "for themselves, the survivor of them and the heirs of such survivor" have necessarily to be quantified as equal in amount. That case did not relate to a joint bank account. It related to Guernsey realty held in joint ownership by a mother and her daughter. The parties had agreed to bring the joint ownership to an end. There was no agreement between them as to the entitlement to the proceeds of sale. The appellant (the daughter) claimed that there had been a legally enforceable gift of a joint interest and that upon severance each party was entitled, in default of agreement to the contrary, to one-half of the proceeds. In her action she sought a declaration that the division should be 95% to her and 5% for her daughter, or in such proportions as the Court should think just.

Bailhache JA in delivering the judgment of the Court of Appeal rejected the principle advanced by Day DB in the Royal Court that there was a rebuttable presumption of equality. The Court of Appeal emphasised the need for certainty:-

> *"Although the Royal Court laid down certain broad criteria for the exercise of the jurisdiction that it claimed, it seems to us that the inevitable result would be endless argument as to how the discretion could be exercised.".*

The Royal Court's assertion of such a jurisdiction in relation to jointly owned property outside the context of matrimonial proceedings (where statutory provisions apply) was in the Court's judgment made without right.

> *"22 In both forms of co-ownership, unless different shares are stated in the conveyance, the parties hold in equal shares, subject, of course, in the course of joint ownership to the right of survivorship. Subject to the proviso below, in the event of severance of joint ownership, the parties are entitled to the property, or to the proceeds of sale of the property, in equal shares. The proviso is that there seems to us no reason in principle why the parties to a conveyance into joint ownership should not, if they so wish, make different provision for the sharing of the property or the proceeds of sale in the event of severance. Such provision would obviously be included in the habendum. We leave open the question whether a private arrangement outside the conveyance could validly be made to the same effect.".*

As this case relates to Guernsey realty I draw only very limited benefit from it by way of general analogy. Nevertheless the fact that the Court of Appeal was concerned not to strike at the very heart of the certainty which exists in relation to the severance of joint ownership of Guernsey realty is of some relevance. The Court of Appeal's judgment might from one perspective seem to result in harsh consequences to the party who had introduced most of the capital, but from another perspective it transmits a clear message that it is incumbent upon parties to order their contractual affairs with appropriate clarity. It must be of equal concern that there should be certainty in relation to the divisions of Guernsey joint bank accounts upon severance.

Mr. Wessels drew my attention to the judgment of the Royal Court in the Royal Bank of Scotland Plc v. Faulkner and Faulkner. In that case the bank was the arresting creditor of jointly owned furniture and furnishings belonging to Mr. and Mrs. Faulkner. They had each been declared *"en desastre".* H.M. Sheriff held the proceeds of the jointly owned assets which he had sold. Mr. Faulkner also had sole ownership of some assets which were to be sold by H.M. Sheriff. On a reference from a Commissioner of the Court dealing with the desastre proceedings Dorey B directed that separate desastre proceedings be opened for each of the debtors. He also directed that the proceeds of sale of the joint assets be severed, one-half to be applied to each desastre, in the absence of evidence of some other title.

For the reasons outlined above in relation to Waterman v. McCormack I draw limited benefit in this case from the principles applied by Dorey B to the proceeds of the sale in a *désastre*. Because of the origin of Guernsey's banking system, which is based on English banking law principles, it is important to have regard to those English principles. Should the differences between the parties not be resolved and the case comes to trial I would wish to hear further argument on this point with the benefit of any other research which may produce other relevant English banking law authorities on the subject of severance. It may be, however, that there have been few cases since Jones v. Maynard in 1951 and Heseltine v. Heseltine in 1971. Counsel were not aware of any Guernsey case in point.

I now return to answer the questions posed by Counsel. In answering them I emphasise that I frame them in view of their relevance to this case.

Question 1

Can the presumption of survivorship in section 1(1) of the 1966 Law be rebutted only by proof of the intention of the parties at the time of opening the joint account or can the intentions thereafter of a person who alone has deposited monies in the account have any legal significance.

It is common ground between the parties that the intention of the sole depositor at the time the joint account was opened will be of great significance and may be decisive.

If the intention of the sole depositor was to create an immediate absolute gift of an interest in the chose in action so that the chose in action will pass on the death of the sole depositor to the other account holder should he or she be the survivor then that gift once made cannot be unilaterally revoked by the sole depositor.

If it can be established that when money was transferred into an account it was not intended by the sole depositor to be an immediate gift of an interest in the chose in action then the sole depositor will have a right thereafter to change his intention. He will have power to confer a greater interest upon the joint account holder. If he has reserved a power of reservation then he can use it. If he intended that no interest in the chose in action should pass until his death, the convenience arrangement being an example, then he has power to act as he may deem appropriate. If his power is contested by the other account holder then he may have to sustain his intention through litigation in order to resolve the dispute.

Compelling evidence will be necessary to rebut the statutory presumption.

Question 2

What interest does the law recognise in a joint account?

The law will recognise both legal and beneficial interests in joint accounts.

Question 3

What act does the law recognise as being capable of effecting severance in a joint account?

I am unable to conclude on the basis of the limited argument which I heard that a joint beneficial interest can be severed by the unilateral act of one party, with which the other party does not concur

and may not even have notice such act of severance to be followed, in the absence of agreement as to division, by court proceedings to determine the shares in which the monies standing to the credit of the account are to be decided

If the parties are in agreement as to the dissolution of a joint account they will act accordingly and put their agreement into effect, perhaps by simply withdrawing monies. If for some reason it is necessary to instruct the bank to sever the account then the bank will act upon their instructions. In the absence of an agreement and if the account holders are not content for the joint account to remain for the time being in joint ownership pending the resolution of their dispute (whether by mutual discussion, alternative dispute resolution or as part of a matrimonial property order) then court proceedings should be instituted and a court order will be necessary for the bank to effect severance. It is not for the bank to resolve the differences between account holders who are in dispute and sever their joint account.

Question 4

What principles are to be applied in determining the issue of ownership in a joint account upon severance?

If the sole depositor intended, an immediate and absolute gift of an interest in the chose in action so that the sole depositor intended the chose in action to pass on the death of the sole depositor to the other account holder should he or she be the survivor, then the Court would be bound to sever the chose in action in undivided one-half shares unless there was evidence of a clear intention to sever the chose in action in different shares.

If there was no such intention then the Court will have regard to whatsoever may have been the intention of the sole depositor and order appropriately.

