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Gifts - U. S. Postal Savings Certificates and U. S. War Savings Bonds

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Gifts—U. S. Postal Savings Certificates and U. S. War Savings Bonds — Mrs. Felker, friend, confidant and nurse of the decedent, brought suit to establish ownership of certain securities as against the estate of the decedent who, it was claimed, gave them to the plaintiff as a gift prior to his death. These securities, postal savings certificates and a war savings bond, were in the possession of the plaintiff, having been held by her for some period of time prior to the donor's death. *Held*: that postal savings certificates and war savings bonds may, notwithstanding statements therein that they are not negotiable and not transferable, be the subject of a gift by delivery which is valid between the parties, in the absence of express prohibition by the Federal statutes, rules, and regulations under which they were issued. *Marshall v. Felker* (Fla. 1946), 23 So. 2d. 555.

The court followed the general rule that any personal property, of which the legal or equitable title can pass by delivery, actual or constructive, may be the subject of a gift *inter vivos* or *causa mortis*.¹ Saying that the rule applies to nonnegotiable or nontransferable postal savings certificates and savings bonds issued by the federal government in the absence of an express prohibition in the federal statutes, rules and regulations against the transfer of such instruments by gift, the court stated:²

"We find nothing in the rules and regulations brought to our attention which will prevent an inter vivos gift of the securities in question. Indeed, section 1624 of the Postal Laws and Regulations seems to be clear to the effect that if the rights and interests of a donee beneficiary in postal savings certificates have been adjudicated by a court of competent jurisdiction payment will be made by the United States Post Office Department upon production of a decree containing such adjudication . . ."

As to the regulations governing the issuance of United States savings bonds which provide that no judicial proceedings will be recognized "if they would give effect to an attempted voluntary transfer inter vivos of the bond", the court construed the provision as not making unlawful such transfer as between the donor and the donee.³ The impracticability of the decision, and the possibility of its negligible value to the donee of a savings bond, is apparent when one considers the possibility of the federal government refusing to pay the proceeds of the bond to the donee whose rights are recognized by the state court. The court seemed not unaware of the dubious value of a war savings bond in the hands of such a donee. The Court said:⁴

¹ 38 C.J., Gifts, 38, 39, 114.

² *Marshall v. Felker* (Fla. 1946), 23 So. 2d. 555 at p. 557.

³ Treasury Department Regulations, Sec. 315.51.

⁴ *Supra*, *Marshall v. Felker*, at page 557.

"The fact that the donee may experience some difficulty in procuring the proceeds of the securities when they are presented to the issuing agency for payment is also outside the issue."

The weight of authority seems to be that gifts inter vivos of postal savings certificates are valid.⁵ While the position of the donee of a postal savings certificate would seem secure in view of section 1624 of the Postal Laws and Regulations, that of a donee of a war savings bond would seem precarious due to the federal government's possible reluctance to pay the amount due on the bond. A much more practical decision, and one which would seem to be in harmony with the federal regulations under which savings bonds are issued was indicated by a New York court, although the court based its actual decision upon the insufficiency of the evidence to establish the gift.⁶ There the court added that under the form of the bond, and the regulations of the Treasury Department of the United States, a United States savings bond could not be made the subject of a voluntary transfer by way of gift or sale or pledge. Because of the practical considerations mentioned above, it would seem that this should be the better and the prevailing rule.

CHARLES M. DALY

⁵ *Re Vanicek*, 17 N.W. 2d. 477 (Neb. 1945) ; *Diskin's Estate*, 105 Pa. Sup.Ct. 519, 161 A. 893 (1932) ; *Williams v. Letton*, 228 Ky. 371 (1929).

⁶ *Re Owens*, 32 N.Y.S. 2d. 747 (1941).