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GIFTS - CAUSA MORTIS -AUTOMOBILES - EFFECT OF STATUTE ON TRANSFER OF TITLE BY GIFT AND WILL

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GIFTS — CAUSA MORTIS — AUTOMOBILES — EFFECT OF STATUTE ON TRANSFER OF TITLE BY GIFT AND WILL—Plaintiff filed a bill in chancery seeking a declaration of rights with respect to an automobile to which she claimed title by reason of a gift causa mortis. Although the evidence offered by plaintiff on trial tended to support a valid common law gift causa mortis, defendant contended that the gift was ineffective because of the failure of the donor to comply with a statute[1] which stated that "in the event of the sale or other transfer . . . of the ownership of a motor vehicle for which a certain certificate of title has been issued . . . the holder of such certificate shall endorse on the back of same an assignment thereof with warranty of title . . . and deliver the same to the purchaser or transferee." *Held*, the words "or other transfer" include gifts causa mortis, and an assignment and delivery of the certificate of title are essential to the execution of a valid gift. *Taylor v. Burdick*, 320 Mich. 25, 30 N.W. (2d) 418 (1948).

The conclusion of the court was reached by a consideration of the legislative purpose in enacting this statute, which was found to be "to protect the public against fraud and imposition in transactions involving the title to motor vehicles, and to discourage larceny and unlawful disposition of such vehicles."[2] In view of this purpose and the fact that a penalty is provided for the violation of the statute, the court stated that "the legislature sought to cover every transaction involving the transfer of a motor vehicle from the owner to another, as well as transfer by operation of law."[3] Under such a construction of the statute, a problem is presented as to how the owner of an automobile may dispose of it by will. The only express exception to the provision requiring the owner to assign and deliver the certificate of title relates to transfers by operation of law, which are covered by a proviso[4] rendering compliance with the portion of the statute under consideration unnecessary. Transfer by operation of law does not include testamentary disposition,[5]

[1] Mich. Comp. Laws (1929) § 4660.

[2] Principal case at 30.

[3] Id. at 31.

[4] Mich. Comp. Laws (1929) § 4660.

[5] 2 BOUVIER, LAW DICTIONARY, Rawle's 3d rev., 2417 (1914).

and, since the statute, under the court's interpretation in this case, seeks to cover every transaction by which title to an automobile moves to another, the conclusion seems inescapable that a testator must comply with the statute to effect a valid transfer of his automobile. The paradox is that should he execute his will and then assign and deliver the title to his legatee, ownership of the car, under Michigan decisions,[6] would pass not under his will at his death, but at the time of delivery. As a practical matter the court probably would not hold a transfer of an automobile by will ineffective under this statute, and yet, under a long line of Michigan decisions,[7] culminating in the broad language of the principal case, a contrary result would involve at least logical difficulties. Under similar statutes in other jurisdictions[8] this problem has been avoided by holding that the statute is in the nature of a police regulation only and does not provide the only effective method of transferring the ownership of an automobile.[9] There is also a question as to whether the effect of this decision will be consistent with the legislative purpose of preventing fraud and imposition. Gifts causa mortis are normally made under rather pressing circumstances and are not favored by the courts, since opportunities for fraud are numerous. In requiring that the donor assign and deliver the certificate of title to the donee, the court has indeed swung shut one door to fraud, but in the process it has opened wide another. Assuming that a donor follows the decision of the principal case, the donee, who possesses a revocable title to the subject of the gift,[10] will now have the certificate of title to the automobile. Even though the donor should recover from his "last illness," an event which has heretofore revoked the title passed by the gift,[11] the donee, being the title holder, is still the legal owner of the automobile[12] and is in a position to defraud the donor by selling the car to a stranger. On the other hand, if gifts causa mortis were exempt from the operation of this statute, the donee, not having the certificate of title, would not be able to pass good title by sale.[13] Existing evidentiary requirements governing gifts causa mortis are designed to prevent fraud,[14] and, in view of the possible effects outlined, supra, it is doubtful whether the court's interpretation of the statutes in this case has contributed to their ultimate effectiveness.

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[6] Endres v. Maria-Rickenbacker Co., 243 Mich. 5, 219 N.W. 719 (1928).

[7] Noorthoek v. Preferred Automobile Insurance Co., 292 Mich. 561, 291 N.W. 6 (1940), and cases cited therein at 567.

[8] 75 Pa. Ann. Stat. (Purdon, 1939) § 37 (a); 36 Del. Laws (1929) c. 10, § 37 (b).

[9] In Braham & Co. v. Steinard-Hannon M. Co., 97 Pa. Super. 19 (1929), the court stated that a failure to observe the regulations of the statute may subject the offending party to the penalty imposed in the statute but does not avoid the transaction. See, also, Cardish v. Tomazowski, 99 Pa. Super. 360 (1930); Commercial Credit Co. v. McNelly, 36 Del. 88, 171 A. 446 (1934); Commercial Credit Co. v. Schreyer, 120 Ohio St. 568, 166 N.E. 808 (1929).

[10] In re Reh's Estate, 196 Mich. 210 at 218, 162 N.W. 978 (1917).

[11] State Bank of Crosswell v. Johnson, 151 Mich. 538, 115 N.W. 464 (1908).

[12] Noorthoek v. Preferred Automobile Insurance Co., 292 Mich. 561, 291 N.W. 6 (1940).

[13] Schomberg v. Bayly, 259 Mich. 135, 242 N.W. 866 (1932).

[14] 24 AM. JUR., Gifts, §§ 115-133.