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GIFTS OF CHOSES IN ACTION -- DELIVERY

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GIFTS OF CHOSES IN ACTION — DELIVERY — The alleged donor of a trust certificate of the *X* trust company presented it at the office of the company, had the assignment blank on the back of the certificate filled in and the name of the donee registered on the books of the company, but retained possession of the certificate at all times except during the interval when the registration was taking place. Previous to the transaction the donor had stated that he did not intend to "sign it over" to the donee but merely to "have it fixed in case something happened to him." Yet he told the officer of the trust company that he understood he was divesting himself of all rights under the contract. Afterwards, when it was suggested that he hand the certificate to the donee, he stated that he would keep it and take care of it. *Held*, in an action by the donor's administrator to quiet title in the certificate, that this was a mere revocable assignment, that there was no delivery, and hence no gift of the chose in action. *Madison Trust Company v. Skogstrom*, (Wis. 1936) 269 N. W. 249.

At early common law, assignments of choses in action were not given

[16] Boston Belting Co. v. Ivens, 28 La. Ann. 695 (1876); Atwood v. De Forest, 19 Conn. 513 (1849); Smith v. Gibbs, 72 Mass. 298 (1856).

[17] Atwood v. De Forest, 19 Conn. 513 (1849).

[18] Baker v. Willis, 123 Mass. 194 (1877); Woods v. Bresnahan, 63 Mich. 614, 30 N. W. 206 (1886). The latter case permits the exemption despite the fact that temporarily suspended business is to be resumed only in another state.

[19] Re Fox, (D. C. La. 1924) 2 F. (2d) 374; Norris v. Hoitt, 18 N. H. 196 (1846); Willis v. Morris, 66 Tex. 628, 1 S. W. 799; Atwood v. De Forest, 19 Conn. 513 (1849).

[20] Parkerson v. Wightman, 4 Strob. (S. C. Law) 363 (1850); Howard v. Williams, 19 Mass. 80 (1824); Re Robinson, (D. C. Idaho 1913) 206 F. 176; Pierce v. Gray, 73 Mass. 67 (1856).

In these cases the court expressly relied upon the fact that a maximum exemption is prescribed by the statute. Eager v. Taylor, 91 Mass. 156 (1864); Baker v. Willis, 123 Mass. 194 (1877).

Multiplication of employment does not entitle a debtor to take advantage of several distinct exemptions. Jenkins v. McNall, 27 Kan. 532, 41 Am. Rep. 422 (1882); Bevitt v. Crandall, 19 Wis. 610 (1865).

Michigan has attempted to meet this problem by a variation of the statutory wording "the trade . . . in which he is wholly or principally engaged. . . ." Mich. Comp. Laws (1929), § 14578. Smalley v. Masten, 8 Mich. 529 (1860); Kenyon v. Baker, 16 Mich. 373 (1868).

[21] Walsch v. Call, 32 Wis. 159 (1873).

effect,[1] but this rule has been gradually relaxed so that it is now possible by proper formalities to make gifts at least of choses in action evidenced by writings.[2] The two requirements of such gifts are intent to make a gift and delivery.[3] The cases, as well as the writers, are in irreconcilable conflict as to what constitutes a proper delivery of a chose in action.[4] The facts of the principal case, it would seem, do not constitute a delivery under any of the theories yet advanced. The generally accepted test, and that adopted by the court in the principal case, is that the acts of the donor must result in a relinquishment of all dominion and control over the chose in action.[5] It is evident that, since the assignment and registration were revocable, retention of the certificate by the donor was an important item in the control of the chose in action and hence there was no delivery. Another theory of delivery, which under the facts of this case probably is equivalent to the preceding test, requires that the donor must deprive himself of the means of enforcement of the debt, that he hand over the writing which must be surrendered in order to collect the indebtedness.[6] So long as the donor retained the certificate he could still enforce the obligation. A third standard is that the donor must hand over the "best evidence" of the debt; [7] here the certificate itself was the best evidence and this was retained. The most liberal theory requires merely such delivery as the

[1] Ames, "The Disseisin of Chattels," 3 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 580 (1909); criticized by Cook, "The Alienability of Choses in Action," 29 HARV. L. REV. 816 (1916); defended by Williston, "Is the Right of an Assignee of a Chose in Action Legal or Equitable?" 30 HARV. L. REV. 97 (1916); rejoinder by Cook, "The Alienability of Choses in Action: A Reply to Professor Williston," 30 HARV. L. REV. 449 (1917).

[2] Costigan, "Gifts Inter Vivos of Choses in Action," 27 L. Q. REV. 326 (1911); Rundell, "Gifts of Choses in Action," 27 YALE L. J. 643 (1918); BROWN, PERSONAL PROPERTY, § 58 (1936). See also the citations in the preceding footnote.

[3] Mechem, "The Requirement of Delivery in Gifts of Chattels and of Choses in Action Evidenced by Commercial Instruments," 21 ILL. L. REV. 341, 457, 568 (1926); THORNTON, GIFTS AND ADVANCEMENTS 255 (1893); Hatton, Ex'r v. Jones, 78 Ind. 466 (1881); Tucker v. Tucker, 138 Iowa 344, 116 N. W. 119 (1908).

[4] Cases collected in 25 A. L. R. 671 (1923) (bills and notes) and 40 A. L. R. 508 (1926) (checks and certificates of deposit). See also, Mechem, "The Requirement of Delivery in Gifts of Chattels and of Choses in Action Evidenced by Commercial Instruments," 21 ILL. L. REV. 341, 457, 568 (1926).

[5] BROWN, PERSONAL PROPERTY, § 59 (1936); Williston, "Gifts of Rights under Contracts in Writing by Delivery of the Writing," 40 YALE L. J. 1 (1930); Basket v. Hassell, 107 U. S. 602 at 614, 2 S. Ct. 415 (1882). Accord: Cook v. Lum, 55 N. J. L. 373, 26 A. 803 (1893), which involved an undocumented chose.

[6] 1 CONTRACTS RESTATEMENT, § 158 (1, b) and comment a (1932); Grover v. Grover, 24 Pick. (41 Mass.) 261 (1837); Elam v. Keen, 4 Leigh (31 Va.) 333 (1833); Ward v. Turner, 2 Ves. Sen. 431 at 442, 28 Eng. Rep. 275 (1752). Cases collected in AMES, CASES ON TRUSTS, 2d ed., 162, note 4 (1893).

[7] Bruton, "The Requirement of Delivery as Applied to Gifts of Choses in Action," 39 YALE L. J. 837 (1930); criticised by Williston, "Gifts of Rights under Contracts in Writing by Delivery of the Writing," 40 YALE L. J. 1 (1930). See In re Huggins' Estate, 204 Pa. 167, 53 A. 746 (1902).

nature of the obligation permits; [8] but certainly it would have been possible for the donor to have given the donee possession of the certificate. Finally, it has been suggested that the tendency of the courts is to make intent, and not symbolic delivery, the test.[9] This would, of course, be the ideal test, yet the principal case clearly illustrates the difficulty in applying it. Out of the conflicting evidence presented, it seems impossible to arrive at any conclusion as to the actual intent of the donor. It therefore appears that, unless the donor hands to the donee or his agent some writing evidencing the right of the donor to collect from his debtor or an irrevocable assignment thereof, there is no completed delivery of the gift.[10]

[8] 2 KENT, COMMENTARIES ON AMERICAN LAW, 14th ed., *439 (1896); Dinslage v. Stratman, 105 Neb. 274, 180 N. W. 81 (1920), noted in 19 MICH. L. REV. 656 (1921); Chase National Bank v. Sayles, (C. C. A. 1st, 1926) 11 F. (2d) 948, certiorari denied, 273 U. S. 708, 47 S. Ct. 99 (1926). These cases involved undocumented choses.

[9] "It is only a question of time until the courts will sustain gifts at least between the alleged donee and third parties where there is not even a semblance of symbolical delivery but where they are satisfied that the alleged donor intended to make a gift." Roberts, "The Necessity of Delivery in Making Gifts," 32 W. VA. L. Q. 313 at 319 (1926).

[10] In Helmer v. Helmer, 159 Ga. 376, 125 S. E. 849 (1924), the note, of which the donee was maker, was retained by an agent of the donor, and the donee did not know of the gift; held, no gift. In re Crawford, 113 N. Y. 560, 21 N. E. 692 (1889), involved railroad coupon bonds which were required by statute to be registered in order to effect an assignment. The donor registered the bonds, but did not give them to the donee, nor did the donee know of the assignment. Held, no gift.

In Matter of Townsend, 5 Dem. 147 (N. Y. Surr. 1887), mere registration of the bonds in the name of the donee was held sufficient to complete the gift. In Harris Banking Co. v. Miller, 190 Mo. 640, 89 S. W. 629 (1905), the owner indorsed the certificate of deposit to the assignee without consideration but retained possession and collected interest up until his death. Held, although there was no gift, there was a valid executed parol trust.