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Personal Property—Parties to a Marriage Which Never Materializes Held Tenants in Common of the Wedding Gifts

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the happening of a particular contingency, *i.e.*, remarriage of the widow.

In addition the suggested solution is desirable in view of the policy considerations mentioned above. In normal circumstances the duty of raising a family falls upon the widow, and the task is often a difficult one. In many cases the necessity for selling the property arises, perhaps because it is not a good income-producing property in its present condition, and no money is available to improve the property. Selling a life estate is a difficult thing at best, and more often than not results in the seller's getting relatively little for her interest. Finally, it has as a general proposition been considered desirable to place as much of the total quantum of possible estates in one person so as to increase marketability, and thus advance the overall objective of free alienability.

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PERSONAL PROPERTY—PARTIES TO A MARRIAGE WHICH NEVER MATERIALIZES HELD TENANTS IN COMMON OF THE WEDDING GIFTS.

Plaintiff and defendant received wedding gifts at three parties given in honor of their engagement. Each gift was accompanied by a card reading, "To Janet and Seymour," plaintiff and defendant respectively. When the couple subsequently ended their engagement by mutual consent, plaintiff demanded the gifts, which defendant had been storing at his home for safekeeping. Upon defendant's refusal to surrender them, plaintiff instituted a replevin action. At no time did any of the donors express a desire for the return of the gifts, nor did either of the litigants make such a tender.[1]

Refusing to take judicial notice of the social custom contended for by plaintiff, namely that the intended bride is entitled to the wedding gifts, the court found that plaintiff and defendant owned the gifts as tenants in common. Once that determination had been made, plaintiff's action necessarily failed. One tenant in common is deemed to hold for the benefit of his co-owners, and hence another co-tenant has no grounds for demanding that the person already in possession relinquish the goods.[2]

1. Mandelbaum v. Weiss, 11 N.J. Super. 27, 77 A.2d 493 (App. Div. 1950).
2. Garrett v. McAtee, 195 Ark. 1123, 115 S.W.2d 1092 (1938); Kleinfeld v. General Auto Sales Co., 118 N.J.L. 67, 191 Atl. 460 (1937).

The specific problem raised in the case is nowhere discussed by textual material. Nor is there a previous case directly in point. Therefore, resort must be had to two somewhat similar groups of cases in an attempt to find a theory to govern the principal case. The first group of cases, which involves the situation in which a donor, not a party to the proposed marriage, seeks to recover his gifts because of the termination of the engagement, is only indirectly in point.[3] But the second line of cases, those involving the consummation of the marriage and a subsequent separation in which each spouse claims the wedding gifts, is closely analogous.[4]

There are only two decisions in the former category, both of which hold that a gift in anticipation of marriage is conditional upon the occurrence of that marriage and allow the donor to revoke when it fails to take place. Thus in *Grossman v. Greenstein*[5] where a father deposited $1000 in a joint account for his daughter and intended son-in-law, he was accorded restitution of that sum when the marriage failed to materialize. The court concluded that there were sufficient circumstances to find an unexpressed, but nevertheless implied, intent on the part of the donor that the gift was conditioned upon the consummation of the marriage. The same result was reached in an earlier English case involving a similar factual situation.[6] In each instance it is apparent that the court was guided by the supposed intent of the donor.

The black letter rule of Section 58 of the *Restatement of Restitution* indicates that a wedding gift cannot be recovered unless given conditionally, without indicating under what circumstances a condition will be found.[7] Comment *c*[8] thereon states that ordinarily in the case of gifts exchanged between the parties to the

3. There is also a line of cases involving recovery of gifts given by one of the engaged parties to the other. See Note, 92 A.L.R. 600 (1934). The question involved there seems too far removed from the facts of the principal case to warrant discussion here.

4. The court in deciding the principal case relied upon cases of this nature, apparently feeling that the slight variation in circumstances was immaterial.

5. 161 Md. 71, 155 Atl. 190 (1931).

6. Bond v. Walford, 32 Ch. D. 238 (1886).

7. RESTATEMENT, RESTITUTION § 58, (1937).

8. . . . Gifts made in anticipation of marriage are not ordinarily expressed to be conditional and, although there is an engagement to marry, if the marriage fails to occur without the fault of the donee, normally the gift cannot be recovered. . . .

marriage there must be an intention on the part of the donor that the gift be conditional to justify revocation, except in cases of fraud[9] or the wrongful ending of the relationship by the donee. Moreover, it indicates that such an intention will seldom be found without direct manifestations thereof. However, the language of comment *b* imports that in the case of gifts by a donor other than one of the engaged parties, restitution will normally be permitted. Comment *b* reads in part as follows:

> . . . The condition may be stated in specific words or it may be inferred from the circumstances. Likewise, as in the case of engagement and wedding gifts, justice may require the creation of a condition although the donor had no such condition in mind. . . .[10]

Thus the *Restatement* indicates that when the gifts are obviously given in anticipation of marriage they are recoverable, for although the donor usually will have no intent concerning what is to happen if the marriage proves abortive (*i.e.*, he just does not think about this contingency), it is inferred that if he had given any thought to this possibility he would have desired that the gift be returned. "Implied in law intent", as distinguished from implied in fact intent, might be said to give rise to the condition in this situation.

Thus the gist of these authorities is that when a controversy arises between donor and donee, the intent of the donor, either express or implied from the circumstances, or in the absence of any intent, that which he probably would have had ("implied in law intent"), is controlling.

Turning now to those cases more nearly in point, we find that the earliest one awarded the gift to the wife.[11] This result might be justified on the facts if the intent of the donor is to be the criterion, for, although there was no manifestation of intent, the donors were all relatives and friends of the wife. The court did not indicate on precisely what ground it was basing its decision, but rather devoted almost its entire opinion to explaining that under the married women's property act the wife was entitled to claim the property as her own. Thus the case lays down no rule to be followed in the future, and is of little or no use to us here, although possibly the court had in mind the social cus-

9. *Cf.* Burke v. Nutter, 79 W. Va. 743, 91 S.E. 812 (1917).
10. RESTATEMENT, RESTITUTION, § 58, comment *b* (1937).
11. Ilgenfritz v. Ilgenfritz, 49 Mo. App. 127 (1892).

tom asserted by the plaintiff in the principal case, without articulating that fact.

In a more recent New York decision,[12] in which money to buy gifts for herself had been given the wife by her mother and sister, the chattels were awarded to the wife. The court indicated that it would look to the intent of the donor in determining to whom the gifts belonged, when it said:

> If a gift be made to the man or woman, it is his or hers, as the case may be; if it be made to both, it belongs to both.[13]

Thus that court was not guided by any social custom such as the one contended for by the wife in the principal case, but rather, upon examining the facts peculiar to the case before it, found an intent that the gifts should belong to the wife, and gave judgment accordingly.

In the *Mandelbaum* case the court relied upon *Kantor v. Kantor*,[14] in which, upon the dissolution of their marriage because of the impotency of the husband, the husband and wife were held tenants in common of $300 worth of household goods which had been given by relatives of both spouses. The court concerned itself solely with the intent of the various donors and found that all contributed with the intent of benefiting both husband and wife.

It is clear then that the theme running throughout the better reasoned cases is that the intent of the donor is the controlling factor, whether the issue be ownership of the goods as between the two parties to the marriage or whether it be a contest between donor and donee. That conclusion seems well settled.

In the situation where the marriage never takes place, and the donor does not seek to recover the gifts, the best result will usually be to find a tenancy in common between the parted lovers, unless a clear intent to benefit only one party is manifested. Moreover, although this suggestion is not strongly reinforced by the few decided cases, it would seem most reasonable that there be a presumption that the gifts were intended for both parties, thus creating a tenancy in common. This presumption could then be rebutted by evidence such as any express declarations of intent or the nature of the gifts themselves. The rela-

12. Wainess v. Jenkins, 110 Misc. 21, 180 N.Y. Supp. 627 (Munic. Ct. 1920).
13. *Id.* at 22, 180 N.Y. Supp. at 628.
14. 133 N.J. Eq. 491, 33 A.2d 110 (Ch. 1943).

tionship of the donor to the prospective wife or husband might also be considered in rebutting the presumption, but ordinarily that factor should not be accorded very much weight. By the time marriage is in the offing, relatives of the engaged party will frequently think as highly of his fiancee as of him, and thus intend the gifts for both. It is for this reason, together with the fact that the donor will naturally expect the engaged couple to enjoy and make use of the gifts together, that a presumption that the donor intended the gift for both is desirable.

In the principal case resort to such a presumption would, of course, not have been necessary, since sufficient evidence was available to show the intent of the donors. The decisive factor was the presence of the cards accompanying the gifts, evincing an intent that both parties should receive them. In basing its decision on this intent, the court reached a logical, equitable, and well reasoned result.

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