Michigan Law Review

Volume 34 | Issue 3

1936

ASSIGNMENTS -VALIDITY OF GRATUITOUS WRITTEN ASSIGNMENT

ASSIGNMENTS — VALIDITY OF GRATUITOUS WRITTEN ASSIGNMENTS — Deceased took defendant, his son, to a notary and there made and acknowledged written assignments of three mortgages he owned. He handed these assignments to defendant, saying "I give you these. Put them in the safety-deposit box." Defendant went away with the assignments which reappear only after the father's death; they were found in an envelope, marked with defendant's name in deceased's hand, in a safety-deposit box owned jointly by deceased and defendant. Deceased always retained possession and enjoyment of the actual mortgage instruments. Plaintiff, another son, claims these mortgages should be part of deceased's estate. The court *held* that a delivery of the written assignments was a good delivery of the choses so that defendant got title during the father's life. *Jackman v. Jackman*, 271 Mich. 585, 260 N. W. 769 (1935).

The opinion quotes from an earlier Michigan case,[1] where, without citation of authority, it was said: "it has also been held that the delivery of the written assignment of the chose in action is a good delivery of the chose in action, and is sufficient to support a gift." Although similar statements may be found elsewhere,[2] it appears that direct authority for this proposition is not nearly so plentiful as citation of cases indicates.[3] The early common law rule, that choses in action

[1] Shepard v. Shepard, 164 Mich. 183 at 200, 129 N. W. 201 (1910).

[2] WILLISTON, CONTRACTS 838, 839 (1931); THORNTON, GIFTS AND ADVANCEMENTS 256 (1893); 28 C. J. 658 (1922).

[3] WILLISTON, CONTRACTS 839, n. 61 (1931), cites several American cases as authority for this proposition. Only one of these seems strictly in point, Massey v. Huntington, 118 Ill. 80 (1886), where an assignment in trust of realty and choses in action

could not be assigned, has been more and more relaxed both by decision and by statute.[4] Gradually documented choses in action came to be regarded as chattel property, and the same rules that apply to the delivery of a chattel were applied to this kind of chose in action.[5] Both could be given either by delivery of the chattel itself or by delivery of a deed of gift. Such is clearly the law today.[6] However, if the chose in action is an undocumented one, it would have to be given by deed since there is no other tangible evidence of it to pass by delivery.[7] In view of the statutory inroads on the law of seals, the question as to the need of a seal has received little discussion and does not seem to be a very important one.[8] In considering the validity of the delivery where the article claimed to have been given is in the possession of the alleged donor, it is essential to distinguish between "retention of control" and "retention or resumption of possession."[9] The grantor's possession of the deed raises a presumption against delivery.[10] But if by the terms of the instrument, the grantor retains a life interest in the property, this presumption does not arise.[11] Also where the donee is a member of the donor's family, the rule in respect to delivery is much relaxed.[12] In a few states, particu-

was upheld. In Otis v. Beckwith, 49 Ill. 121 (1868), and Bond v. Bunting, 78 Pa. 210 (1875), the gifts were upheld as voluntary declarations of trust. In Trough's Estate, 75 Pa. 115 (1874), the gift in trust failed for want of delivery. In Scott v. Dickson, 108 Pa. 6 (1884), the attempted gift was treated as a direction to pay the donee. Badgley v. Votrain, 68 Ill. 25 (1873), held that notes could only be transferred by indorsement and not by deed. For cases that do stand directly for this proposition cf.: Cowen v. First Nat. Bank of Brownsville, 94 Tex. 547, 63 S. W. 532, 64 S. W. 778 (1901); Leedham v. Leedham, 218 Iowa 767, 254 N. W. 61 (1934).

[4] In 3 POMEROY, EQUITY JURISPRUDENCE 3066 (1918), the following test of assignability is laid down: "All things in action which survive and pass to the personal representatives of a decedent creditor as assets or continue as liabilities against the representatives of a decedent debtor are, in general, thus assignable; all which do not survive, but which die with the person of the creditor or of the debtor, are not assignable." This test is quoted in full in Atlantic & N. C. R. Co. v. Atlantic & N. C. Co., 147 N. C. 368 at 375, 61 S. E. 185 (1908).

[5] THORNTON, GIFTS AND ADVANCEMENTS 255 (1893).

[6] One writer considers this proposition too well established to require any citation of authorities. Cf. Rundell, "Gifts of Choses in Action," 27 YALE L. J. 643 at 653 (1918).

[7] Adams v. Merced Stone Co., 176 Cal. 415, 178 P. 498 (1917); DeCaumont v. Bogert, 36 Hun (N. Y.) 382 (1885).

[8] Cowen v. First Nat. Bank of Brownsville, 94 Tex. 547, 63 S. W. 532, 64 S. W. 778 (1901).

[9] If the former exists, there is no delivery and thus no gift. For a collection of cases showing the language the courts use when the facts are of the latter type, cf. 32 L. R. A. (N. S.) 220 (1911).

[10] Shetler v. Stewart, 133 Iowa 320, 107 N. W. 310, 110 N. W. 582 (1907); Donahue v. Sweeney, 171 Cal. 388, 153 P. 708 (1915).

[11] Hill v. Kreiger, 250 Ill. 408, 95 N. E. 468 (1911). However, since there was no express reservation of a life interest there, even though such an interest was in fact reserved, it would seem that the case does not properly come within the exception to the presumption.

[12] THORNTON, GIFTS AND ADVANCEMENTS 164 (1893).

larly Illinois, a transaction such as this is known as a "voluntary settlement," and the courts will go far to presume a delivery.[13] What seems to be a better reason is found in the fact that when people live together there is less likely to be a noticeable change in possession.[14] With a chattel in the form of a deed the joint safety-deposit box would appear to present a very similar situation. The present case seems to occupy an intermediate position; the presumption against delivery should apply but, in view of other facts, in a decidedly relaxed form.

E. S. B.

[13] In such cases the donee will either be an infant or there will exist rather cogent reasons of justice for finding a delivery. Cf. Latimer v. Latimer, 174 Ill. 418 at 429, 51 N. E. 548 (1898); Thompson v. Calhoun, 216 Ill. 161 at 164, 74 N. E. 775 (1905).

[14] Davis v. Zimmerman, 40 Mich. 24 (1879); here a husband gave his wife some chattels. The court said that the change in possession must be considered in connection with the other facts, that the parties lived together.