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Reformation of Voluntary Conveyances

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NOTES

REFORMATION OF VOLUNTARY CONVEYANCES

It has frequently been stated that equity will not reform a conveyance which is merely voluntary and based on no consideration.[1] As thus broadly stated the rule is manifestly inaccurate, for it is universally recognized that a grantor is entitled to have a voluntary conveyance reformed.[2] Moreover, the rule is unhelpful and even misleading, for it does not define the term "voluntary" and it ignores a line of authority which allows reformation of concededly voluntary conveyances in favor of parties other than the grantor.

The continued recital of this rule is probably due to a spontaneous reaction of abhorrence on the part of chancellors to the idea that an intended donee, a mere volunteer, should seek equity's assistance in obtaining something for nothing. Where the donee brings suit against the donor, this reaction is understandable, unless the donor has been guilty of deceitful conduct to the donee's detriment. But the donee or his successor in interest may have a conscionable claim, especially in a case where the donor is not a party and no longer has any interest in the property.[3]

This will be a review of the authorities and a consideration of the underlying principles to determine: (1) when a conveyance is voluntary in the sense intended by the rule forbidding reformation of voluntary conveyances; (2) what circumstances may induce equity to reform a conveyance which is, in a broad sense, voluntary; and (3) what other techniques for granting relief may be available.

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1. *E.g.*, Lynn v. Lynn, 33 Ill. App. 299 (1889), *rev'd on other grounds*, 135 Ill. 18, 25 N.E. 634 (1890) (requires *valuable* consideration); Baker v. Pyeatt, 108 Ind. 61, 9 N.E. 112 (1886); Tuthill v. Katz, 174 Mich. 217, 140 N.W. 519 (1913) (requires either consideration or consent of the parties); Hoyt v. Oliver, 59 Mo. 188 (1875); Powell v. Morisey, 98 N.C. 426, 4 S.E. 185, 2 Am. St. Rep. 343 (1887) (requires either valuable or meritorious consideration); Hunt v. Frazier, 59 N.C. (6 Jones Eq.) 90 (1860); Willey v. Hodge, 104 Wis. 81, 80 N.W. 75, 76 Am. St. Rep. 852 (1899); Lee v. Henley, 1 Vern. 37, 23 Eng. Rep. 292 (Ch. 1681). See Notes, 69 A.L.R. 423 (1930), 128 A.L.R. 1299 (1940).

2. *E.g.*, Jones v. McNealy, 139 Ala. 378, 35 So. 1022, 101 Am. St. Rep. 38 (1904); Crockett v. Crockett, 73 Ga. 647 (1884); Deischer v. Price, 148 Ill. 383, 36 N.E. 105 (1894); Abbot, *Mistake of Fact as a Ground for Affirmative Equitable Relief*, 23 HARV. L. REV. 608 (1910); Notes, 69 A.L.R. 423 (1930), 128 A.L.R. 1299 (1940).

3. Aside from the question of consideration, the great weight of authority is to the effect that, where the grantee seeks reformation to include property mistakenly omitted, the defective conveyance is an adequate memorandum to satisfy the Statute of Frauds. *E.g.*, Blackburn v. Randolph, 33 Ark. 119 (1878); Kevern v. Kevern, 11 Ohio App. 391 (1917); Judson v. Miller, 106 Mich. 140, 63 N.W. 965 (1895); First National Bank v. Ashby, 2 Tenn. App. 666 (M.S. 1925); Note, 86 A.L.R. 448 (1933). *Contra:* Glass v. Hulbert, 102 Mass. 24, 3 Am. Rep. 418 (1869). Although the fact of payment has been emphasized, Ruhlman v. Hackett, 1 Nev. 360, 369 (1865), the lack of consideration should not change the result, since in either case the court will require clear and convincing proof.

When is Conveyance Voluntary?

In granting reformation equity gives an extraordinary remedy where the legal remedy is inadequate to secure the legal right.[4] Since it is a legal right which is sought to be enforced by the equitable remedy, it would seem that equity would look to the common law to determine whether the requisites of a legally binding promise are present. In general equity does follow the common law in this respect. But equity does not always follow the common law in the matter of determining whether there is consideration to render the promise binding.[5] In a discussion of the chancellors' motivation in cases in which equity departs from the common law on the question of consideration Dean Pound says in summary: "[B]ehind all these is a . . . feeling that faith ought to be kept, that so far as possible he [the chancellor] ought to hold men to their promises, that a deliberately declared intention to benefit another ought to be given effect."[6] *Seavey v. Drake*[7] is a striking example of enforcement by equity of a promise which would not be binding at law. In that case a father made an oral gift of land to his son and put him in possession. The son made extensive improvements on the land and then sought specific performance of the promise to convey. The court said: "The expenditure in money or labor . . . induced by the donor's promise to give the land to the party making the expenditure, constitutes, *in equity,* a consideration for the promise, and the promise will be enforced."[8] There was something like deceit on the part of the donor in this case. Equity sometimes recognizes and gives effect to "meritorious consideration" where there is a blood relationship between the grantor and the grantee or where the grantee is a charitable institution.[9]

There are a varying number of policy factors in the cases under discussion which may influence the court's decision. Broadly, there is on the one hand a policy to require the promisor to keep faith, or, if he is dead, to give effect to his intention. And on the other hand there is a policy against aiding a volunteer. The variances in the factual situations in the cases have not been conducive to a crystallization of the concept of equitable consideration. It is important to realize that equity allows itself considerable latitude in the matter and that the court may decide the consideration question primarily for the purpose of reaching an equitable result.

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4. 3 Pomeroy, Equity Jurisprudence § 870 (5th ed., Symons, 1941); Pound, *Consideration in Equity,* 13 Ill. L. Rev. 667, 679 (1919).

5. Pound, *Consideration in Equity,* 13 Ill. L. Rev. 667 (1919).

6. *Id.* at 679.

7. 62 N.H. 393 (1882).

8. *Id.* at 394 (italics added). See also Crosbie v. McDoual, 13 Ves. 148, 33 Eng. Rep. 251. (Ch. 1806).

9. See *infra* pp. 328-29.

WHEN WILL REFORMATION BE GRANTED?

Donee's rights as against donor.—If the intended gift was incomplete for lack of delivery or any other reason, the intended donee, as against the donor, is clearly without any prospect of relief. But in the case of a formally completed gift which includes less than the donor intended to transfer, reformation, if available, would give the donee complete relief. In the case of a donee against the donor the donee ordinarily cannot make an equitable showing. The court will not stir itself to find consideration in such a case; and when it declares the conveyance voluntary, the donee's chance for relief has gone.[10] Where the donee has occupied the land and made improvements, equity might reform the conveyance as against the grantor. No case in point is found, but it would seem that, on the principle of *Seavey v. Drake*[11] where a wholly oral and executory promise was enforced, equity would grant relief in such a case.[12]

Where the grantee is a charitable institution it has been given reformation, even though there was no showing of legal consideration or of inequitable conduct on the donor's part.[13] The charitable institution, because of its nature, is deemed to have given "meritorious consideration."[14]

Donee's rights as against donor's heirs.—The courts are split on the question of the donee's right to reformation as against the donor's heirs. Some take the position that the donor's intent should be given effect and that the prevailing equities are on the side of the intended donee rather than on the side of the heir who would take by a windfall.[15] Although a majority of the

10. *E.g.*, German Mut. Ins. Co. v. Grim, 32 Ind. 249, 2 Am. Rep. 341 (1869); Shears v. Westover, 110 Mich. 505, 68 N.W. 266 (1896); Metcalfe v. Lowenstein, 35 Tex. Civ. App. 619, 81 S.W. 362 (1904). In Eaton v. Eaton, 15 Wis. 259, 259-60 (1862), the court expressed the attitude toward such suits: "Judicial tribunals act to enforce legal obligations, not to compel parties to carry into execution mere benevolent intentions, which they may once have entertained, but have subsequently abandoned. So far as giving is concerned, they are allowed to say as Falstaff did of reasons, that they will not 'give upon compulsion.'"

11. See notes 7 and 8 *supra*.

12. *Cf.* Tampa Northern R.R. v. City of Tampa, 104 Fla. 481, 140 So. 311 (1932) (grantee's fulfillment of agreement to fill in submerged land and to use for commercial purpose held to constitute consideration for city's conveyance).

13. Price v. School Directors, 58 Ill. 452 (1871).

14. "[T]he gift was to a charity from which the donor had already received, and continued to receive . . . a personal benefit in religious instruction and consolation, besides the general benefit which he, in common with all the citizens and property owners of the vicinity, derived from the improvement of the morals of the inhabitants and the general attractiveness of the city. . . . These benefits . . . created a moral obligation . . . to make compensation, and so formed a *quasi* consideration for the gift. . . ." Methodist Episcopal Church v. Town, 47 N.J. Eq. 400, 20 Atl. 488, 491 (1890); Sims v. Camp Creek School Dist., 117 S.C. 461, 109 S.E. 148 (1921).

15. "If the donor were living it . . . could not be reformed against his will, for a volunteer must take the gift as he finds it; but after his death, and in the absence of proof of any change of intention, it cannot be assumed that he would have dissented, and it might even be presumed that he would not dissent." M'Mechan v. Warburton, [1896] 1 Ir. R. 435; Laundreville v. Mero, 86 Mont. 43, 281 Pac. 749, 69 A.L.R. 416 (1929), 43 HARV. L. REV. 968 (1930), 14 MINN. L. REV. 425 (1930); Lawrence v. Clark, 115 S.C. 67, 104 S.E. 330 (1920), 30 YALE L.J. 418 (1921); O'Conner v. McCabe, 42 S.D. 506, 176 N.W. 43 (1920).

courts assert the contrary view, they will still be inclined to find consideration.[16] Thus where the grantee was a natural object of the grantor's bounty, a nominal recited consideration plus the "meritorious consideration" of natural love and affection has frequently been held to render the conveyance nonvoluntary.[17] Some courts have held conveyances nonvoluntary even though there was no valuable consideration recited.[18] Where the grantee is also an heir, most courts will grant reformation, if the other heirs have been provided for and it appears that the gift was made as part of a family settlement.[19] Also, where the parties are claiming under the same conveyance and the grantor's interests are not at stake, voluntary conveyances have been reformed.[20]

Rights of purchasers from, or creditors of, grantor or grantee.—Generally, purchasers from, or creditors of, the grantor stand in the grantor's shoes.[21] Thus they will ordinarily be given reformation[22] and reformation will not be given against them,[23] if the conveyance is deemed voluntary. Likewise, purchasers from, or creditors of, the voluntary grantee have only such rights as the grantee had.[24]

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16. "[T]he modern trend of the cases [is] to seize upon some fact or circumstance that may be construed as a valuable as opposed to a mere good consideration. . . ." Triesback v. Tyler, 62 Fla. 580, 56 So. 947, 948 (1911); Baker v. Pyeatt, 108 Ind. 61, 9 N.E. 112 (1886) (past services rendered by grantee, daughter of grantor, constituted consideration for deed); Hoyt v. Oliver, 59 Mo. 188 (1875) (consideration was prior existing debt); see Notes, 69 A.L.R. 423, 435 (1930), 128 A.L.R. 1299, 1303 (1940).

17. Mason v. Moulden, 58 Ind. 1 (1877) (deed to niece for $1 and love and affection); Crawley v. Crafton, 193 Mo. 421, 91 S.W. 1027 (1906) (deed to wife at a time when grantor was about to engage in an unfamiliar business—recited consideration of $1,250 was concededly never paid); O'Conner v. McCabe, 42 S.D. 506, 176 N.W. 43 (1920) (deed to adoptive brother—$1 and "other valuable consideration" recited). *But cf.* Triesback v. Tyler, 62 Fla. 580, 56 So. 947 (1911) (deed to son, recited consideration of $5 never paid); Strayer v. Dickerson, 205 Ill. 257, 68 N.E. 767 (1903) (deed to wife for $1 and love and affection); Lynn v. Lynn, 33 Ill. App. 299 (1889); *rev'd on other grounds*, 135 Ill. 18, 25 N.E. 634 (1890) (deed to son, $3,000 recited consideration never paid); Shears v. Westover, 110 Mich. 505, 68 N.W. 266 (1896) (deed to grandson for $1 and love and affection).

18. Partridge v. Partridge, 220 Mo. 321, 119 S.W. 415, 132 Am. St. Rep. 584 (1909) (deed to wife for purpose of providing for her widowhood); Shepard v. Shepard, 7 Johns, Ch. 57 (N.Y. 1823) (same). *But cf.* Smith v. Smith, 80 Ark. 458, 97 S.W. 439, 10 Ann. Cas. 522 (1906) (deed to wife); Turner v. Newell, 129 Ga. 89, 58 S.E. 657 (1907) (deed to wife and minor children); Powell v. Morisey, 98 N.C. 426, 4 S.E. 185, 2 Am. St. Rep. 343 (1887) (deed to grandchildren); Willey v. Hodge, 104 Wis. 81, 80 N.W. 75, 76 Am. St. Rep. 852 (1899) (deed to son).

19. *E.g.*, M'Call v. M'Call, 3 Day 402 (Conn. 1809); St. Clair v. Marquell, 161 Ind. 56, 67 N.E. 693 (1903); Swinebroad v. Wood, 123 Ky. 664, 97 S.W. 25 (Ct. App. 1906); Spencer v. Spencer, 115 Miss. 71, 75 So. 770 (1917). *Contra:* Triesback v. Tyler, 62 Fla. 580, 56 So. 947 (1911) *semble;* Lee v. Henley, 1 Vern. 37, 23 Eng. Rep. 292 (Ch. 1681) *semble.* See Notes, 69 A.L.R. 423, 428 (1930), 128 A.L.R. 1299, 1301 (1940).

20. Adair v. McDonald, 42 Ga. 506 (1871) (held analogous to correcting will); Huss v. Morris, 63 Pa. 367 (1869).

21. See Notes, 69 A.L.R. 423, 431 (1930), 128 A.L.R. 1299, 1302 (1940).

22. German Mut. Ins. Co. v. Grim, 32 Ind. 249, 2 Am. Rep. 341 (1869).

23. Jones v. McNealy, 139 Ala. 378, 35 So. 1022, 101 Am. St. Rep. 38 (1904); Turner v. Newell, 129 Ga. 89, 58 S.E. 657 (1907).

24. Browne v. Gorman, 208 S.W. 385 (Tex. Civ. App. 1919). See note 21 *supra.*

OTHER TECHNIQUES

In the reported cases in which mistakes in voluntary conveyances have been rectified, reformation has been the only procedural technique employed. There are, however, several other techniques which may be applicable and which may, in proper cases, be presented.

Constructive trust. The constructive trust technique has been advanced as a rationalization of the cases which allow reformation of essentially voluntary conveyances.[25] According to this explanation of the cases, the courts have granted reformation whenever the adverse claimant would be unjustly enriched if permitted to retain the property.[26] This technique should be especially appealing to a court which is bound by prior decisions to a strict application of the rule forbidding reformation. By a liberal application of the unjust enrichment principle such a court could impose a constructive trust in any case in which the prevailing equities were on the complainant's side.

Estoppel. In a few cases the technique of a promissory estoppel, as distinguished from a true equitable estoppel, may be employed. Where a promisee, relying on a mere oral promise to convey, made extensive improvements on the land, specific performance was decreed against the promisor.[27] Where the promisee makes improvements in reliance upon a defective conveyance, there appears to be no reason why he should not have the same relief. Relief may be granted in either case on the basis that the promisee's change of position in reliance upon the promise or defective conveyance constituted equitable consideration.[28] Although the court may not apply the promissory estoppel principle as such, it is an arguable technique; and where the intended donee has made improvements or otherwise changed his position,[29] he has enhanced his chances of obtaining relief by any of the available techniques.[30]

CONCLUSION

The courts may take the conveyance out of the voluntary class by finding equitable consideration. They are especially inclined to find consideration where the donor is dead or his interests are not involved and where the

25. 3 SCOTT, TRUSTS §§ 466-73 (1939); RESTATEMENT, RESTITUTION, Explanatory Notes § 164 (1937).

26. *Ibid.*

27. See notes 7 and 8 *supra.*

28. In the cases granting relief where the gift was to a charitable institution, there was action in reliance upon the defective conveyance. The courts, however, based their holdings on the theory of meritorious consideration. See notes 13 and 14 *supra.*

29. See Cummings v. Freer, 26 Mich. 128 (1872) (grantee mortgaged the land).

30. Turner v. Newell, 129 Ga. 89, 58 S.E. 657 (1907) held that the grantees, wife and minor children of the grantor, who had moved on the land under a defective voluntary deed but had made no improvements, could not reform as against a judgment creditor of the grantor.

prevailing equities are on the complainant's side.[31] The lawyer seeking reformation of an essentially voluntary conveyance should emphasize these factors, if they are present, and should argue the theoretical concept of equitable consideration.

Where the donor is dead, the theory that the general rule is inapplicable[32] appears to be logically sound and likely to operate to permit substantial justice. The reason for the general rule, according to this theory, is that the donor should not be compelled to bestow his bounty against his will. If the donor is living, he can, of course, consent to reformation. If the donor dies, believing that he has made a prefect conveyance, the natural presumption is that, if living, he would consent. Therefore, when equity reforms his conveyance, it is merely giving effect to the deceased grantor's presumed intent. This is analogous to the theory upon which equity bases the correction of mistakes in wills.[33]

In proper cases the lawyer seeking relief should argue that constructive trust or promissory estoppel is available as a technique which may be employed to reach an equitable result.

If the lawyer is able to present strong equities in his client's favor and if he will point out the techniques available, he may reasonably expect relief to be granted. The numerous cases granting relief to the donee and his successors in interest seem to warrant the statement of a general rule that relief will be granted, if

> "(a) the intended donee has so changed his position that it would be inequitable to preclude him from obtaining the property, or
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> (b) the donor has died believing that he has made an effective conveyance, and the intended donee was a natural object of his bounty, and it is not inequitable to permit him to have the property."[34]

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31. *Compare* Turner v. Newell, 129 Ga. 89, 58 S.E. 657 (1907) *with* Partridge v. Partridge, 220 Mo. 321, 119 S.W. 415, 132 Am. St. Rep. 584 (1909).

32. See note 15 *supra.*

33. Adair v. McDonald, 42 Ga. 506, 508 (1871); O'Conner v. McCabe, 42 S.D. 506, 176 N.W. 43, 45 (1920); 1 STORY, EQUITY JURISPRUDENCE §§ 179-81 (12th ed., Perry, 1877).

34. RESTATEMENT, RESTITUTION § 164 (1937).