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Federal Taxation - Cancellation of Gift for Mistake of Law

Daniel A. Kraemer

the employer without remedy at law or in equity. The personal contact rule seems to be the better reasoned rule and more desirable for it recognizes and protects the economic interests of both the employer and the employee.

EARL A. CHARLTON

Taxation — Cancellation of Gift for Mistake of Law — Plaintiff made a gift to his wife of stock in a corporation that he and another controlled. Subsequently, the corporation was dissolved and a limited partnership of husbands and wives was formed to which each conveyed an undivided interest in the tangible assets received by them in the liquidation. In 1942, the Commissioner of Internal Revenue assessed the income received by the wife from the partnership to the plaintiff, and the position of the Commissioner was sustained by the courts.[1] Plaintiff then sought to have the gift rescinded in equity on the ground that it was made under a mistaken interpretation of the income tax law. *Held:* that plaintiff made the gift to his wife for the purpose of creating a separate estate in her name as well as for its tax-saving effect, and under such circumstances a court of equity will not rescind the gift. *Lowry v. Kavanaugh, et al, 34 N.W. (2d) 60 (Michigan, (1948).*

The plaintiff relied on a previous Michigan decision in *Stone v. Stone*[2] where the court allowed rescission of a similar gift made in a misguided effort to save taxes. In that case, parents transferred in trust for their minor children undivided shares in a family partnership believing that the income arising thereon would be taxed separately to the children for federal income tax purposes. The *Stone* decision seemed quite liberal, but the Court in the instant case distinguished it on this ground: in *Stone* the only purpose of the gift was the expected tax saving, whereas in the present case the main purpose was to create a separate and independent estate in the wife, the tax-saving motive being only secondary. The Court in the *Stone* case, after reviewing the facts, concluded that there was involved "no compromise of doubtful legal rights, no question of the rights to retain the benefits of a bargain, and no circumstance making restitution inequitable to the donees or inexpedient because opposed to public interests". In the instant case, the Court reasoned that there were circumstances which would make restitution inequitable. The donor in his testimony stated that he made this gift because he wanted his wife to have property of her own independent of his, which she could do with as she pleased. To return

[1] Tower v. Commissioner, 327 U.S. 280, 66 S. Ct. 532, 90 L. Ed. 670, 164 A.L.R. 1135 (1946).
[2] Stone v. Stone, 319 Mich. 194, 29 N.W.(2d) 271 (1947).

the property to the donor would not only be inequitable after the donee had been led to believe that she was the owner of the property with all the rights connected with such ownership, but would also be opposed to public interest.

The authorities in point are few, and those that are can be distinguished on their facts.[3] In *Heaton v. Heaton*[4] a New York court voided a gift, but there was an express condition in the assignment whereby it would become effective only if a tax saving resulted, and in the event the assignment did not lessen the tax burden of the assignor, the instrument was either to be returned to him or cancelled. In a recent Illinois case[5] it appears that an alleged partnership was created by a father with his daughter for the sole purpose of reducing income taxes. The court held the partnership invalid under the Uniform Partnership Act and ordered an accounting to be taken for money and properties appropriated by the daughter and her husband. Wisconsin has not as yet passed on the question involved in the principal case.

Apparently a new class of cases is developing in equity courts. The attempt by the taxpayer is to seek equitable relief on the theory that the gifts were made under a mistake of law. It is a well settled doctrine that equity will not grant relief because of mistake of law,[6] but in many jurisdictions certain exceptions are as firmly established as the rule itself. Thus in Wisconsin, it has been held that equity will grant relief from a mistake of law where the mistake was mutual to both parties.[7] South Carolina has laid down the rule that a mistake of law will warrant relief in equity where it is accompanied by some inequitable conduct on the part of the other party in the action.[8] The Supreme Court of Iowa added another exception to the general rule when it decided that a court of equity will grant relief, if it is satisfied that the parties benefited by the mistake cannot in conscience retain the benefits acquired.[9] In a discussion of this question in a federal court,[10] it was held that wherever a person is ignorant or mistaken with respect to his own antecedent and existing private legal rights, interests or estates, either of property or contract, and enters into some transaction for the purpose of affecting such assumed rights, interests or estates, equity will grant relief, treating the mistake as analogous to, if not identical with, a mistake of fact. It was under this latter doctrine that the plaintiffs in both the *Stone* and *Lowry* cases sought their relief.

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[3] 174 A.L.R. 1352.
[4] Heaton v. Heaton, 55 N.Y.S.(2d) 154 (1945).
[5] Rubardt v. Salzman, 314 Ill. App. 189, 40 N.E.(2d) 846 (1942).
[6] 10 R.C.L. 304, Sec. 48.
[7] Hoberg v. John Hoberg Co., 170 Wis. 50, 173 N.W. 639 (1919).
[8] Turner v. Washington Realty Co., 128 S.C. 271, 122 S.E. 768 (1924).
[9] Cherry v. Welsher, 195 Iowa 640, 192 N.W. 149 (1923).
[10] Barnett v. Kunkle, 256 Fed. 644 (1919).

Why this particular combination of words should justify relief the Court failed to explain. In that respect the Michigan Supreme Court was doing only what other courts have done, denying relief under the general rule or granting relief under some exception, without any satisfactory analysis of the situation or discussion of the reasons for granting or refusing relief. With the aid of the now accepted "exceptions" there is now no question of the power of a court of equity to rescind a gift. The only problem lies in the propriety of exercising that power in a given case.

Of course, the *Lowry* and the *Stone* decisions are Michigan cases. The extent to which they will be followed in other states depends upon the extent to which the principles of equity in those states are consistent with the principles of equity as applied by the Michigan courts. Much depends, also, upon the extent to which the courts in those states are willing to invoke equitable jurisdiction under the circumstances in question. In the last respect, it is doubtful whether relief would be forthcoming in cases where, after the United States Supreme Court decision, the tapayer formed the partnership. It is probable that such a situation would be treated as one in which no relief is warranted.

DANIEL A. KRAEMER

Torts — Contributory Negligence[1] by Patron at Wrestling Match — The plaintiff while attending a wrestling match staged under the auspices of defendant promoter and by defendant contestants was injured when the referee was catapulted out of the ring onto his lap. The referee left the ring in this manner by reason of an inopportune impact with one of the contestants who had just missed placing a flying tackle on his opponent. The plaintiff through choice occupied a front seat. It was not shown how familiar the plaintiff was with wrestling matches. *Held:* it was error for the trial court to take the question of contributory negligence from the jury. *Klause v. Nebraska State Board of Agriculture, 35 N.W. (2d) 104 (Nebraska, 1948).*

The point worthy of notice in this decision is that the plaintiff was not contributorily negligent as a *matter of law* in placing himself in a front seat. The question posed, therefore, is: when is a spectator at a sporting event regarded as contributorily negligent in the choice of his vantage point as a matter of law? The general rule appears to be that

[1] "The term (assumption of risk) is rightly applicable only to master and servant cases and is a result of a contract of hiring. City of Linton v. Maddox, 75 Ind.App. 449, 130 N.E. 810. Contributory negligence implies misconduct, the doing of an imprudent act by the injured party, or his dereliction in failing to take proper precaution for his personal safety. Wheeler v. Tyler, 129 Minn. 206, 152 N.W. 137." Black's Law Dictionary, "Assumption of Risk," p. 160.