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Successions - Collation - Manual Gifts Exempt

E. A. M.

concurring opinion.[18] Several reasons may be advanced for its failure to do so. The majority may have been searching for a broad basis on which to deal with the charges which Assistant Attorney-General Thurman Arnold proposes to bring against participants in certain labor practices.[19] In the next case the Court may not find it easy to weave a thread of distinction and differentiation between the earlier decisions, as it did in *Apex Hosiery Mills v. Leader.*[20] Too, the Supreme Court has shown a determination to reconsider vital social problems without the hindering effect of precedents.[21] Here was a convenient way to discard old decisions without directly overruling established precedents. In addition, the Court perhaps considered it time to officially pronounce the end of the era of "mutilating narrowness"[22] in statutory construction. As a matter of statutory interpretation, the decision appears to be "not free from doubt"[23]—as stated by the moderate Mr. Justice Stone. As a *tour de force* to enable the Court to begin laying a fresh judicial foundation for reconciliation of labor activities and the Sherman Act, it is understandable.

A. B. R.

SUCCESSIONS — COLLATION—MANUAL GIFTS EXEMPT—Defendant, a daughter of decedent, had been given twelve shares of homestead stock without consideration, but in accordance with

18. 61 S.Ct. at 468, 85 L.Ed. at 427.

19. See the Public Statement of the Department of Justice, issued in the form of a letter, dated November 20, 1939, from Assistant Attorney-General Thurman Arnold to the Secretary of the Central Labor Union of Indianapolis, titled: "Application of the Anti-Trust Laws to Labor Unions." N.Y. Times, Nov. 20, 1939, p. 1, col. 4; id. at p. 12, cols. 1, 2. See also references to this statement and pending cases in Arnold, The Bottlenecks of Business (1940) 249; Boudin, The Sherman Act and Labor Disputes (1939) 39 Col. L. Rev. 1283; McLaughlin, Bottlenecks (Union-Made Included) (1941) 8 U. of Chi. L. Rev. 215, 218; Shulman, Labor and the Anti-Trust Laws (1940) 34 Ill. L. Rev. 769, 779; Simons, For a Free-Market Liberalism (1941) 8 U. of Chi. L. Rev. 202, 206.

20. 310 U.S. 469, 60 S.Ct. 982, 84 L.Ed. 1311 (1940), noted in (1940) 3 LOUISIANA LAW REVIEW 241. It is of interest that in the *Apex* case Mr. Justice Stone suggested the broad application given the Norris-LaGuardia Act in the *Hutcheson* case by citing the act in a footnote declaration that, "Federal legislation aimed at protecting . . . labor organizations . . . supports the conclusion that Congress does not regard . . . such combinations . . . as . . . condemned by the Sherman Act." 310 U.S. at 504, n. 24, 60 S.Ct. at 998, 84 L.Ed. at 1329.

21. See cases cited supra note 1.

22. "Such legislation must not be read in a spirit of mutilating narrowness." United States v. Hutcheson, 61 S.Ct. 463, 467, 85 L.Ed. 422, 426 (1941).

23. 61 S.Ct. at 468, 85 L.Ed. at 427.

the provisions of the Uniform Stock Transfer Act.[1] Plaintiffs sued to force collation of the value of the stock. Defendant contended that the transfer was valid as a manual gift and therefore was not subject to collation under Article 1245 of the Civil Code.[2] *Held,* stock, being an incorporeal, is incapable of manual gift and must be collated. Although the requirements of the Code that incorporeal things be transferred by authentic act are superseded by the Uniform Stock Transfer Act, that does not affect the inability to make a manual gift of incorporeal things. *LeBlanc v. Volker,* 198 So. 398 (La. App. 1940).

Forced heirs in the descending line who have received gifts inter vivos from the decedent must collate into the succession the value of the gifts, unless they were expressly given as an extra portion,[3] were manual gifts,[4] or came within one of the other exceptions.[5]

Article 843 of the Code Napoleon provides that every heir coming into a succession must collate all donations inter vivos unless they were made *expressly* as an extra portion above his share and exempted from collation. However, gifts which are given from custom and are small in proportion to the fortune of the donor need not be collated.[6] Such gifts are called *presens d'usage* and are regarded more as mere tokens of esteem than as gifts properly speaking.[7] There is no provision in the Code Napoleon exempting a manual gift from collation. The French disagreed as to whether such a gift was exempt when it was not a *presens*

1. Uniform Stock Transfer Act, La. Act 180 of 1910, §§ 1, 6, 7 [Dart's Stats. (1939) §§ 1180, 1185, 1186].

2. Art. 1244, La. Civil Code of 1870 exempts expenses of board, support, education and apprenticeship from collation. Art. 1245, La. Civil Code of 1870 says: "The same rule is established with respect to things, given by a father, mother, or other ascendant, by their own hands, to one of their children for his pleasure or other use."

3. Art. 1228, La. Civil Code of 1870.

4. Art. 1245, La. Civil Code of 1870.

5. Art. 1244, La. Civil Code of 1870.

6. Art. 852, French Civil Code.

7. See 7 Duranton, Cours de Droit Français (1834) 441, nº 305, in which it is said in connection with the rule requiring collation that: *Toutefois cette décision cesserait d'être applicable au cas où la chose donnée ne serait que de peu d'importance, et devrait être regardée comme un de ces présens d'usage et d'amitié, moins faite comme une donation proprement dite, que comme un gage de bienveillance; et à cet égard on prendrait en consideration la condition et la fortune du donateur.*"

(Translation) "Always that decision ceases to be applicable to a case where the thing given was only of small importance, and would be regarded as one of the presents given because of custom and friendship, made less as a donation properly speaking, than as a token of esteem and friendship; and as regards this we would take into consideration the condition and fortune of the donor."

d'usage. Some writers, applying Article 843, contend that such gifts must be collated if they are not expressly exempted.[8] On the other hand, there is some authority that manual gifts are by their nature presumed to be made with exemption from collation.[9] This view is sustained apparently on the theory that Article 843, requiring collation unless there has been an *express* exemption, contemplates a gift by written act and does not apply to a manual gift, which is made without formality.[10] The Court of Cassation has held that manual gifts may be exempt from collation without being expressly exempted by the donor, even when they are not small in proportion to the donor's wealth. The intention of the donor is controlling and this is determined by the trial court from the circumstances of the case.[11]

The Louisiana Civil Code of 1808[12] exempted New Year's gifts and other small presents from collation. These corresponded to the *presens d'usage* of the French. Therefore, it seems that these presents would have had to be small in proportion to the fortune of the donor.

The above exemption in the Code of 1808 was replaced by the provision exempting manual gifts from collation.[13] It is suggested that this substitution was made to obviate the uncertainty which had existed in France. The concept of a manual gift as shown by Articles 1245 and 1537[14] of the Louisiana Code of 1870 is much broader than the idea of *presens d'usage* as expressed in the Code of 1808.[15] There is nothing in the Code to suggest that the gift

8. 10 Laurent, Principes de Droit Civil Français (2 ed. 1876) 656, nº 596.

9. 41 Dalloz, Jurisprudence Générale Répertoire Méthodique et Alphabétique de Législation (nouvelle ed. 1856) 390, nº 1108: *"Toutefois, il a été jugé que le don manuel est présumé fait par préciput, alors surtout qu'il n'y a d'autre preuve du don que l'aveu du donataire, et que celui-ci déclare que le don lui a été fait avec dispense de rapport, et que cette dispense résulte des présomptions les plus graves. (Bordeaux, 2 mai 1831 (2))."*

(Translation) "Moreover it has been decided that the manual gift is made as an extra portion, then there is no other proof of the gift than the avowal of the donor, and that this declares that the gift has been made to him with exemption from collation, and that this exemption results from the gravest presumptions."

10. See 9 Baudry-Lacantinerie et Wahl, Traité Théorique et Pratique de Droit Civil, 3 Des Successions (3 ed. 1905) 273, nº 2789.

11. Cass. 19 octobre 1903, Sirey 1904.I.40; Cass. 12 mars 1873, Sirey 1873.I.208, See also 9 Baudry-Lacantinerie et Wahl, loc. cit. supra note 10.

12. La. Civil Code of 1808, 3.3.207, p. 196: "New Year's gifts and small presents, money given to the minor and by him spent and even money given to the son of age, for play and for his pleasures, are not subject to collation."

Cf. Art. 852, French Civil Code.

13. Art. 1323, La. Civil Code of 1825; Art. 1245, La. Civil Code of 1870.

14. Art. 1539, La. Civil Code of 1870: "The manual gift, that is, the giving of corporeal movable effects, accompanied by a real delivery, is not subject to any formality."

15. The fact that the redactors changed the article in the Code of 1825

given manually must be small in proportion to the fortune of the donor in order to be exempt from collation. There is ground, therefore, for the view that Article 1245 of the Code of 1870 prescribes a method by which the disposable portion can be given to a forced heir free from the obligation to collate.[16] However, since a parent might make a manual gift to a child without intending that it be exempt from collation, it is suggested that the intention of the donor should be determined from the facts and circumstances of the case, as is done in France.

The basis of collation, which originated in the Roman law,[17] is the presumption that the heirs are to share equally.[18] This presumption is overcome, however, and collation is not required when the act of donation expressly exempts it or when it is made by manual gift. But only corporeal movable effects may be given by manual gift.[19] The instant case attains a highly desirable result in that it refuses to extend the class of things which may be exempted from collation, and thus further insures equality among the forced heirs.

E. A. M.

SUCCESSIONS—TESTAMENTARY DISINHERISON—EFFECT OF RECONCILIATION—Defendant was disinherited in her mother's will and in the four wills of her father for having married while a minor without the consent of her parents. After the death of both par-

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would seem to indicate that they did not mean the same thing as was provided in the Code of 1808. A contrary view would be that the redactors adopted the notion of *presens d'usage* in the article exempting manual gifts from collation.

16. See Succession of Turgeau, 130 La. 650, 58 So. 497 (1912), in which the decedent gave his wife by manual gifts checks exceeding in value the disposable portion. Reduction was allowed in favor of the forced heir, but the gifts were held good for the amount of the disposable portion. Since manual gifts to a forced heir are exempt from collation, the parent should be allowed to give the disposable portion by manual gift to one of his forced heirs free from obligation of collation.

In a French case, Cass. 12 mars 1873, Sirey 1873.I.208, the donor had already disposed of the disposable portion at a profit to one of his heirs. It was held that manual gifts to other heirs, which would have had to be out of the forced portion, were exempt from collation, apparently implying that not only can the disposable portion be given to an heir by manual gift with exemption from collation, but also that part of the forced portion can be given by manual gift to an heir free from any obligation to make a return to the other heirs.

17. D. 37.6; C.6.20.

18. Arts. 1229, 1230, La. Civil Code of 1870.

19. Art. 1539, La. Civil Code of 1870. For a discussion of what may be the subject of a manual gift, see Comment (1935) 9 Tulane L. Rev. 602.