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GIFTS — SUBSEQUENT DECLARATIONS BY DONOR — VOLUNTARY SELF DECLARATION OF TRUST — Certain bonds were found in a safe deposit box of the decedent in an envelope marked with the words "Property of *X*." *X* sought to introduce evidence of declarations of decedent made to third persons to the effect that he had given the bonds to *X* before. *Held*, that such declarations were inadmissible because there was no extraneous evidence of a delivery of the bonds to *X* to support the theory of a gift. *Reynolds v. Kenney*, (N. H. 1935) 179 A. 16.

It is almost universally held that delivery of the subject matter is essential to make a valid gift of personalty.[1] The majority of the cases in this country are in accord with the principal case in holding that such declarations by the donor

[1] Cochrane v. Moore, 25 Q. B. D. 57 (1890); WILLIAMS, PERSONAL PROPERTY, 18th ed., 72 (1926); Mechem, "The Requirement of Delivery in Gifts of Chattels and of Choses in Action Evidenced by Commercial Instruments," 21 ILL. L. REV. 341, 459, 568 (1926-27), which also notes the possibility of constructive and symbolical delivery in those cases where the res does not readily lend itself to manual transfer, and a small group of cases in which no delivery was required when the donee was an infant child of the donor. For the United States rule that a bond and certain other evidences of choses in action may be the subjects of a gift, see Bruton, "The Requirement of Delivery as Applied to Gifts of Choses in Action," 39 YALE L. J. 837 at 851-852 (1930).

are not of themselves sufficient to prove delivery, though they may be used to corroborate other evidence of delivery and to prove donative intent.[2] On the other hand there are a number of courts which have received evidence of such declarations, arguing that they are admissions of a gift which necessarily imply a sufficient prior delivery, and are at least evidence to go to the jury.[3] It should be emphasized that these cases do not do away with the requirement of delivery; they merely supply an additional method of proving it. But the probative value of such evidence is greatly decreased when we consider that to an average layman the words, "I have given," are highly ambiguous. He may intend a simple bailment without any passing of title, a gift but without delivery, a completed gift with delivery, or merely a legacy in his will which would naturally be revocable.[4] Williams suggested that delivery might be dispensed with by saying that the donor who retains possession becomes a bailee of the goods for the donee. But that author admits that there is no authority for the proposition.[5] In a Missouri case [6] the court held that subsequent declarations of the donor stating a past gift of real estate to a donee who later went into possession were sufficient to create a trust of the legal title, which was executed by the Statute of Uses. But it is now generally held that an imperfect gift will not be upheld as a voluntary self declaration of trust unless it affirmatively appears that a trust was intended;[7] though the line between the two is not always clear.[8] In the principal case, however, it was clear that no trust was intended; and though the result may be harsh in many cases, to admit such declarations would tend to open an avenue for fraud, especially since in most cases the alleged donor is dead.

D. D.

[2] Chambers v. McCreery, (C. C. A. 4th, 1901) 106 F. 364; Smith v. Burnet, 35 N. J. Eq. 314 (1882); Atchley v. Rimmer, 148 Tenn. 303, 255 S. W. 366 (1923); and cases collected in L. R. A. 1916E 288 (1916).

[3] Zollicoffer v. Zollicoffer, 168 N. C. 326, 84 S. E. 349 (1915); Sprouse v. Littlejohn, 22 S. C. 358 (1884); Miller v. Silverman, 247 N. Y. 447, 160 N. E. 910 (1928), noted in 37 YALE L. J. 836 (1928), where the cases are collected.

[4] See Mechem, "The Requirement of Delivery in Gifts of Chattels and of Choses in Action Evidenced by Commercial Instruments," 21 ILL. L. REV. 568 at 608 (1927).

[5] WILLIAMS, PERSONAL PROPERTY, 18th ed., 72 (1926). The view is strongly criticized by Professor Mechem.

[6] Neal v. Bryant, 291 Mo. 81, 235 S. W. 1075 (1921).

[7] Farmers' Loan & Trust Co. v. Winthrop, 238 N. Y. 477, 144 N. E. 686 (1924); In re Ashman's Estate, 223 Pa. 543, 72 A. 899 (1909); Ginn's Admx. v. Ginn's Admr., 236 Ky. 217, 32 S. W. (2d) 971 (1930); 24 COL. L. REV. 767 at 770 (1924).

[8] Cf. In re Valentine's Estate, 122 Misc. 486, 204 N. Y. S. 284 (1924), in which the court held that the language of the donor might be interpreted as either.