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VOLUNTARY CONVEYANCES.

(*Continued from p.* 11.)

FOURTH PROPOSITION.—*Knowledge by the grantee or donee that the grant or gift has been made is not necessary to its completeness and irrevocability: Clavering* v. *Clavering* (1704), *supra*, p. 7; *Sidmouth* v. *Sidmouth* (1840), *supra*, p. 3.

Smith v. *Lyne*, 2 You. & Col. 345 (1843). Philip Lyne transferred to trustees a certain sum of 3*l.* per cent. consols, and by an indenture made between himself and the trustees, after reciting that he was desirous of making provision for the plaintiff, a single woman (who had cohabited with him, and by whom he had had two sons), and for her infant children, and that he had that day transferred the said sum into the names of said trustees, declared that the trustees should stand possessed of the stock, upon trust, to pay the dividend to himself for life, and after his decease, to the plaintiff, &c. Philip Lyne did not communicate to the plaintiff the fact of the settlement, but, after its execution, handed her a sealed parcel with the endorsement that it was for her, and to be opened after his death. She opened the parcel and found a copy of the indenture, but, from fear of giving offence, made no mention to the settlor of what she had done. For some time afterward, Philip Lyne received the dividend by power of attorney, granted to him by the trustees. Some years afterward he procured the trustees to transfer the stock into his own sole name, and tore off the seals from the indenture of settlement, which was found after

his death among his papers. By his will, dated some five years subsequently, he made certain provisions for the plaintiff.

For the executors it was argued that the plaintiff, after the date of the execution of the indenture, had changed his intention, and had therefore intended to substitute one provision for the other.

The Vice-Chancellor, Sir LANCELOT SHADWELL, said: "I am unable to discover any serious question in this case: a trust is created, a valid and binding trust, affecting a fund for which the author of the trust afterwards becomes indebted to the *cestui que trust*, or to the trustees, and through them to the *cestui que trust*. * * * If the testator had meant the provision made for the plaintiff by the will to be in satisfaction of demands which she had against him, he might have said so. * * * The plaintiff is entitled to both provisions.'

Middleton v. *Pollock, Ex parte Elliott*, Law Rep. 2 Ch. Div. 104. JESSEL, M. R. (1876). A solicitor to whom a sum of money had been intrusted to invest, becoming insolvent (as to his knowledge of which, however, there was no proof), endorsed a bill of exchange for that amount to his client, and executed a declaration of trust to her, placing the bill of exchange and declaration of trust in an envelope, endorsed with his client's name. The envelope was found after his death, which occurred a short time thereafter, in a safe at his office, where it had been placed by his confidential clerk. *Held*, that the client was entitled to the declaration of trust and the security, though she was not aware of their existence until they were discovered after the solicitor's death.

FIFTH PROPOSITION.—*A complete conveyance or transfer of the thing given has been made when the instrument of conveyance, if a deed, sets forth the fact of delivery, and the surrounding circumstances show that at the time of execution delivery was intended; or where the property given is personalty, and there is no instrument of conveyance, the thing given, though a chose in action, is completely transferred where the legal title has actually vested in the donee.*

Lorimer v. *Lorimer*, 10 Ves. 367, n. (l.) 1822. Stock purchased by a man in the name of himself and his wife, was, on his death, held by the Vice-Chancellor to go to her as the survivor. MSS. of Mr. *Beams* who was counsel against the wife: *Sidmouth* v. *Sidmouth* (1840), *ante*, p. 3.

Xenos v. *Wickham et al.*, 14 C. B. N. S. (108 E. C. L. 435, 860) (1863–1867). The plaintiffs' insurance broker directed the defendants to insure a vessel belonging to the plaintiffs, for a certain period, for 1000*l.* The manner in which transactions of this kind were carried out was as follows: The broker sent the directions for the policy upon a written slip, which was unstamped. The policy was then prepared and stamped, and the amount of the premium, together with the price of the stamp, debited to the broker in the defendant's standing account with him. The policy was expressed to be sealed and delivered in the presence of A. B., the defendant's secretary. The policy was retained by the insurers until called for by the broker or insured. The accounts of the insurer with the broker were settled monthly. At the expiration of a month from the insurance, the insurer sent a debit note in the amount of the premium and the stamp to the broker, when the broker disclaimed liability, stating that the insurance had been made under a mistake, and requesting that the policy should be cancelled. The policy was accordingly cancelled by the insurers. The broker had no authority from the insured to rescind the contract, nor was the insured aware of the fact of the rescission until sometime afterwards, after the vessel had proved a loss. The question was whether the insurers were liable, and this depended upon the other questions, first, whether there had been a delivery of the policy to bind the insurers; second, whether the broker had authority enough from the nature of his employment to rescind the contract. The Common Pleas and the Exchequer Chamber decided in favor of the defendants, MELLOR, J., and BLACKBURN, J., dissenting, but the decision of both courts was reversed by the House of Lords (Lord CHELMSFORD and Lord CRANWORTH), who *held*, that there had been an actual delivery of the policy, and that after its execution the insurers held it merely as bailees for the insured.

Fowkes v. *Pascoe*, Law Rep. 10 Ch. Ap. 343 (1875). The testatrix purchased sums of stock several times in the names of herself and the son of her daughter-in-law, and at the same time she purchased stock in the names of herself and a companion. By her will she gave the residue of her estate to her daughter-in-law for life, and after her death to the son and daughter of her daughter-in-law. The son of the daughter-in-law testified, that the investment in the joint names had been intended as a gift to himself upon the death of the settlor. *Held*, reversing JESSEL, M. R., that though the testatrix had not placed herself *in loco parentis*

to the son of her daughter-in-law, yet the evidence of a resulting trust was rebutted, and the stock purchased in the joint names went to the son of the daughter-in-law upon the settlor's death.

It will be observed that it was assumed in this case, both in the decision of the Master of the Rolls, who decided against the gift, and in that of the Lords Justices, who reversed that decision, that if the son of the daughter-in-law had stood in the place of a son to the settlor, there would have been no resulting trust at all.

SIXTH PROPOSITION.—*A purchase or conveyance made with the money of one in the name of another, ordinarily raises a presumption of a resulting trust to the former; but the reverse is the case where the person in whose name the conveyance is taken or purchase made is the wife or child of the owner of the money. In this case the presumption arises that it is a gift or advancement, which may be rebutted by contemporaneous (but not subsequent) evidence of a contrary intent.*

In Story's Equity Jur., vol. 2, § 1202, after stating the general rule, that where a man buys in the name of another, and pays the consideration-money, there is a resulting trust in favor of the person purchasing, he adds: "But there are exceptions to the doctrine, as the resulting or implied trust is, in such a case, a mere matter of presumption. It may be rebutted by circumstances established in evidence, and even by proofs which satisfactorily contradict it. Thus, if a parent should purchase in the name of a son, the purchase would be deemed *primâ facie* intended as an advancement, so as to rebut the presumption of a resulting trust for the parent," and see the cases cited in note 1 to that section. In the next section he says that the presumption in favor of the child ought not to be frittered away by nice refinements. It was, perhaps, rather to be lamented that it had been suffered to be broken in upon by any sort of evidence of a merely circumstantial nature.

In *Dyer* v. *Dyer*, 2 Cox 92 (1788), HOTHAM, L. C. B., says it has been determined in so many cases that the nominee being a child, shall have such operation, as a circumstance of evidence, that we should be disturbing landmarks, if we suffered either of these propositions to be called in question, namely, that such circumstance should rebut the presumption of a resulting trust, and that it should do so as a circumstance of evidence. I think it would have been a more simple doctrine if the children had been consi-

dered as purchasers for a valuable consideration. Natural love and affection raised a use at common law; surely, then, it would rebut a trust resulting to the father. See, also, Jeremy on Eq. Jur., b. 1, ch. 1, § 2, pp. 89 to 92. In § 1204, Story proceeds: The same doctrine applies to the case of securities taken in the name of a child. The presumption is that it is intended as an advancement, unless the contrary is established in evidence. *Ebrand* v. *Dancer*, 2 Ch. Cas. 26; *Lloyd* v. *Read*, 1 P. Wms. 607; 2 Madd. Ch. Pr. 101; 2 Fonbl. Eq., b. 2, ch. 5, § 2, noted.

Glaister v. *Hewes*, 8 Ves. 195 a, 198 (1802). Sir WILLIAM GRANT, M. R. A purchase made in the name of a child of the purchaser is *primâ facie* considered as an advancement intended for such child; in order to repeal this presumption, evidence must be given of a contrary intention contemporaneous with the purchase; an after-thought of that nature will have no effect: *Prankerd* v. *Prankerd*, 1 Sim. & Stu. 3; *Finch* v. *Finch*, 15 Ves. 50; *Dyer* v. *Dyer*, 2 Cox 94; s. c. 1 Watk. on Copyholds, 14th ed. 277, and 1 P. Wms. 112 n. The trust cannot arise from subsequent payments: *Buck* v. *Pike*, 2 Fairf. 9; *Steere* v. *Steere*, 5 Johns. Ch. 1; *Botsford* v. *Burr*, 2 Id. 409; *Hoxie* v. *Carr*, 1 Sumner 188; *Seward* v. *Jackson*, 8 Cowen 406; 4 Kent. (5th ed.) 305–6.

The *onus probandi* does not rest with the child: *Redington* v. *Redington*, 3 Ridg. P. C. 178; *Finch* v. *Finch*, 15 Ves. 48. The prior facts that the parent has taken possession of the purchased estate and has taken the rents and profits, do not necessarily rebut the presumption that the purchase was intended for an advancement: *Stilman* v. *Ashdown*, 2 Atk. 480; *Grey* v. *Grey*, Rep. temp. Finch 340; s. c. 2 Freem. 6, and 2 Swanst. 600; *Taylor* v. *Taylor*, 1 Atk. 368; *Sidmouth* v. *Sidmouth*, 2 Beav. 447; *Crabb* v. *Crabb*, 1 Mylne & K. 511; *Kilpin* v. *Kilpin*, Id. 539.

In *Rider* v. *Kidder*, 10 Ves. 367 (1805), Lord ELDON, L. C., said "That though in general, where A. bought an annuity in B.'s name, A. paying for it, and B. having no proof that it was meant as provision for her, the court would raise a resulting trust, if there was no relationship between the parties; yet there were exceptions to that rule, fully discussed in a case of a copyhold estate in the west of England, which was bought for successive lives. The habit was to insert as feoffees the children of the purchaser. It was settled in that case, that *primâ facie* the relation would give the child an interest, and perhaps that would prevail also in favor of a wife.

But the case of a child was distinguished from that of a stranger, in which there was not that natural affection that would beat down the presumption arising from the advance of the money.

In a note to this case, it is said, "where, indeed, a conveyance has been taken in the name of a child of the purchaser, the *primâ facie* presumption is that the purchase has been made as an advance for such a child."

McIntire v. *Hughes*, 4 Bibb (Ky.) 186 (1815). Bill in equity for specific performance. One McIntire had executed an obligation under seal, to convey five hundred acres of land to his son, but had died without completing the execution of the conveyance, leaving a will by which the land was devised to two other sons. BOYLE, C. J., said, that while it was true that a court of equity would not enforce a specific execution of a contract merely voluntary, yet the obligation given by McIntire to his son was evidently not of that description. The relation between them of father and son was not only alleged in the bill, but apparent upon the face of the obligation, and that relation, though not valuable, was deemed in law a good consideration. Under the Statute of Uses, the proximity of blood between the father and son was sufficient to support a covenant by the former to stand seised to the use of the latter; and if so, it must have been prior to the statute a sufficient consideration to have created the use, for the statute could only operate to transfer the possession of the use where there was a use created. Now, a use prior to the statute was similar to what was denominated a trust since. It gave to the *cestui que use* no right to the thing, but it gave him a right in equity to demand the thing. And prior to the statute it was a common practice to resort to a court of chancery to enforce the execution of an use, as it still was to enforce the execution of a trust. The inference was, therefore, clear, that proximity of blood had always been a sufficient consideration to warrant the interposition of a court of equity, where there was no other circumstances in the case which forbade such interposition: Newland on Contracts 69, 70.

Dennison v. *Goehring*, 7 Barr 175 (1847). In this case, land purchased with the money of Dennison had been conveyed to Sturgeon, who then conveyed it to Dennison, in trust, to apply the rents to the education of Dennison's three children. Other children having been afterwards born to Dennison, this action of account render was brought by one of the *cestuis que trust*,

Sturgeon's wife, against Dennison, to enforce the trust. GIBSON, C. J., held the trust executed, and that, therefore, though voluntary, the plaintiffs, the *cestuis que trust*, were entitled to its being carried out. The mere fact that the legal estate was vested in the trustee, and the *cestuis que trust* therefore required the intervention of a court of equity to compel the execution of the trust, did not disentitle them to relief. "It is an elementary principle, that a purchase by a father in the name of his child, is *primâ facie* an advancement, though the legal presumption that it is so may be rebutted by circumstances."

The cases are analogous in which an uncle or grandfather, being *in loco parentis*, and the father alive, the court has presumed against double portions: *Powys* v. *Mansfield*, 3 Myl. & Cr. 359; *Ex parte Pye*, 18 Ves. 140; *Monck* v. *Lord Monck*, 1 B. & B. 298; *Trimmer* v. *Baine*, 7 Ves. 508; *Booker* v. *Allen*, 2 Russ. & My. 270.

The definition of one standing *in loco parentis* is one "meaning to put himself *in loco parentis*, in the situation of the person described as the lawful father of the child." Lord ELDON, *Ex parte Pye*, *supra*. "A person assuming the parental character or discharging parental duties." Sir WILLIAM GRANT, *Wetherby* v. *Dixon*, 19 Ves. 412. In *Monck* v. *Lord Monck*, *supra*, an uncle was held to stand *in loco parentis* to his niece; in *Trimmer* v. *Baine*, *supra*, a father to his natural child (for legal purposes a stranger); in *Booker* v. *Allen*, a descendant of a great-uncle was held to stand *in loco filii*.

To the foregoing cases may be added the following, which illustrate one or more of the above propositions:—

Ray v. *Simmons*, Supreme Court of Rhode Island, 15 Am. Law Reg. N. S. 701; and Mr. Dale's note.

The deceased in this case had deposited in a savings bank certain money belonging to him in his own name, as trustee for his stepdaughter, the plaintiff. His bank deposit-book was headed, "Dr., Fall River Savings Bank, in account with Levi Bosworth, Trustee for Marianna Ray, Prov. Cr." The account was credited with all the accrued dividends upon the amount deposited, excepting one which was paid to the depositor, who had not withdrawn any part of the money deposited by him. The decedent had no children, and the plaintiff was treated by him as his own daughter. Decedent brought the bank book home and threw it into the plaintiff's

lap. The plaintiff opened it, looked at it, and said she was much obliged for the present. The bank book was then put by the decedent's wife in a box of her own, and remained there at the decedent's death. The action was brought against the decedent's administrator. *Held*, that the trust was completely executed, though voluntary: *Braybrooke* v. *The Boston Five Cent Savings Bank*, 104 Mass. 228; *Clark* v. *Clark*, 108 Mass. 522, are distinguished.

In *Hill* v. *Stevenson*, 63 Me. 364 (1873, APPLETON, C. J.), the decedent had handed to her son-in-law her deposit book, containing her account with the savings bank, in which a considerable sum was standing to her credit, at the same time saying to him that she gave the money in that bank on her book to her two daughters; that she wished her son-in-law to take the book, and after her decease to divide the money equally between them. This was a bill in equity by the daughters against their mother's representative. *Held*, that the delivery of the bank book was a good gift of the deposits, when made as here with the intent to give the donee the deposits represented by it.

Howard v. *Windham County Savings Bank*, 40 Verm. 597 (1868), was assumpsit to recover money belonging to the plaintiff's intestate, and deposited by her in the defendant bank, in the name of her niece. At the time the deposit book was made, a deposit book was taken by the decedent, in which the treasurer of the bank had made the following entry: "1864, No. 530, Adeline F. Brown (the niece) deposited $220." The deposit book was found among the effects of the decedent after her death, and came into the plaintiff's hands, as her administrator. There was no evidence that Adeline F. Brown, the decedent's niece, had any knowledge of the deposit, or that her husband had such knowledge, until after the decedent's death. "The presumption," says the judge, "is that all this was done by and under the direction of the donor, and intended by her as evidence of a perfected gift. The bank, in virtue of the deposit, had a right to regard Adeline F. Brown as a depositor, and legal owner of the money. The transaction constituted an agreement and legal privity between the bank and Adeline F. Brown, by force of which the bank became accountable to her, and to no other person; she thereby became bound by the by-laws and regulations of the corporation in respect to the deposit, after which the donor had no power to recall the gift, and it is not claimed that she ever at-

tempted to recall it. * * * It is true that the deposit book is evidence of the deposit, but it is no better evidence than the entry of the deposit made in the treasurer's book, and retained by him. Suppose the treasurer had neglected to make and deliver a duplicate of the deposit, we think it would hardly be claimed that the rights of the bank or the depositor would be affected by such neglect. * * * The possession of the book alone gave the intestate no power or authority to control the deposit, or interfere with it."

In *Minor* v. *Rogers*, 4 Conn. 512 (1873), the decedent, a widow, who possessed considerable property, and had no children, deposited $250 in a savings bank in her own name, as trustee for a lad, the child of friends of hers, who was frequently at her house, and in the habit of doing errands for her. She had frequently made him presents in return. After making the deposit the decedent told the boy's friends that she had deposited that amount in the savings bank for their son, saying that he would need it for his education. The decedent kept the bank book, and afterwards drew out the money and appropriated it to her own use. In a will subsequently made no mention was made of the deposit or of the donee. *Held*, a complete irrevocable gift at the time of the deposit. PARK, J., said: "If she had made the deposit in the name of the plaintiff alone, or had made some other person than herself trustee for the plaintiff, no question could have arisen regarding the completeness of the gift."

In *Millspaugh* v. *Putnam*, 16 Abbott's Practice Reports 380, money was deposited in a bank in the depositor's name, in trust for a third party. *Held*, to raise a presumption of an intended gift by the depositor to the *cestui que trust*.

In *Camp's Appeal*, 35 Conn. 88 (1869), the decedent handed his bank book, containing an account of moneys deposited in the decedent's own name, to his nephew, telling him that if he, the depositor, never called for the deposit book, the latter should keep it. *Held*, an executed gift of the money deposited.

In *Gardner* v. *Merritt*, 32 Md. 78 (1869), the decedent deposited moneys at various times in a savings bank to the credit of her grandchildren, having caused accounts to be opened in the bank in the name of each of them as a minor, subject in each case to the depositor's order or that of her daughter.

The depositor, about the time when she began making these deposits, stated that she was going to put the money in bank for the children. *Held*, that though the depositor retained control of the deposits, the gift was executed, the control retained being for the benefit of the donors, to whom an executed gift had been made.

In *Currant* v. *Iago*, 1 Collyer 261, 266 (1844), the plaintiff and her husband adopted as their child the plaintiff's nephew, who was maintained and educated by them until he went to sea. He died intestate during his minority. At various times moneys belonging to the plaintiff's husband were invested by him in the nephew's name. These sums, with their accumulations, were never disturbed excepting once, when the plaintiff drew out two pounds, being the amount of the accrued interest upon the deposit for a certain period. The plaintiff's husband having died, she brought this bill in equity against the father of her deceased nephew, who was his personal representative, and the trustees of the bank, alleging that the investments were made with the sole view of providing for her nephew in the event of his surviving both the plaintiff and her husband, and asking for a declaration that the sums deposited were held in trust by her as executrix of her husband. *Held*, by the Vice-Chancellor, that the gift was executed, and that the presumption of a resulting trust was displaced by the relations of the parties and the circumstances of the case; that the exercise of dominion over the fund by the withdrawal of a portion of it did not displace the donee's title. "I think it probable," said the Vice-Chancellor, "that if their attention had been called to the subject the gift would have assumed that shape (*i. e.*, a benefit to the nephew, contingent upon the donors both dying in the infant's lifetime), but the circumstances never so presented themselves to the minds of the parties, and accordingly the matter was not so arranged."

The latest case is *Reed* v. *Roberts*, 3 Weekly Notes of Cases (Pa.) 453. There A., who had no descendants living, adopted B., the niece of his wife, when under fourteen years of age, and from that time forward treated her as his own child. By his will, A. provided for B. Shortly before his death, and subsequent to the execution of the will, A. received in payment of a debt a large number of shares of stock of a railroad corporation. The new certificates were by his order made out in the name of B., and the