

based their results upon business custom and usage in accordance with the spirit of the Negotiable Instruments Law. *Plover Savings Bank v. Moodie*, 135 Ia. 685, 110 N.W. 29 (1907); *Sublette Exchange v. Fitzgerald*, 168 Ill. App. 240 (1912); *Gordon v. Levine*, 194 Mass. 418, 80 N.E. 505 (1907). The last case cited, a leading case on the subject, established the rule that deposit for collection within one day after receipt and transmission for collection through the usual course adopted by that bank should be regarded as due diligence. The rule of the present case, though not required for the decision, seems to restrict unnecessarily the more liberal view of the *Gordon* case.

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Bills and Notes—Contract upon a Negotiable Instrument—Negotiable Instruments Law § 16—[Massachusetts].—Defendant was made the payee of a note, secured by a mortgage, in order to defraud the creditors of the actual owner of the note. Defendant then assigned the note and mortgage to the actual owner by a separate instrument under seal without consideration or delivery of the note or mortgage. The assignment was not in fraud of the defendant's creditors, nor were debts created in reliance on the apparent ownership of the note. The negotiability of the note did not clearly appear. Suit was brought to reach the note in payment of certain debts of defendant. *Held*, the plaintiff could not recover as the assignment was valid and irrevocable. *O'Gasapian v. Danielson*, 187 N.E. 107 (Mass. 1933).

This decision represents the prevailing view as to the assignment of non-negotiable instruments in the jurisdictions where the seal is effective. *Connor v. Trawick's Adm'r*, 37 Ala. 289 (1861); *Newell v. Newell*, 34 Miss. 385 (1857); *Tarbox v. Grant*, 56 N.J. Eq. 199, 39 Atl. 378 (1898); see also Contracts Restatement (1932), § 157; Williston, Contracts (1920), § 440. This effect was given to a seal even in a jurisdiction that has so far reduced the formalities of a sealed instrument that not even a scroll is required. Mass. Acts of 1929, c. 377, § 2. See 15 Am. Bar Ass'n Jour. 460. Where, however, the rights of an assignee are regarded as merely equitable, Williston, Contracts (1920), § 447; but see Cook, Alienability of Choses in Action, 29 Harv. L. Rev. 816 (1916) and 30 *id.* 449 (1917), it would seem that a court of equity would hold an assignment under seal as revocable in compliance with the maxim that equity will not aid a volunteer, the seal being a product of the common law courts. *Borum v. King's Adm'r*, 37 Ala. 606 (1861).

While the validity of the assignment of a negotiable instrument is governed by the common law rather than the law merchant, *Bullitt v. Scribner*, 1 Blackf. (Ind.) 14 (1818), the negotiability of the instrument may be significant in determining the legal power retained by the assignor. See Williston, Contracts (1920), §§ 440, 1042. It is generally recognized that for an assignment to be effective there must be a parting with all present and future legal power and dominion over what is assigned. *McCutchen v. McCutchen*, 9 Port. (Ala.) 650 (1839); *Walker v. Crews*, 73 Ala. 412 (1882); *Calvin v. Free*, 66 Kan. 466, 71 Pac. 823 (1903); 20 Cyc. 1195, 1196. Thus, if the instrument were negotiable it would seem that the legal power of negotiation would make the purported assignment ineffectual so far as *bona fide* purchasers from the assignor are concerned.

The court in the principal case held the Negotiable Instruments Law inapplicable even if the instrument were negotiable, because there was no delivery of the note to the assignee. But the Negotiable Instruments Law, § 16, Ann. Laws of Mass. (1933), c.

107 § 38, states that, "Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto." See *Horn v. Nicholas*, 139 Tenn. 453, 201 S.W. 756 (1917). It is not certain, however, that there was no delivery. The Negotiable Instruments Law, § 191, clause 6, provides: "Delivery means transfer of possession, actual or constructive, from one person to another." Common law cases have held that for a constructive delivery of an instrument there need be no manual transfer or possession. *Noble v. Fickes*, 230 Ill. 594, 82 N.E. 950 (1907); *Kelsa v. Graves*, 64 Kan. 777, 68 Pac. 607 (1902); *Bone v. Holmes*, 195 Mass. 495, 81 N.E. 290 (1907); *Ehrlich v. Sklamberg*, 65 Misc. 5, 119 N.Y.S. 337 (1909).

An undoubtedly true statement in the principal case would be that the assignee obtains none of the advantages of a "holder" under the Negotiable Instruments Law because he was not an indorsee. Negotiable Instruments Law, § 191, clause 7. In regard to the rights of a transferee the Negotiable Instruments Law, § 49, provides: "Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein." Because the words "for value" are in the statute, some courts take the narrow interpretation that a gratuitous transferee does not have title even as between the maker and the assignee. *Bond v. Maxwell*, 40 Ga. App. 679, 150 S.E. 860 (1929); *Moore v. Moore*, 35 Ga. App. 39, 131 S.E. 922 (1926), where the assignment was by a separate instrument. This requirement of value was made even in a state giving a seal the effect of a conclusive presumption of consideration. Code of Georgia, 1926, §§ 4219, 4241. However, section 49 might be extended by analogy to cover a gratuitous transferee. Brannan, Negotiable Instruments Law (5th ed. 1932), 472. The term "for value" may be interpreted as a requisite solely for the continuing clause: "and the transferee acquires in addition the right to have the indorsement of the transferor." See *Elmore v. Harris*, 134 Okla. 282, 273 Pac. 892 (1928). Where a transferee is required to give value to obtain title to a negotiable instrument a mere technical consideration will be sufficient if value be defined as in the Negotiable Instruments Law, § 25: "any consideration sufficient to support a simple contract." This definition has been followed by some courts by disregarding the Negotiable Instruments Law, § 191, clause 12: "Value means valuable consideration." *Judy v. Steer's Adm'x*, 199 Ky. 221, 250 S.W. 859 (1923); *Jackson v. Carter*, 128 S.C. 79, 121 S.E. 559 (1924); *Marling v. Fitzgerald*, 138 Wis. 93, 120 N.W. 388 (1909).

ASHLEY FOARD

Conflict of Laws—Determination of Validity of *Inter Vivos* Trust of Movable—[New York].—*H* and *W*, domiciled in Quebec, entered into an antenuptial agreement settling a sum of money on *W*. Subsequent to their marriage they entered into an agreement whereby *W* gave up all rights under the previous settlement, and *H* conveyed to her an interest in a more valuable trust consisting of securities then in the possession of a New York trust company, which was named trustee, and other securities turned over to the trustee by the agent of *H* in New York. Plaintiff, trustee in bankruptcy of *H*, the settlor, brought an action against *W* to have the trust set aside as void in its inception, on the ground that, by the law of Quebec where husband and wife agree to maintain separate estates, neither spouse can transfer to the other, directly or in trust, a substantial part of his or her property. *Held*, two judges dissenting, that the law of the *situs* of the trust *res* and the place in which the parties had intended