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Gifts--Corporate Stock--Delivery

GIFTS—CORPORATE STOCK—DELIVERY.—On June 8, 1924, John G. Kratli, being the owner of a certificate of shares of corporate stock, caused to be written upon the back of said certificate an indorsement transferring it to Frank W. Kratli, his son. The indorsement was dated, witnessed, and signed by the indorser. From the time of the indorsement to the death of the indorser in January, 1929, the certificate was kept in his safety deposit box, to which he held the only key except the one kept by the bank. All dividends paid on the stock during this time were paid to John G. Kratli. The son, indorsee of the certificate, claimed a gift *inter vivos* of the certificate. Frequently, during the summer of 1928, the son accompanied his father, the decedent, to the bank. *Held*, there was not a gift *inter vivos*. Judgment for claimant, reversed.[1]

While the law requires delivery of the gift to be made and many cases state the rule to be that there must be an absolute transfer of the property from the donor to the donee,[2] several cases modify this rule by holding that it is not to be enforced arbitrarily[3] and it should be the object of the court not to defeat, but rather to carry into effect, the intention of the intestate, if it is able to do so without violation of some controlling

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[35] *Kent v. Interstate Public Service Co.* (1929), 168 N. E. 465; *Indianapolis Water Co. v. Harold* (1907), 170 Ind. 170, 83 N. E. 993.

[36] *The Louisville, N. A. etc. R. Co. v. Leass* (1894), 11 Ind. App. 654, 38 N. E. 774.

[37] *Union Pacific Ry. Co. v. Dundem* (1887), 37 Kans. 1, 14 Pac. 501.

[1] *Kratli v. Starke County Trust & Savings Bank*, Appellate Court of Indiana, December 23, 1932, 183 N. E. 696.

[2] *Hayes v. McKinney* (1919), 73 Ind. App. 105, 126 N. E. 497; *Tenbrook v. Brown* (1861), 17 Ind. 410; *Smith v. Dorsey* (1872), 38 Ind. 451; 10 Am. Rep. 216; *Daubenspect v. Biggs*, 71 Ind. 255; *Buschian v. Hughart*, 28 Ind. 449; *Smith v. Ferguson*, 90 Ind. 229, 46 Am. Rep. 216; *Pruitt v. Pruitt*, 91 Ind. 595; *Bingham v. Stage*, 123 Ind. 281; *Richard v. Reeves*, 149 Ind. 427; *Martin v. McCullough, Adm.* (1893), 136 Ind. 331, 34 N. E. 819; *Crawfordsville Trust Co. v. Ramsey* (1913), 55 Ind. App. 40, 100 N. E. 1049, 102 N. E. 282; *Reasoner, Adm. v. Bohne* (1921), 76 Ind. App. 114, 129 N. E. 490; *Ogdon, Adm. v. Washington Natl. Bank* (1924), 82 Ind. App. 187, 145 N. E. 514; *Snyder v. Frank* (1912), 53 Ind. App. 301, 101 N. E. 684; *Dewey v. Barnhouse* (1910), 83 Kans. 12, 109 Pac. 1081, 29 L. R. A. (N. S.) 166; *Miller v. Williams* (1923), 195 Iowa 1305, 192 N. W. 798; *Jones v. Jones* (1918, Mo.), 201 S. W. 557; *Edson v. Lucas* (1931), 40 Fed. (2) 398; *Copland v. Commissioner* (1931), 41 Fed. (2) 501.

[3] *Teague v. Abbott* (1912), 51 Ind. App. 604, 100 N. E. 27; *Ross, Exr. v. Watkins* (1923), 80 Ind. App. 487, 141 N. E. 477; *Stephenson's Adm. v. King, etc.* (1883), 81 Ky. 425, 50 Am. Rep. 173.

principle of law.[4] In case of a gift of an article of personal property by the father to his child the change of possession need only be such as the circumstances and the nature of the property will permit.[5] The fact that the decedent retained the right to the dividends[6] and that he retained the key of the safety-deposit box is not of itself sufficient to defeat the gift.[7] Delivery may be either constructive or symbolical, dependent on the subject matter.[8] Knowledge of the transaction by the donee is not necessary,[9] and his acceptance will be presumed if the gift is entirely beneficial to him.[10]

While giving lip service to the rule that an absolute transfer is necessary to have a valid delivery there are cases which, in result, only require that the donor recognize his continued possession as not in conflict with the donee's ownership,[11] and the donor is declared a trustee for the benefit of the donee.[12] These limitations put on the general rule of absolute transfer for a valid delivery show that in practice a literal interpretation is not given to the word "absolute." While this tendency to give effect to the intentions of the parties is commendable, yet it is dangerous if carried too far, as it increases the chances of fraud against decedent's estates.

Under the facts presented to the Appellate Court there was not a valid gift *inter vivos* in this case as there was no delivery in any sense. Because of the appellee's failure to file a brief it was impossible for the upper court to determine accurately this case on its merits. The statement of fact that frequently during the summer of 1928 the claimant accompanied his father to the bank tends to show that there might have been facts which would have constituted a delivery to have completed the gift, but such facts could not be presumed under so broad a statement.

J. D. W.

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[4] *Jacobs v Jolley* (1902), 29 Ind. App. 25, 62 N. E. 1028.

[5] *The Gammon Theological Seminary v. Robbins* (1890), 128 Ind. 85, 12 L. R. A. 506; *In re Kaufman's Estate* (1924) 281 Pa. 519, 127 Atl. 133.

[6] *Smith v. Commissioners* (1932), 59 Fed. (2) 533; *Jacobs v. Jolley, supra;* Note in 3 A. L. R. 906; *Ross, Exr. v. Watkins* (1923), 80 Ind. App. 487, 141 N. E. 477; Same in case of trust *Green v. McCord* (1903), 30 Ind. App. 470; *Copeland v. Summers* (1894), 138 Ind. 219; *Wyble v. McPheters* (1876), 52 Ind. 393.

[7] *Smith v. Commissioners* (1932), 59 Fed. (2) 533; *Bingham v. White* (1929) 31 Fed. (2) 574; *Stevenson et al v. Hunter* (1930), 131 Kans. 750, 293 Pac. 500; *Brine v. Parker* (1930), 271 Mass. 86, 190 Pac. 836; *Hynes v. White* (1920), 47 Cal. App. 549, 190 Pac. 836.

[8] *Devol v. Dye* (1889), 123 Ind. 321, 24 N. E. 246, 7. L. R. A. 439; *Richards v. Wilson* (1916), 185 Ind. 335, 383, 112 N. E. 780; *In re Cohn* (1919), 176 N. Y. S. 225; *Matter of Van Alstyne* (1913), 207 N. Y. 298, 100 N. E. 802; *Contra: Albreacht v. Slater* (1921, Mo.), 233 S. W. 8.

[9] *Goelz v. People's Saving Bank* (1903), 31 Ind. App. 67.

[10] *Warner v. Keiser* (1931), 93 Ind. App. 547, 177 N. E. 369 and cases cited.

[11] *Jacobs v. Jolley, supra,* and cases cited; *Grant Trust, etc., Co. v. Tucker* (1911), 49 Ind. App. 345, 96 N. E. 487; *Smith, Adm. v. Moore* (1921), 77 Ind. App. 455, 133 N. E. 837; *Townsend v. Schaden* (1918), 275 Mo. 227, 204 S. W. 1076; *Contra; Hatton, Exr. v. Jones* (1881), 78 Ind. 466; *Hale v. Hale* (1920), 189 Ky. 171, 224 S. W. 1078.

[12] *Reasoner, Adm. v. Bohne* (1921), 76 Ind. App. 114, 129 N. E. 490, and cases cited; *Ray v. Simmons* (1875), 11 R. I. 266, 23 Am. Rep. 447; *Martin v. Funk* (1878), 75 N. Y. 134, 31 Am. Rep. 446; *Minor v. Rogers* (1873), 40 Conn. 512, 16 Am. Rep. 69; *Scallan v. Brooks* (1900), 66 N. Y. S. 591; *Farleigh v. Cadman* (1899), 159 N. Y. 169, 53 N. E. 808.