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Personal Property--Gifts--Informal Writing as Constituting Sufficient Delivery

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Corp., 194 Va. 872, 75 S.E.2d 694 (1953). On certiorari the Supreme Court held that the state had jurisdiction to try the tort action even though the same tortious act did, under the LMRA, constitute an unfair labor practice. The court proceeded on the theory that, since the LMRA did not provide a remedy for the consequences of such tortious conduct, it was still within the power of the state to award such relief.

In the principal case the court held that although the Board, if the respondent had applied to it, could have awarded him back pay, the fact that the state would also make such an award in a tort action would not cause a conflict of remedies.

It would seem then that in the principal case the Court could have held, under the *Garner* case, that the power of the state to award back pay in a tort action had been pre-empted since Congress had given the Board the power, in its discretion to likewise make such an award. However, the Court chose not to so hold, perhaps because the awarding of back pay does not constitute full tort relief in most cases of this nature, thereby indicating that Congress did not intend for the Board to have jurisdiction in the tort aspect of labor relations. In any case, it follows that by the outcome of the *Russell* and *Laburnum* cases, *supra*, the Supreme Court is supporting pre-emption by direct conflict rather than pre-emption by entry into the field.

It is felt that Congress could regulate even the tort phase of labor relations under the commerce clause as hereinbefore stated; however, the Board thus far has been given no jurisdiction in this aspect of the field. It would seem in accord with the majority of prior opinions concerning labor relations that until Congress legislates in the tort realm of labor relations, the states will continue to have jurisdiction although the act constituting the tort may also consist of an unfair labor practice under the LMRA of 1947.

G. H. A.

PERSONAL PROPERTY—GIFTS—INFORMAL WRITINGS AS CONSTITUTING SUFFICIENT DELIVERY.—Defendant wrote several letters to the plaintiff, his former wife, in which he referred to certain bonds as “your bonds”. He also stated that he would draw the interest on these bonds. Defendant had access to the bonds after the alleged

gift, and upon their remarriage, the plaintiff discovered that the defendant had taken the bonds. The defendant refused to return the bonds, claiming that he never gave them to the plaintiff. The plaintiff contends that there was a manual delivery of the bonds to her by the defendant, who denied making any delivery. *Held*, the defendant's letters to the plaintiff were sufficient to constitute a valid present gift of the bonds to the plaintiff, with the reservation of the interest in the defendant for life. *Smith v. Smith*, 253 F.2d 614 (4th Cir. 1958).

The court was construing West Virginia law in this case. Bonds are capable of being the subject of a gift in West Virginia. *Taylor v. Spurr*, 126 W. Va. 773, 30 S.E. 437 (1924). There must be words of a present gift as well as delivery. If it regards the future, it is but a promise and being without consideration, cannot be enforced. *Sterber v. Combs*, 121 W. Va. 509, 5 S.E.2d 420 (1939). Upon one who claims to be the donee of a gift rests the burden of proof to establish every fact and circumstance necessary to show the validity of the gift, of which the delivery of possession is the strongest and most essential. *Dickerschied v. Exchange Bank*, 28 W. Va. 340 (1886). A gift may be inferred from the conduct of the parties, but the circumstances must be such as to put the question of intention beyond reasonable doubt. *Morris v. Westerman*, 79 W. Va. 502, 92 S.E. 567, 3 A.L.R. 1237 (1917).

The W. VA. CODE ch. 36, art. 1, § 5 (1955), states that, "no gift of any goods or chattels shall be valid unless made by writing, signed by the donor or his agent, or by will, or unless actual possession shall have come to and remained with the donee or some person holding for or under him. . . . No seal shall be necessary to give validity to a gift of goods or chattels by writing, as hereinbefore provided". There are no West Virginia cases construing the revised gift statute. On the particular facts and circumstances involved, this was a case of first impression. There is a split of authority on the question of informal writings or memoranda as being sufficient to constitute a delivery of goods or chattels and proving the proper donative intent needed to constitute a valid gift *inter vivos*.

In the majority of the jurisdictions, the courts have refused to sustain gifts evidenced only by the delivery in informal written instruments. *Eldon v. Treadgall*, 120 N.Y.S.2d 501 (Sup. Ct. 1953); *DeMony v. Jepson*, 255 Ala. 377, 51 So. 2d 506 (1951); *In re Seigle's Estate*, 176 Misc. 15, 26 N.Y.S.2d 410 (Surr. Ct. 1941); *Dodson v.*

National Title Ins. Co., 159 Fla. 371, 31 So. 2d 402 (1947); *Cross v. Cross*, 20 N.J. Misc. 359, 27 A.2d 877 (1942); *Bank of Manhattan Trust Co. v. Gray*, 53 R.I. 377, 166 Atl. 817 (1953). Annot., 48 A.L.R. 2d 1405 (1956). These decisions are based on the grounds that there was no delivery of the subject of the gift, no transfer of possession, and the writings did not sufficiently show donative intent.

The jurisdictions following the minority view take the position that delivery of informal memoranda and letters from the donor to the donee is sufficient to perfect a transfer of a variety of gifts and is sufficient to show the proper donative intent. *In re Roosevelt's Will*, 190 Misc. 341, 73 N.Y.S.2d 821 (Surr. Ct. 1947); *Jesse Parker Williams Hospital v. Nisbet*, 189 Ga. 807, 7 S.E.2d 737 (1940); *In re Cohn*, 187 App. Div. 392, 196 N.Y. Supp. 225 (1st Dep't 1919); *Hawkins v. Union Trust Co.*, 187 App. Div. 472, 175 N.Y. Supp. 694 (1st Dep't 1919). The minority view seems to follow the supposition that if a man's intent is to bestow a gift upon another and he puts this intent in writing, and delivers the writing to the donee it should be sufficient to constitute a gift, and his intent should not be thwarted because he failed to adhere to certain strict, formal requirements.

The court of appeals took the minority view in deciding this case. This view seems to be the more modern view and now has a sizeable following. The requirements of using a deed of gift or a will in order to bestow a gift of personal property upon a friend or relative are vestiges of a bygone age and several states have done away with them. It seems that the West Virginia legislature had this in mind when they revised the gift statute. If, indeed, the only writings sufficient to make a valid gift in West Virginia were held to be a deed of gift or will, then the revision would be pointless, and it is not likely that the legislature intended a pointless revision. A man should be able to give his personal property to whom he pleases and as long as his intentions are to make a gift, any writing expressing this intent and naming the donee, signed by the donor, should be sufficient when delivered to the donee. Gifts are usually made to members of one's family or friends as a method of showing affection or friendship and such a gift should not be nullified by the courts because the donor failed to execute a formal instrument. Many times it is not practical to make a manual delivery but it is never very difficult to send a letter. Also, a man is only as good as his word, and if a man gives his word that he has made a gift, the fact that his word appears in an informal rather than in a formal writing should not

free him of his obligation to the donee, who may have relied heavily upon the gift. The minority view should become the majority view in the foreseeable future.

D. V. W.

REAL PROPERTY—OIL AND GAS LEASES—RIGHTS OF LESSOR AGAINST SUBLESSEE.—Plaintiffs leased certain oil and gas lands to X. By mesne assignments, B acquired X's rights under these leases, all of which were recorded. In 1932, in compromise of a forfeiture suit then being prosecuted by the plaintiff, the plaintiff and B entered into a written modification agreement providing for an increase in the amount of the royalties due the plaintiff. The modification agreement was never recorded. In 1936 B subleased to the defendant and the defendant agreed to pay B such rents and royalties as B might be chargeable with under the leases and agreements through which B derived title. The terms of this sublease were substantially reiterated in a new lease between B and the defendant in 1946. The defendant was sued by the plaintiff for the excess in royalties provided for in the unrecorded agreement over the royalties provided for in the recorded leases. *Held*, where a sublessee agrees with the lessee to assume the obligations of the parent lease, the lessor has a right of action as a creditor beneficiary on that contract regardless of the recording statutes. *Shearer v. United Carbon Co.*, 103 S.E.2d 883 (W. Va. 1958).

There is one matter that has led to considerable difficulty in an analysis of this case as reported. The majority opinion mentions at one point in their decision the fact that the defendant had actual notice of the unrecorded modification agreement prior to the signing of the 1946 lease, under which recovery for the excess royalties was sought. The dissenting opinion states most emphatically that "the defendant was not a party to such agreement, had no notice thereof, or of any fact putting it on inquiry." The conflict thus presented by the majority and minority opinions cannot be reconciled under the limited facts of this case. In spite of the conflict of factual statements, the issue with which this comment is most concerned is squarely raised. It is: is a modification agreement with respect to mineral royalties within the coverage of the West Virginia recording statutes?

The dissenting opinion was based on the contention that the modification agreement was one necessarily covered by the record-