South Carolina Law Review

Volume 1 | Issue 1 Article 8

9-1948

The Uniform Simultaneous Death Act

James M. Perry

THE UNIFORM SIMULTANEOUS DEATH ACT

JAMES M. PERRY *

The various issues raised in connection with descent and distribution of property where persons perish in a common disaster and title depends upon priority of death, while not encountered every day in legal practice, can present many complications when they arise.

The Uniform Simultaneous Death Act passed at the recent session of the South Carolina Legislature and which became law April 3, 1948, is, therefore, of special interest.

In 1940 the Uniform Simultaneous Death Act was approved by the National Conference of Commissioners on Uniform State Laws. At the close of the 1947 Legislative sessions, the Act had been adopted in thirty states, [1] South Carolina being the thirty-first state to adopt the Uniform Act.

Briefly stated, it provides that where persons die in a common disaster and there is no sufficient evidence of survivorship, the property of each person shall be disposed of as though he had survived, with the following exceptions:

Where, under a will or otherwise, two or more beneficiaries are designated to take successively, the property is divided among them equally and distributed to those who would have taken had each designated beneficiary survived.

In cases of joint tenancy or tenancy by the entirety, the property is divided among the tenants equally and distributed as though each had survived.

The remaining exception relates to the proceeds of life or accident insurance policies. Where an insured and his beneficiary die simultaneously, the insured is considered to have survived the beneficiary and the proceeds of the insurance policy are distributed accordingly.

The Act is inapplicable where the contingency of certain

* Member of South Carolina Bar, Firm of Haynsworth & Haynsworth, Greenville, S. C.

1. Adopted in: Arkansas, California, Colorado, Delaware, Florida, Idaho, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, Washington, Wisconsin, Wyoming.

persons dying in a common disaster is otherwise provided for by will, trust, deed or insurance contract.

It will be observed that the Act does not change or affect the law with respect to proof of survivorship, but merely declares the law governing the disposition of property in the event of death in a common disaster where there is no sufficient proof of survivorship.

There are only three reported South Carolina decisions where simultaneous death was an issue in connection with the distribution of property and two of these cases related to the sufficiency of proof as to survivorship.

Under the common law, there was no presumption of survivorship, this being a fact to be proved by the party asserting it.

This rule also obtains in South Carolina, as established by the decision in *Pell v. Ball,*[2] a leading case on the question. In that case, a Mr. and Mrs. Ball, husband and wife, embarked at Charleston on a steamer which was destroyed by the explosion of one of the boilers. A large number of passengers were lost, including Mr. and Mrs. Ball. An action was brought in connection with the settlement of Mr. Ball's estate wherein it was alleged that the wife survived the husband. The Court held that the burden was on the plaintiffs who claimed through Mrs. Ball to prove that she was the survivor. On the trial of the case, a number of witnesses testified that immediately after the explosion they saw Mrs. Ball frantically searching for her husband and calling his name in loud tones of despair. Mr. Ball was never seen or heard of following the explosion. On the basis of these facts the Court held there was sufficient proof that Mrs. Ball had survived her husband.

The opinion written by Chancellor Johnson in *Pell v. Ball, supra,* is a very interesting one and in it he discusses some of the perplexing problems facing the courts in those cases where survivorship could not be proved, saying: " * * * Where the right is mutual, it may be safest, and perhaps, in some instances, the rule should be * * * to abstain from anything approaching conjecture, and leave the right untouched, unless it can be shown, by reasonable evidence, that the party who is to take derivatively, was the survivor."

Continuing, however, the Court stated, "But there are in-

2. Pell v. Ball, 15 S. C. Eq. (Cheves) 99.

stances, such as cross remainders, and partnerships, and such as would have arisen on joint tenancies before the abolition of the *jus accrescendi,* * * * where there must be a decision, and to which the rule just mentioned cannot be applied, without in fact deciding for one of the parties, and against the other, by refusing to decide at all; and where indeed this may not be the only consequence. * * *"

These instances which gave Chancellor Johnson such concern are now specifically provided for under the Uniform Act.

Faced with the problem of deciding upon some basis for the distribution of estates, where there was no proof of survivorship, the courts naturally gave great consideration to any evidence which might tend to prove survivorship and various presumptions were indulged in. Again quoting from *Pell v. Ball, supra*: " * * * the English and American courts have hitherto carefully avoided the adoption of any rule of decision. The cases have gone off on compromise, or were decided upon a rule adapted to the nature of the question before the court, and not to the question of right, as transmitted by survivorship. * * * I think I may safely conclude, that * * * 'the English law has hitherto waived the question.' I am not, however, prepared to abandon, as delusive, all effort to attain rules capable of deciding the fact of survivorship, even in cases denominated conjectural. * * * Indeed, there will generally be found something in the condition of the parties, their age, strength, health, and habits, which will, in some degree at least, rescue the decision from the imputation of rash conjecture, and place it rather upon the foundation of evidence and probability, than tremulous presumption. But where there is any evidence whatever, even though it be but a shadow, it must govern in the decision of the fact."

There appears to have been no further South Carolina decisions on this question until the case of *Nolf v. Patton*[3] In that case one George Nolf and his wife and baby were burned to death in a fire which destroyed the home in which they lived. All were burned beyond recognition, but examination of the body of the husband disclosed an indentation about an inch thick at the back of his head, apparently having been made by some blunt instrument similar to that of the head of a hatchet or hammer. The bodies of Mrs. Nolf and the baby were found in the kitchen while that of Mr. Nolf was found in

3. Nolf v. Patton, 114 S. C. 323, 103 S. E. 528.

the dining room with his head toward his bedroom. The plaintiffs as heirs at law of the husband brought suit for distribution of the estate, alleging that the husband was the survivor. The defendants as heirs at law of Mrs. Nolf contended that Mrs. Nolf and the baby were the survivors. The case was submitted to the jury who found for the defendants, which was the equivalent of finding that the wife and baby survived. On appeal the Supreme Court held that the burden was on the plaintiffs to prove the allegations of their complaint, to-wit, that the husband survived, saying: "There is nothing in the case of *Pell v. Ball,* Cheves Eq. 99, upon which the appellants rely, inconsistent with that principle." The Court also held that the verdict of the jury was sustained by the evidence and did not rest upon conjecture.

It will be observed that in the two cases just discussed, to-wit, *Pell v. Ball* and *Nolf v. Patton,* the question on appeal related to the sufficiency of proof of survivorship and its determination was substantially influenced by the incidence of the burden of proof. The Court in those cases managed to avoid facing the question of what disposition would have been made of the deceased's property, had death been simultaneous.

The only decision of the South Carolina Supreme Court on the subject of the proper distribution of property in the event of simultaneous death is that of *Collins v. Atlantic Coast Line Railroad Company.*[4] In that case a Mr. and Mrs. Anderson, husband and wife, were instantly killed when the car in which they were riding was struck by defendant's train. The plaintiff, as administrator, brought suit for the benefit of the heirs at law of Mrs. Anderson to recover damages for her alleged wrongful death. The Railroad Company moved for a nonsuit on the ground that the husband and wife perished in a common disaster; that the action was brought on the theory that Mrs. Anderson survived and there was no proof to this effect. Plaintiff took the position that the action was based on the theory that Mr. and Mrs. Anderson died at the same instant of time and, therefore, the only persons to take under the Statute were the heirs at law of Mrs. Anderson.

On appeal from the order of the Trial Court overruling the motion, the Supreme Court held there was no testimony to show that Mr. Anderson survived his wife and there was

4. Collins v. A. C. L. R. R. Co., 183 S. C. 284, 190 S. E. 847.

no error in overruling defendant's motion; that they were asserting survivorship and the burden of proof was upon them.

Specifically the Court held that "it was reasonably inferable from the evidence that there was no survivorship, and that, if such was the case, the right of action would accrue on behalf of the heirs at law of Mrs. Anderson, because, if their deaths occurred at the same moment, it could not be said that a cause of action would accrue to Mr. Anderson as an heir at law of his wife, and that, therefore, the case at bar was brought for the benefit of the proper parties, to wit, the heirs at law and distributees of Mrs. Anderson.

The result would have different, however, had the Uniform Simultaneous Death Act been in effect in South Carolina at the time of this decision. The husband and wife would each have been considered to survive the other for the purpose of accruing a cause of action for the death of the other. The proceeds of any recovery on behalf of the husband for the death of the wife would have been distributed on the theory that he survived his wife and *vice versa*.

Thus, under the common law, the Courts had no alternative but to strain for some inference from the circumstances, failing that, to determine substantial rights by the unrealistic consideration of the procedural incidence of the burden of proof. The statute will largely relieve the Courts of that otherwise unescapable predicament, and, since the incidence of the burden of proof will no longer be the determining factor, it may be supposed that hereafter very tenuous evidence of survivorship will not be accepted with the readiness apparent in the former opinions of our Courts.

A statutory definition of rights accruing where a simultaneous death occurs is of much larger moment than might be indicated by the existence of only three decisions on the subject by the South Carolina Supreme Court. Laymen, as well as lawyers engaged in the preparation of wills and trusts, are conscious of the risk that several members of a family may die in a common accident in this motorized age when more and more of life is being lived upon wheels and wings. Their attempts to provide for such eventualities are constant but are necessarily cumbersome when there is no firm ground upon which to start. The common law provided only a nebulous field of uncertainty where substantial rights were de-

pendent for resolution upon such vagaries as the happenstance of the incidence of the burden of proof. The testator, the settlor of a trust, whose wishes coincide with the statute, need no longer make special provision to cover simultaneous death situations. He who wishes other results to flow from such situations or to provide for non-simultaneous deaths from common accidents, may still make provision to effectuate his wishes and the statute is of some benefit to him in establishing a concrete beginning point.

The adoption of the Uniform Simultaneous Death Act marks an advance in the administration of law in South Carolina. By specifically providing for the distribution of property in the event of simultaneous death, it supplies a long existing need.

The general purpose of the Uniform Simultaneous Death Act as stated therein is to make uniform the law in those states which enact it, and Section 7 thereof requires that it be so construed and interpreted as to effectuate this purpose.

Decisions of other states in which the Uniform Act is now in effect will, therefore, be valuable in determining questions arising under the Act in South Carolina.