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Joseph Dainow

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SECURITY DEVICES

*Joseph Dainow**

PLEDGE

Article 3152 of the Civil Code¹ requires actual delivery to the creditor as essential to the contract of pledge. One reason for this requirement is to establish the intent of the parties. While there are situations for which the law recognizes a valid pledge without a physical delivery into the personal possession of the creditor,² it is unusual for a creditor to deny such delivery when the object is actually in his personal possession. This was one of the disputed issues in the case of *Ducros v. Williams*.³ After collecting \$3,000 on a life insurance policy of her son, the mother sued his estate for a like sum as the indebtedness on a promissory note. The widow pleaded in defense that the policy had been taken out with the mother as beneficiary in order to secure the note, and that the payment under the policy had extinguished the debt of the note. The mother maintained that she did not know of the presence of the policy in her locked armoire until finding it after her son's death, and she explained that her son must have placed it there without her knowledge. This was contradicted by the evidence that the policy was taken out for the exact sum of the loan, three days after the execution of the note, that the mother was not dependent on the son, and that the policy was in the mother's personal possession. Under these circumstances the court concluded that the parties intended, and that there had been, a valid pledge, which placed this case within one of the exceptions of the statute exempting the proceeds of insurance policies from payment of debts,⁴ thereby discharging the indebtedness on the note.

* Professor of Law, Louisiana State University.

1. Art. 3152, La. Civil Code of 1870: "It is essential to the contract of a pledge that the creditor be put in possession of the thing given to him in pledge, and consequently that actual delivery of it be made to him, unless he has possession of it already by some other right."

2. E.g., delivery to a third person agreed on by parties (Art. 3162, La. Civil Code of 1870); pledge of incorporeal right (La. Act 95 of 1938 [La. R.S. (1950) 9:4321 et seq.]).

3. 217 La. 418, 46 So. 2d 612 (1950).

4. La. Act 189 of 1914, as amended by La. Act 155 of 1934, repealed and replaced by the more recent statute, La. Act 195 of 1948, § 14.37 (La. R.S. [1950] 22:647).