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Donations - Tacit Revocations of Donations Inter Vivos

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that the percentage requirements of Section 38 would be void. Of course, the constitutional right of inspection does not embrace the examination of books showing the action taken at shareholders' and directors' meetings, statements of receipts and disbursements, gains and losses, and other similar facts—the inspection of which is essential before a thorough picture of the corporation's activity may be had. In order to have a right to inspect these books, the shareholder must meet the strict, and somewhat impractical, requirements of Section 38. In this regard the liberal interpretation of the instant case achieves a fortunate and logical result.

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DONATIONS—TACIT REVOCATIONS OF DONATIONS INTER VIVOS—An individual created a charitable trust to which he donated several hundred lots. Subsequently the donor and donee trustee agreed to sell to the defendant certain land, including the lots previously donated. The donor joined with the donee in signing the warranty deed tendered to the defendant, but the defendant refused to accept the deed. Suit for specific performance followed. The defendant resisted upon the ground that the title was not merchantable since the property was open to an action of revendication by the forced heirs of the donor.[1] *Held*, that the donor's joining with the donee in the signing of the warranty deed resulted in a *tacit* revocation of the donation and furnished a valid title which would not be subject to an action of revendication by the forced heirs of the donor. *Atkins v. Johnston*, 213 La. 458, 35 So.(2d) 16 (1948), Chief Justice O'Niell and Justice McCaleb dissenting.

The Civil Code treats a donation inter vivos as a solemn contract perfected by the formal acceptance of the donee and *irrevocable*[2] by the donor except for causes specified in the code.[3]

1. The right of revendication is granted by Art. 1517, La. Civil Code of 1870, which provides, "The action of reduction or revendication may be brought by the heirs against third persons holding the immovable property, which has been alienated by the donee, in the same manner and order that it may be brought against the donee himself, but after discussion of the property of the donee."

Accord: Tessier v. Roussel, 41 La. Ann. 474, 6 So. 542 (1889), in which the court recognized the right of the forced heirs to bring an action against third persons holding immovable property that has been the subject of a donation in excess of the disposable portion.

2. Art. 1468, La. Civil Code of 1870: "A donation *inter vivos* (between living persons) is an act by which the donor divests himself, at present and *irrevocably*, of the thing given, in favor of the donee who accepts it." (Italics supplied.)

3. Art. 1559, La. Civil Code of 1870.

However, in the early case of *Scudder v. Howe*[4] it was held that the parties to a donation may conventionally rescind it.[5] In that case the donor and donee executed a formal act of revocation and the court held that when a donation has been mutually rescinded, and the property donated has been restored to the donor in its entirety, the status which existed prior to the donation is continued, and the donor's estate stands undiminished, just as if no donation had been made.

In such a case the forced heirs of the donor have no grounds for complaint because their eventual rights have been in no manner impaired. A subsequent alienation by the donor will not be subject to attack by the forced heirs of the donor at his death.[6] Assuming that the donor and the donee in the instant case had expressly rescinded the donation by authentic act or by an act under private signature and that the *Scudder* case was correct in holding that a donation inter vivos may be conventionally rescinded,[7] the instant case would be squarely in line with the prior jurisprudence. Although the court, through Justice Hamiter, recognized that the *Scudder* case and the jurisprudence under it require that the donor and the donee execute an act of revocation clearly manifesting an intent to revoke, it unequivocally held that the donor's joining with the donee in signing the warranty deed resulted in a *tacit* revocation.

The case of *Derby v. De Saix Corporation*[8] was relied on to show the significance of the donor's joining with the donee in executing the act of sale of the donated property. There, the

4. 44 La. Ann. 1103, 11 So. 824 (1892).

5. The court used as its authority Art. 1901, La. Civil Code of 1870, which provides: "Agreements legally entered into have the effect of laws on those who have formed them. They cannot be revoked, *unless by mutual consent* of the parties, or for causes acknowledged by law. They must be performed with good faith." (Italics supplied.)

6. Scudder v. Howe, 44 La. Ann. 1103, 11 So. 824 (1892). Following a donation of immovable property, the donor and donee mutually rescinded. The donor sold the property to a third person and donated the proceeds to the original donee. The court held that the immovable was forever free from claims of the forced heirs. Thus the court sanctioned a procedure which permits the donor to place his immovable property beyond the reach of his forced heirs.

7. See also Quirk v. Smith, 124 La. 11, 49 So. 728 (1909) where the court said, "Neither the text of the Civil Code nor the case cited [referring to Tessier v. Roussel, 41 La. Ann. 478, 6 So. 542 (1889)] solves the question of the legal effect of a conventional rescission of a completely executed donation inter vivos." While admitting that the French commentators consider a donation inter vivos as irrevocable by the donor, the court, however, concluded that "the proposition that the donor and the donee may by mutual consent abrogate the donation whenever they deem proper seems to have been too plain for controversy." Such a statement may be seriously challenged.

8. 201 La. 1060, 10 So. (2d) 896 (1942).

donation was made subject to certain negotiations between the donor and a third party. The donee was instructed by the donor in the event of a sale to join in the act of sale. As Justice McCaleb correctly pointed out in his dissent in the instant case, in the *Derby* case the donor had never lost his interest in the property and the donee was merely acting as an agent for the donor. In the case under discussion, the donor unequivocally vested title in the donee and when the donee joined in signing the warranty deed, it was only warranting title against its own acts and not the acts of the donor or anyone else.

In the absence of more pertinent authority, the court in the present case relied heavily upon cases involving the revocation of donations between married persons as authority for the proposition that the revocation of a donation may be tacit.[9] Prior to 1942 donations between married persons were always susceptible of being expressly or tacitly revoked.[10] Any act of the donor which was inconsistent with the donation was considered as having revoked it.[11] This rule, embodied in Article 1749,[12] was founded upon considerations of public policy,[13] but in 1942 there was a demand for a change of policy and the legislature repealed Article 1749. The new rule contained in Act 187 of 1942 provides that gifts by one spouse to the other "shall be *irrevocable* as fully and to the same effect as if made to a stranger." (Italics supplied.) The enactment of this statute emphatically re-affirmed the principle that donations inter vivos are fundamentally irrevocable and should not be susceptible of tacit or implied revocation. Since the cases cited by the court were all decided prior to 1942, and before the repeal of Article 1749, it is clear that they were not determinative of the problem presented in the instant case.

Before the repeal of Article 1749,[14] certain federal taxes[15]

9. Succession of Hale, 26 La. Ann. 195 (1874); Abes v. Davis, 46 La. Ann. 818, 15 So. 178 (1894); Lavedan v. Jenkins, 47 La. Ann. 725, 17 So. 256 (1895).

10. Art. 1749, La. Civil Code of 1870.

11. Succession of Hale, 26 La. Ann. 195 (1874); Abes v. Davis, 46 La. Ann. 818, 15 So. 178 (1894); Lavedan v. Jenkins, 47 La. Ann. 725, 17 So. 256 (1895); 10 Aubry et Rau, Cours de Droit Civil Francais (5 ed. 1918) 441, nos 644, 645; 15 Laurent, Principes de Droit Civil Francais (1893) 365-371, nos 330-335.

12. La. Civil Code of 1870.

13. Howard v. United States, 40 F. Supp. 697 (E. D. La. 1941); 9 Duranton, Cours du Droit Francais (4 ed. 1944) 785, no 770; 2 Laurent, Cours du Droit Civil (1887) 329, no 447.

14. La. Act 187 of 1942 followed the decision of Howard v. United States, 125 F. (2d) 986 (C.C.A. 5th, 1942), and was clearly for the purpose of placing donations between spouses outside the scope of the federal taxes levied on revocable gifts.

15. Revenue Act 1926, 302 (d) 1, as amended in 1934, 26 U.S.C.A. (Int.

were collectible on donations between married persons because they were susceptible of revocation at any time by any act of the donor which proved inconsistent with the donation. Even though the instant case is concerned with a donation inter vivos, and not with a donation between married persons, it is submitted that if the decision is followed and extended, and if the policy declared in 1942 is again overlooked as it was in this case, the result may well be that all donations inter vivos will be subject to these federal taxes.

The court also held in the present case that no particular form is prescribed for the revocation of a donation. It is true that the Civil Code does not specify any particular rule, probably because a donation is treated as being irrevocable. Conceding the rule of the *Scudder* case to be correct, investigation will lead to the conclusion that certain minimum requirements should be met for the revocation of a donation of immovable property. When a donation is revoked, the ownership of the donor is reinstated as if there had been no donation. The revocation operates to *transfer* the land back to the donor.[16] In *Quirk v. Smith*[17] the court, holding that a donation of real estate could be rescinded by mutual consent, repudiated the idea that the donee had to re-donate the land in order to return the property to the donor. Since the transfer is made through a contractual agreement and not through a donation from the original donee to the original donor, there is no reason why the authentic act should be essential to complete the transfer. However, Article 2275[18] specifically provides that *every transfer* of immovable property must be in writing; hence it is imperative that there at least be an act under private signature when the parties wish to effect a revocation of a donation of real estate. In the instant case the revocation so-called was contained in a warranty deed, but the deed failed to show an *express* agreement between the parties to revoke.

In view of the decisions, the articles of the Civil Code, and Act 187 of 1942, all of which state that donations inter vivos are fundamentally irrevocable, it would seem that a donation may not be revoked even by mutual consent of the parties. But conceding that the parties may conventionally rescind, it appears

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Rev. Code) § 811 (d) 1. Howard v. United States, 125 F. (2d) 986 (C.C.A. 5th, 1942).

16. Scudder v. Howe, 44 La. Ann. 1103, 11 So. 824 (1892).

17. 124 La. 11, 49 So. 728 (1909).

18. La. Civil Code of 1870.

that the court erred in holding that a donation may be tacitly revoked. It seems that in *every* case the intention to revoke should be clearly and expressly shown, and when the immovable property is concerned, the agreement to revoke should be reduced to writing.

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TAXATION OF VESSELS—For many years W. G. Coyle & Company, a Louisiana corporation, had conducted a marine terminal and water traffic operations at New Orleans. In 1934 it began also to operate as a towing concern on the Gulf Intracoastal Waterway. In 1937 DeBardeleben Coal Corporation, a Delaware corporation, acquired all of the assets of the Louisiana corporation through merger. The marine terminal and towing operations were continued in the trade name used by the Louisiana corporation for those enterprises. These commercial enterprises were carried on in substantially the same manner before and after the merger. At all times New Orleans was the principal operating base of twelve vessels;[1] and they were never in state of Delaware. Many factors clearly distinguished it from their other ports of call, each accentuating the greater importance of New Orleans in the operation of the vessels.[2] Each vessel was regularly engaged in interstate commerce.[3] None of the vessels ever visited

1. This note is not concerned with the problem presented by eight additional barges which were operated solely within Alabama and were important in the decision of several points of the case. The discussion will be limited to those vessels engaged in interstate commerce between New Orleans and ports in other states. See American Barge Line Co. v. Cave, 68 F. Supp. 30, 40 (E.D. La. 1946).

2. See the trial judge's findings of fact, Nos. 8, 9, 10, 11, 14 (Id. at 51). He found that the Delaware corporation had continued the operations of the Louisiana corporation without material change or interruption, using the name "Coyle Lines" to benefit from the business reputation of the Louisiana corporation. New Orleans was found to be the location of the main office from which Coyle Lines were controlled, the only machine and repair shop, the place where crews were paid and took their weekly twenty-four hour lay-off, the place where vessels were usually fueled, and the place where all scheduled general repairs or minor "voyage" repairs were made. The Coyle Lines common carrier water transportation business was operated out of New Orleans with two Coyle Lines tugs and ten Coyle Lines barges, to which it added approximately eight chartered tugs and many barges, depending upon the tonnage offered for transportation.

3. Id. at 40. It also affirmatively appears from the opinion of the trial judge that each of the vessels were absent from the port of New Orleans for the greater part of the year. Since New Orleans was the only Louisiana port of consequence in the operation of the lines, it would seem to follow, though there is no express finding of fact on that point, that the vessels were each beyond the borders of Louisiana for the greater part of the year. Taking the year 1944 as typical, the court found that of the total number