

Vennard v. Albany Sav. Bank

Court of Appeals of New York

February 29, 1940, Argued ; March 15, 1940, Decided

No Number in Original

Reporter

282 N.Y. 718 *; 1940 N.Y. LEXIS 1514 **; 26 N.E.2d 826

Catherine Vennard, as Administratrix of the Estate of Patrick Gormley, Deceased, Appellant, v. Albany Savings Bank, Respondent, Impleaded with Another

Prior History: **[**1]** Appeal from a judgment, entered November 27, 1939, upon an order of the Appellate Division of the Supreme Court in the third judicial department, reversing on the law a judgment in favor of plaintiff against the defendant-respondent, entered upon a decision of the court on trial at Special Term (Bergan, J.), and directing a dismissal of the complaint, in an action to collect from such bank the sum of \$ 1,148.08, with interest thereon from June 30, 1938, representing uncredited dividends claimed to be due to the plaintiff upon a savings bank account in the defendant bank standing in the name of Patrick Gormley, plaintiff's intestate, which had been opened on March 10, 1885, but which had been inactive since May 19, 1890. The bank continued to credit dividends on such account until July 1, 1927, at which time the deposit amounted, with accrued dividends, to \$ 2,647.33. On December 10, 1937, the bank paid to the Comptroller of the State of New York said sum (see Banking Law [Cons. Laws, ch. 2], § 257), and the Comptroller in turn paid said sum to the plaintiff on May 24, 1938. Thereafter, on November 30, 1938, the plaintiff commenced the present action demanding judgment **[**2]** against the bank for a sum which dividends on such account would have amounted to if such dividends had been credited on said account for the period from July 1, 1927, to December 10, 1937, with interest thereon from June 30, 1938, the date on which the plaintiff had demanded of the bank payment of such dividends. Section 2 of chapter 199 of the Laws of 1840 provides that "Whenever the trustees * * * of the Albany Savings Bank shall deem it expedient or necessary to change or alter the condition on which they have received deposits, they shall publish a notice to the depositors in a newspaper printed in the city of Albany during four weeks preceding such change or alternation." In 1897 the trustees of the bank, in compliance with this statutory provision, adopted a by-law which provided that no interest or dividends should be declared or paid on any account in which no entry of deposit or withdrawal shall have been made for a period of twenty

successive years. The Appellate Division held that plaintiff's intestate was bound by this regulation and that when he elected to allow his account to remain dormant more than twenty years after 1897 he forfeited his rights to further dividends.

[3]** *Vennard v. Albany Savings Bank*, 257 App. Div. 789, affirmed.

Disposition: Judgment affirmed, with costs.

Counsel: *Borden H. Mills* and *Ellis J. Staley* for appellant.

Edward S. Rooney and *B. Jermain Savage* for respondent.

Judges: Concur: Lehman, Ch. J., Loughran, Finch, Rippey, Sears, Lewis and Conway, JJ.

Opinion

[*719] No opinion. (See 282 N. Y. 802.)

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