Gifts - Disposition Made in Contemplation of Death - Delivery of Check to Donee

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question, validate contracts which before such compliance were void. *Allen v. City of Milwaukee,* 128 Wis. 678, 106 N.W. 1099, 5 L.R.A. (n.s.) 680 (1906). Even though a resident defendant escapes the burdens of an onerous contract and although there is due and owing to the foreign unlicensed corporation money, services or property on the contract, yet the sanction of the statute permits the Wisconsin resident to invoke the statutory remedy. *Street Railway Adv. Co. v. Lavo Co.*, 184 Wis. 395, 198 N.W. 595 (1924). However, one cannot always retain the full benefits of a contract without responsibility because the words "affecting the personal liability" exclude all unilateral contracts, like bills and notes, all contracts fully executed outside of this state upon which there remains as obligation only payment, or payment and delivery, to be made in this state, and all contracts not by their stipulations imposing duties or liabilities on such foreign corporation. *Catlin and Powell Co. v. Schuppert*, 130 Wis. 642, 110 N.W. 818 (1907). And the statute does provide that: "Any foreign corporation may without being licensed to do business in this state * * * take, acquire, hold and enforce notes, bonds, mortgages or trust deeds given to represent or secure money so loaned or for other lawful consideration, and all such notes, bonds, mortgages or trust deeds which shall be taken, acquired or held by any such foreign corporation shall be as enforceable as though it were an individual, including the right to acquire the mortgaged property on foreclosure, or in virtue of the provisions of the mortgage or trust deed, and to dispose of the same." The statute does not affect a foreign corporation which is doing interstate business. When an article is brought into this state for the purposes of demonstration, and is then sold in this state, such a transaction is not intrastate and consequently does not come under the provision of the statute. *American S. M. Co. v. Jaworski*, 179 Wis. 634, 192 N.W. 50 (1923). But when an article is taken from the care and custody of a carrier and received by a consignee, and removed by him to the place where he intends to use it, it ceases to be an object of interstate commerce. *Indiana Road Machine Co. v. Lake*, 149 Wis. 541, 136 N.W. 178 (1912). And even where property is sold after it has reached its destination and has been delivered to the consignee, it is no longer a subject of interstate commerce. *Greek-American S. Co. v. Richardson D. Co.*, 124 Wis. 469, 102 N.W. 888 (1905).

William Ketterer.

Gifts—Disposition Made in Contemplation of Death—Delivery of a Check to Donee.—The petitioner, Mary Hartwig, had in her possession the checking account passbook of her sister, Hattie Schreihart, with Hattie's permission. Mrs. Schreihart, becoming seriously ill and fearing death, signed a blank check and gave it to the petitioner as a gift of the funds in the account, with the intention that the petitioner fill in the check and withdraw the funds in full. Several days later, Mrs. Schreihart in the presence of her banker, business adviser, the petitioner and another sister said that she wished it understood that the petitioner fill in the check and withdraw the funds in full. Petitioner never filled in or cashed the check, which, along with the account book, was turned over by mistake to the administrator with the will annexed of Mrs. Schreihart's estate. The administrator refused to redeliver the same or the proceeds thereof to the petitioner. She then filed a claim against the estate for the funds in the checking account and the rest of the property allegedly given to her. The court below ordered judgment that the petition and claim be denied. On appeal, *held,* judg—
ment reversed; there was a sufficient delivery of the "indicia of ownership," together with a clear statement of gift, to complete a valid gift 
causa mortis. In re Schreihart's Estate, (Wis. 1936) 270 N.W. 71.

The case opens discussion of a problem considerably in conflict: does delivery of a bank check constitute a transfer to the payee of title to the funds to which it is subject, sufficient to sustain a gift 
causa mortis? It has been held that a check is not sufficient in any way to constitute a gift 
causa mortis. Dickerson v. Snyder, 209 Ky. 212, 272 S.W. 384 (1925). Many courts hold contrary to the Dickerson case, but there are various grounds of distinction in these courts as to what additional elements must be present to make the check valid as a gift 
causa mortis. In Varley v. Sims, 100 Minn. 331, 111 N.W. 269 (1907), the Minnesota Supreme Court held that a check as a gift 
causa mortis is sufficient as long as it covers the entire amount of the deposit. See also First National Bank v. O'Bryne, 177 Ill. App. 473 (1913) and Aubrey v. O'Bryne, 188 Ill. App. 601 (1914). It has been held that when the check is not drawn for the exact amount in the bank account it is not an executed gift of money where actual payment does not precede the death of the drawer. In re Miller's Estate, 320 Pa. 150, 182 Atl. 388 (1936). Contrarily, the Washington Supreme Court has decided that a check delivered by the drawer to the payee in fear of impending death as a gift 
causa mortis is enforceable although the check did not reach the bank until after the donor's death and although it did not include all of the donor's deposit. Phinney v. State, 36 Wash. 236, 78 Pac. 927, 68 L.R.A. 119 (1904). The court in Carter v. Greensway, 152 Ark. 339, 238 S.W. 65 (1922), does not distinguish between a check for part of the fund or for the whole of it, but simply holds that a gift 
causa mortis by check is valid. Some courts decide that such a check is enforceable as a gift whether honored before or after the death of the drawer. Phinney v. State, supra; Carter v. Greensway, supra. Others decide that a check is valid as a gift 
causa mortis only if accepted by the bank before the death of the donor. In re Miller's Estate, supra; see also In re Knapp's Estate, 197 Iowa 166, 197 N.W. 22 (1924); Weiss v. Fenwick, 111 N. J. Eq. 385 162 Atl. 609 (1932); In re Ehler's Estate, 132 Misc. Rep. 910, 231 N.Y. Supp. 16 (1928). It is difficult to decide from the facts of the principal case how the Wisconsin court would decide each of the questions discussed.

PAUL G. NOELKE.

Municipal Corporations—Governmental and Proprietary Functions—Temporary Employee Injured by City Truck.—The plaintiff, who was unemployed, applied to the board of public welfare of the defendant city for relief. He was told to report at the city farm on a day stated. He did so, and with others was driven to Field Park, which was owned by the city, in an automobile truck registered in the name of the board of public welfare and operated by one of its employees. He worked all day carrying wood from the park to a road. At the close of the day, he and other men, at the direction of the driver, climbed upon the rear of the truck, on which was a load of wood tied with a rope. The driver started down hill and drove into deep frozen ruts. The wood shifted, striking the plaintiff, throwing him off the truck, and causing severe injuries. The plaintiff contended that because some of the wood collected at the park was used for heating shops maintained at the almshouse and farm, at the time of the accident, the driver was engaged and the truck was being used not only in the performance of a public duty but was an enterprise partly commercial in character and productive of profit or corporate benefit to the