

Louisiana Law Review

Volume 7 | Number 1
November 1946

Donations Inter Vivos - Manual Gifts - Formalities Required

Edward D. Moseley

Repository Citation

Edward D. Moseley, *Donations Inter Vivos - Manual Gifts - Formalities Required*, 7 La. L. Rev. (1946)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol7/iss1/23>

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

that the rule that the railroad carrier itself may segregate is still applicable to interstate as well as intrastate passengers.¹⁹

Pullman and air line carriers, who are required, of course, to accommodate both races,²⁰ would be faced with a more serious burden than that in the instant case if forced to make provisions for separate accommodations.²¹ In these cases, segregation, it would appear, is so impracticable as to render translation into a legal requirement out of the question.

In conclusion, a consideration of whether Congress could prescribe less than a nationally uniform rule for motor common carriers deserves comment. Taken literally, the language of Mr. Justice Reed's opinion²² would reflect doubt upon an act of Congress providing for segregation in the southern states and non-segregation in other states. This troubled Mr. Justice Frankfurter, who was at pains to point out, in concurring, that "Congress may effectively exercise its power under the Commerce Clause without the necessity of a blanket rule for the country."²³

MINOS D. MILLER, JR.

DONATIONS INTER VIVOS—MANUAL GIFTS—FORMALITIES REQUIRED—Mrs. Gorman, after being confined to the hospital, executed a power of attorney authorizing the defendant, a half sister, to withdraw her money from the bank. The evidence showed that Mrs. Gorman gave the defendant certain jewelry and her bank-book with the understanding that the jewelry and such money as was left after payment of bills would be a gift to the defendant. The defendant withdrew the money from the bank during the lifetime of Mrs. Gorman, paid her hospital bills and retained the balance as her own. In her will Mrs. Gorman left all her

19. *Chiles v. Chesapeake & Ohio R.R.*, 218 U.S. 71, 30 S.Ct. 667, 54 L.Ed. 936, 20 Ann. Cas. 980 (1910).

20. 54 Stat. 902 (1940), 49 U.S.C.A. § 3(1) (Supp. 1945). As to dining car service, see *Henderson v. United States*, 63 F. Supp. 906 (D. C. Md. 1945).

21. *Mitchell v. United States*, 313 U.S. 80, 61 S.Ct. 873, 85 L.Ed. 1201 (1941) (where a negro traveling interstate recovered damages because he was forced by the conductor to move from his pullman to a coach provided for negro passengers, in purported compliance with an Arkansas statute requiring segregation).

22. Only two justices concurred in the majority opinion. *Supra* note 6.

23. He relied upon *Clark Distilling Co. v. Western Maryland R.R.*, 242 U.S. 311, 37 S.Ct. 180, 61 L.Ed. 326, L.R.A. 1917B, 1218, Ann. Cas. 1917B, 845 (1917); and *Whitfield v. Ohio*, 297 U.S. 431, 56 S.Ct. 532, 80 L.Ed. 778 (1936) to support the theory that Congress may devise a national policy with due regard to varying interests of different regions. While that theory doubtless underlies those decisions, it should be noted that both involved federal implementation of state law (one as to liquor and the other as to convict-made goods), and not primary federal regulation.

property to two other parties, appointing one of them executor. The testamentary executor brought suit to recover the money and jewelry in the possession of the defendant. *Held*, in order to complete the manual gift it suffices that the will of the donor to give the actual possession of the movable property by the donee operate simultaneously. In this case the desire to make the gift was in full operation at the moment the defendant actually received the money from the bank. *Succession of Gorman*, 209 La. 1092, 26 So. (2d) 150 (1946).

The decision of the instant case was based upon Article 1539,¹ which states that the giving of corporeal movable effects accompanied by real delivery is not subject to any formality, and upon Article 2478,² which declares that tradition or delivery of movable effects takes place when the purchaser already had them in his possession under another title.

Money may be donated by manual gift.³ The courts have held that a manual gift of money may be perfect and complete without the actual transferring of cash from hand to hand, the intention to give consummated by a real delivery being all that is necessary.⁴ In the instant case an intention to give consummated by a real delivery was clearly shown. The parties merely adopted the most expedient means of making the donation. It would have been an idle ceremony for the defendant to withdraw the money from the bank and deliver it to the donor in order that she might then give it to the donee.⁵

The court distinguished the *Succession of Housknecht*,⁶ which was relied on by the plaintiff. In that case a written request by the deceased to the president of the bank to transfer her account to her daughter was held null and void as a donation inter

18. For discussion of central registration systems in other states, see Daggett, *The Chattel Mortgage in Louisiana* (1939) 13 *Tulane L. Rev.* 19, 31; Daggett, *Louisiana Privileges and Chattel Mortgage* (1942). See also, Daggett, *loc. cit. supra* note 12.

1. 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."

2. Art. 2478, La. Civil Code of 1870: "The tradition or delivery of movable effects takes place either by their real tradition, or by the delivery of the keys of the buildings in which they are kept; or even by the bare consent of the parties, if the things cannot be transported at the time of sale, or if the purchaser had them already in his possession under another title."

3. *Succession of Hale*, 26 La. Ann. 195 (1874).

4. *Succession of Zacharie*, 119 La. 150, 43 So. 988 (1907); *Ory Bros. v. Muller*, 14 La. App. 35, 128 So. 903 (1930); *Succession of Moran v. Moran*, 25 So. (2d) 302 (La. App. 1946).

5. *Cf. Gibson v. Hearn*, 164 La. 65, 113 So. 766 (1927).

6. 135 La. 818, 66 So. 233, L.R.A. 1915B 396 (1914).

vivos because not passed before a notary and two witnesses as required by Article 1536.⁷ Although the daughter held a power of attorney, there was no indication that the will of the donor to make the gift was in operation at the moment the daughter obtained possession and control of the funds. It was clear that her authority under the instrument was merely that of agent and that she received the money from the bank in that capacity. The dissenting opinion in the *Housknecht* case was based on reasoning very similar to that of the majority opinion in the instant case.⁸

It has been held that a deposit of money in the bank by the donor in the name of the donee⁹ or his agent¹⁰ constitutes a donation by manual gift. An analogous situation arose in *Chachere v. Dumartrait*¹¹ where a son-in-law sold real estate belonging to his father-in-law which the latter intended to donate to his daughter. The father ratified the sale and thereupon the price was paid to the son-in-law. The court held that the husband, as the wife's agent, received the money as a donation to her and that the manual gift was as fully executed as if the money had been delivered from the father to his daughter.

It is submitted that no violence is done Article 1536¹² by the reasoning of the instant case. The mere circumstance that a person authorized another to withdraw his funds from a bank under a power of attorney would not of itself constitute a donation of the funds.¹³ But in the instant case, the power of attorney was executed for the purpose of enabling the defendant to obtain possession and control of the funds, not only as an agent, but also as a donee of the residue after the payment of bills. Since the volition of the donor to make the gift of the residue was in operation at the moment the donee actually received the money from the bank, the manual gift was complete.

EDWARD D. MOSELEY

7. Art. 1536, La. Civil Code of 1870: "An act shall be passed before a notary public and two witnesses of every donation inter vivos of immovable property or incorporeal things, such as rents, credits, rights or actions, under penalty of nullity."

8. Succession of Housknecht, 135 La. 818, 66 So. 233, 236 (1914).

9. Succession of Zacharie, 119 La. 150, 43 So. 988 (1907), cited supra note 4.

10. Gibson v. Hearn, 164 La. 65, 113 So. 766 (1927), cited supra note 5.

11. 2 La. 38 (1830).

12. See note 7, supra.

13. Succession of Housknecht, 135 La. 818, 66 So. 233, L.R.A. 1915B 396 (1914), cited supra note 6.