Vanderbilt Law Review

Volume 7
Issue 5 *Issue 5 - August 1954*

Article 12

8-1954

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PERSONAL PROPERTY AND SALES—1954 TENNESSEE SURVEY

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This article is limited to cases involving transfers of personal property by gift or by sale, and the resultant legal relationships. Cases involving liens on personal property, chattel mortgages, and those dealing with sales in bulk are discussed in the article on Creditors' Rights and Security Transactions in this Survey.[1]

PERSONAL PROPERTY

Gifts: Two cases during the Survey period dealt with the requirement of delivery in making gifts *inter vivos*. In *Collins v. Alexander*[2] the facts were these: Prior to his death in 1950 Walker lived with Miss Collins, a niece of his deceased wife. Miss Collins, who was fifty years old, had lived in the Walker home since infancy, and she occupied the position of a daughter in the home. Walker rented a lock box at the bank; both he and Collins had a key to the box, and both placed their valuables in it; in the last few years of his life, because of his physical infirmities, Walker entrusted his key to Collins, and she took care of his business affairs. Some two years before his death Walker apparently purposed to make a gift of certain stocks to Collins. He endorsed the certificates to her, his endorsement was witnessed, and he placed the certificates in an envelope marked "To be given to Miss Doris Collins at my death." The envelope was placed in the lock box by a third party, and nothing was ever said by Walker to Collins concerning it. Collins saw the envelope repeatedly on her visits to the box, but she never inquired as to its meaning or contents. Stock and cash dividends on the stock represented by the endorsed certificates were received by Walker and treated as his own. Upon Walker's death, his executrix took possession of his effects, including the envelope in question, and sued for a declaratory judgment to determine who owned the shares. It seems clear that delivery so as to effectuate a gift *inter vivos* never occurred. Attorneys for Collins argued unsuccessfully that the Uniform Stock Transfer Act[3] placed the burden of proof on the estate to prove that Miss Collins as endorsee did not have title to the stock. The court properly ruled that endorsement without delivery conveys no title to a negotiable instrument, so that under either theory

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1. Hartman, *Creditors' Rights and Security Transactions—1954 Tennessee Survey, supra* p. 799.

2. 260 S.W.2d 414 (Tenn. App. W.S. 1952).

3. TENN. CODE ANN. § 4094 *et seq.* (Williams 1934).

the failure to deliver would defeat Collins. In a lengthy opinion by the late Judge Anderson, the Court of Appeals sets out two tests to determine whether or not delivery has taken place: (1) Could the donee maintain an action against the donor for possession of the property? (2) If the donor should retake the property without the consent of the donee, would the donor be answerable in damages as a trespasser? Unquestionably the answer to both questions was in the negative in the *Collins* case.

If lawyers were permitted to advertise, this case would provide the basis for an impressive sales talk. For here the intention to give was clearly established; the moral right to receive the gift clearly appears; but because the donor failed to satisfy the requirements of a valid delivery the gift failed. Some kind of educational campaign is needed to convince the public that a half-hour's conference with a competent lawyer can avoid such unnecessary frustration.

The second gift-delivery case was *Pamplin v. Satterfield.*[4] There the complainant claimed to be the owner of a diamond ring by gift from her mother-in-law. Complainant alleged, and so far as appears the allegations was undisputed, that her mother-in-law made a gift of the ring; but that since complainant already had a desirable ring, complainant insisted that the donor retain the ring and wear it until her death. Apparently no actual delivery, even for an instant, took place, though complainant stated that from that time on all parties recognized that the donor was wearing the ring as "agent or trustee" of the donee-complainant. At the mother-in-law's death her husband took the ring and the "trustee" arrangement continued by mutual agreement, the husband now wearing the ring. At his death his son gave the ring to the son's wife, and complainant instituted suit.

Perhaps there is no single rule of law that is more universally honored than that which states that there can be no parol gift of a chattel capable of manual tradition without a delivery thereof.[5] As Justice Burnett points out, there must be a relinquishment of dominion and control over the chattel in order to constitute a delivery. Of course, once a valid gift has been properly consummated, the donee can redeliver to the original donor, who will hold as bailee, agent, trustee, or in whatever capacity the parties intend. But under the rule of the *Pamplin* case the original owner cannot change his status from owner to bailee or trustee by expressing a clear intention to make a gift, unless some kind of delivery takes place.

4. 265 S.W.2d 886 (Tenn. 1954).

5. BROWN, PERSONAL PROPERTY § 38 (1936); Atchley v. Rimmer, 148 Tenn. 303, 255 S.W. 366, 30 A.L.R. 1481 (1923); O'Brien v. Waggoner, 20 Tenn. App. 145, 96 S.W.2d 170 (M.S. 1936).

SALES

There was a complete dearth of absolute sales cases during the Survey period. One case arose under the Bulk Sales Statute, and it is discussed elsewhere in this Survey.[6] One other case perhaps deserves mention. In *Lillard v. Yellow Mfg. Acceptance Corporation*[7] the plaintiff was the assignee of a conditional vendor of an automobile in Georgia where the conditional sales contract was duly recorded. The conditional vendee, with the permission of plaintiff, assigned his interest in the chattel to *X*. Without the knowledge or consent of the plaintiff the automobile was removed to Tennessee and the original vendee had applied for a title certificate in Tennessee without disclosing the existence of the conditional seller's lien. Creditors of the original vendee attached the automobile. *X* brought a replevin action which was settled and dismissed. Plaintiff then brought this replevin action to recover the car from the sheriff, the vendee being in default in payments under the contract. With the exception of a somewhat involved procedural tangle, the case offers nothing unusual or unexpected. The court held that the Motor Vehicle Title and Registration Act[8] in no way affected the priority rights of an out-of-state lienholder whose lien was duly recorded; certainly there is nothing in the statute to warrant a contrary conclusion. The court also rejected the contention that the act of a conditional vendee or his assignee in suffering the vehicle to be attached, or in dismissing a replevin action to recover it, could in any way prejudice the rights of the conditional vendor when he was in no sense a party to the proceedings. The concept of res judicata simply does not lend itself to any other interpretation.

6. The case is Bradas & Gheens, Inc. v. Brewer, 195 Tenn. 139, 258 S.W.2d 734 (1953), discussed in detail in Hartman, *Creditors' Rights and Security Transactions—1954 Tennessee Survey, supra* p. 000 at 000.

7. 263 S.W.2d 520 (Tenn. 1953).

8. TENN. CODE ANN. §§ 5538.101—5538.197 (Williams Supp. 1952).