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TRUSTS-WHERE SETTLOR HAS PREVIOUSLY MADE AN ABSOLUTE GIFT OF CORPUS TO TRUSTEE-SELF DECLARATION OF TRUST

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TRUSTS—WHERE SETTLOR HAS PREVIOUSLY MADE AN ABSOLUTE GIFT OF CORPUS TO TRUSTEE—SELF DECLARATION OF TRUST—In 1930 plaintiff received certain shares of stock from his uncle by way of outright gift. Seven months later, in order to decrease inheritance taxes at the time of the death of the donee, a declaration of trust was prepared and executed by the original donor as settlor, and indorsed by the donee "as Trustee, to evidence his acceptance of the Trusts herein expressed," at which time the donee surrendered the certificate of shares originally given him and was issued a new certificate as trustee. Plaintiff now sues for an annulment of the instrument. *Held*, the document was void as a deed of trust, since the settlor had no property interest in the shares nothing passed to the donee as trustee, or to the beneficiaries. Nor was a trust created in donee's own property in favor of the beneficiaries. *Coleman v. Coleman*, (Wash. 1946) 171 P. (2d) 691.

The novel problem illustrated by the facts of this case apparently has not been faced heretofore by the courts, nor even been suggested by any of the generally accepted textwriters. It is evident that a settlor cannot impose a trust upon property in which he has no interest,[1] nor can he cut down his own absolute gift to a transfer in trust by subsequently executing a unilateral declaration of such intention.[2] However, it would seem that if such a trust instrument is assented to by the original donee of the gift, as was done here, then the doctrine of *Ex parte Pye*[3] should apply and the transaction be treated as a self declaration of trust by the donee. Any doubts as to the genuineness and reality of the trust are removed by the existence of a properly signed statement of its terms, and, since all the requirements of a self declaration of trust have been complied with, a holding in support of the manifest intent of the parties would appear proper. The court in the instant case refused to adopt this line of reasoning and, instead, relied upon the well recognized, but hardly apposite rule, that if an owner of property attempts to make a gratuitous inter vivos conveyance to another to be held in trust for a third person and the conveyance fails,[4] equity will not complete the transaction by declaring it a self declaration of trust by the set-

[1] 1 BOGERT, TRUSTS AND TRUSTEES, § 44 (1935).

[2] Allen v. Withrow, 110 U.S. 119, 3 S. Ct. 517 (1884); Vickers v. Vickers, 133 Ga. 383, 65 S.E. 885 (1909).

[3] 18 Ves. 140 (1811), which first established the doctrine that a voluntary declaration of trust of personalty is valid. See also 1 BOGERT, TRUSTS AND TRUSTEES, §§ 148, 202 (1935); 1 SCOTT ON TRUSTS, §§ 28, 32.5 (1939); 1 TRUSTS RESTATEMENT, §§ 17 (a), 28 (1935); Gulliver and Tilson, "Classification of Gratuitous Transfers," 51 YALE L. J. 1 (1941).

[4] I.e., it fails if the settlor does not comply with the formalities required by law for the expression of the trust intent, or if he fails to identify properly the corpus or cestui que trust, or if he does not adequately complete delivery of the corpus.

tlor as trustee.[5] By way of explanation of this doctrine it is said that the putative settlor intended to bring about the trust by vesting the legal interest in another and did not intend to become a trustee himself. Just why this principle in any way precludes recognition of a trust composed of the trustee's own property where the latter already has received title to the corpus is difficult to understand.[6] Certainly the equities favoring the refusal by a donor to act as trustee when he intended those duties for another are not equated in the denial by the donee here to admit the imposition of a trusteeship which he originally accepted. Further, the court is not called upon to complete an imperfect conveyance but merely to bring about certain legal consequences in a manner actually intended.[7] That certain gift, estate or inheritance tax problems might arise should not be persuasive in deciding the trust question.[8] On the whole, it is submitted that the authority cited by the court is not decisive of the question before it and, as an original problem, the equities point toward an opposite decision.[9]

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[5] Milroy v. Lord, 4 DeG. F. & J. 264 (1862); Whitehead v. Bishop, 23 Ohio App. 315, 155 N.E. 565 (1925); Landon v. Hutton, 50 N.J. Eq. 500, 25 A. 953 (1892); Loring v. Hildreth, 170 Mass. 328, 49 N.E. 652 (1898); Farmers' Loan and Trust Co. v. Winthrop, 238 N.Y. 477, 144 N.E. 686 (1924); 1 BOGERT, TRUSTS AND TRUSTEES, § 202 (1935); 1 SCOTT ON TRUSTS, § 32.2 (1939).

Similarly the courts have generally refused to turn an imperfect gift into a declaration of trust, Miller v. Silverman, 221 App. Div. 697, 224 N.Y. 609 (1927); Clay v. Layton, 134 Mich. 317, 96 N.W. 458 (1903); Loop v. DesAutell, 294 Mich. 527, 293 N.W. 738 (1940); Eschen v. Steers, (C.C.A. 8th, 1926) 10 F. (2d) 739; Noble v. Learned, 153 Cal. 245, 94 P. 1047 (1908). It is sometimes difficult to determine whether the donor intended to declare himself trustee or to make an outright gift. In general, on the various methods of giving another the beneficial interest in property, see 1 TRUSTS RESTATEMENT, §§ 31, 32 (1935).

[6] 1 BOGERT, TRUSTS AND TRUSTEES, § 202 (1935), justifies the application of the basic rule where there is a failure of delivery because the settlor "intended to bring about a trust through a transfer to a third person or not at all." In the principal case the plaintiff's indorsement of the trust agreement amounted to an admission of just the opposite, that certain property was to be held by him in trust.

[7] While delivery normally may be essential evidence of an intention to create an irrevocable trust, it is clearly irrelevant to the validity of a self declaration of trust. Knagenhjelm v. Rhode Island Hospital Trust Co., 43 R.I. 559, 114 A. 5 (1921).

[8] For example, assuming a trust were erected on similar facts arising in more recent years, the Commissioner of Internal Revenue would undoubtedly be interested in collecting an additional gift tax from the original donee of the gift as settlor of the trust.

[9] Although the facts are not clear, it would seem that the simplest solution to the principal case would have been to consider the indorsement of the trust agreement coupled with the return of the original stock certificate as a gift back by the donee in order to permit the donor to remake his bequest in the new form. However, plaintiff was probably precluded from this argument by a recitation in the trust instrument that the original gift had been made in contemplation of trust, a statement which the court regarded as untrue.