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 Movables—[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

the trust to be administered controls; judgment for defendant affirmed. *Hutchison v. Ross*, 262 N.Y. 381, 187 N.E. 65 (1933); for opinions below see *Ross v. Ross*, 137 Misc. 795, 243 N.Y.S. 418 (1930); 233 App. Div. 626, 253 N.Y.S. 871 (1931), noted in 32 Col. L. Rev. 371 (1932); *Hutchison v. Ross*, 233 App. Div. 516, 253 N.Y.S. 889 (1931).

At an early date Anglo-American law seized upon the maxim *mobilia sequuntur personam* and used it to decide the validity of *inter vivos* transfers of movables. See Story, Conflict of Laws (Bigelow's 8th ed., 1883), §§ 376–81; Beale, Equitable Interests in Foreign Property, 20 Harv. L. Rev. 382, 394 (1907); Beale, Living Trusts of Movables in the Conflict of Laws, 45 Harv. L. Rev. 969, 970 (1932). The maxim has been rejected in favor of the *situs* theory as to transfers of tangibles and commercial specialties. *Disconto Gesellschaft v. U.S. Steel Corp.*, 267 U.S. 22, 45 Sup. Ct. 207, 69 L. Ed. 495 (1925); *Goetschius v. Brightman*, 245 N.Y. 186, 156 N.E. 660 (1927); Conflict of Laws Restatement (Proposed Final Draft No. 2, 1931), §§ 275, 277, 282, 379. It is now confined chiefly to transfers upon death or by operation of law upon marriage; see Conflict of Laws Restatement (Proposed Final Draft No. 2, 1931), §§ 310, 325, 328.

Due chiefly to the strong precedents in favor of the domiciliary rule set forth in the testamentary trust cases, *Liberty National Bank v. New England Investors Shares*, 25 F. (2d) 493, 495 (D.C.D. Mass. 1928); see Cavers, Trusts *Inter Vivos* and the Conflict of Laws, 44 Harv. L. Rev. 161, 162–63, 188–89 (1930); but see *Bouree v. Trust Francais*, 14 Del. Ch. 332, 346, 127 Atl. 56, 62 (1924), the law as to the validity of *inter vivos* trusts has lagged behind in abandoning the domiciliary test. Cf. *Mercer v. Buchanan*, 132 Fed. 501 (C.C.W.D. Pa., 1904); *Swetland v. Swetland*, 105 N.J. Eq. 608, 149 Atl. 50 (1930), affd. 107 N.J. Eq. 504, 153 Atl. 907 (1931); see *Maynard v. Farmers' Loan & Trust Co.*, 208 App. Div. 112, 116, 203 N.Y.S. 83, 86 (1924), affd. 238 N.Y. 592, 144 N.E. 905 (1924); but see *Hullin v. Fauré*, 15 La. Ann. 622 (1860); *Greenough v. Osgood*, 235 Mass. 235, 237–38, 126 N.E. 461, 462 (1920); Conflict of Laws Restatement (Proposed Final Draft No. 2, 1931), § 315. The problem is further complicated by the addition of a third possible jurisdiction whose law might govern the validity of an *inter vivos* trust—the place in which the trust is to be administered; *Robb. v. Washington & Jefferson College*, 185 N.Y. 485, 78 N.E. 359 (1906); cf. *Equitable Trust Co. v. Pratt*, 117 Misc. 708, 193 N.Y.S. 152 (1922), affd. 206 App. Div. 689, 199 N.Y.S. 921 (1923); but cf. *Fowler's Appeal*, 125 Pa. 388, 17 Atl. 431 (1889). Some recent cases place strong emphasis on the intent of the settlor, when it can be determined: *Liberty National Bank v. New England Investors Shares*, 25 F. (2d) 493, 495 (D.C.D. Mass. 1928); cf. *Swetland v. Swetland*, 105 N.J. Eq. 608, 149 Atl. 50 (1930), affd. 107 N.J. Eq. 504, 153 Atl. 907 (1931). The law of the jurisdiction in which the trust agreement was executed, although rejected in *Equitable Trust Co. v. Pratt*, 117 Misc. 708, 193 N.Y.S. 152 (1922), affd. 206 App. Div. 689, 199 N.Y.S. 921 (1923), is considered in some cases in which it coincides with other factors on which the court relies; see *Mercer v. Buchanan*, 132 Fed. 501 (C.C.W.D. Pa., 1904); *Fowler's Appeal*, 125 Pa. 388, 17 Atl. 431 (1889).

The court in the instant case was also influenced by a New York statute, enacted after the execution of the trust instrument, effectuating express declarations of settlors that New York law should govern trusts of personal property located in New York. N.Y. Cahill's Consol. Laws (1930), c. 42, § 12-a. Further, inasmuch as the trust had been created to replace a marriage settlement, the emphasis on the *situs* and intent of the settlor in the English cases construing such settlements, as contrasted with other

types of *inter vivos* trusts, may have been persuasive; see Cavers, Trusts *Inter Vivos* and the Conflict of Laws, 44 Harv. L. Rev. 161, 183–86 (1930).

The case is interesting as illustrating the judicial technique of handling such problems; all factors present are weighed, and no single element is permitted to control the decision as to what law will be applied. See 33 Col. L. Rev. 1251, 1252 (1933). Apparently situs is at present the most persuasive single element, administration and intent are increasing in importance, and domicile and place of execution are declining in value. It is as yet impossible to assure prospective settlors that any given trust will definitely be held valid, and this result may be deplored; see 47 Harv. L. Rev. 350 (1933); however, if a substantial number of the factors enumerated point to the law of a particular jurisdiction as controlling, it seems reasonably certain that that law will be applied.

GERALDINE W. LUTES

Conflict of Laws—Validity of Marriage Contracted in Violation of *Lex Fori*—[Federal].—Plaintiff, divorced in the District of Columbia on grounds of adultery, was prohibited by statute (D.C. Code 1929, title 14, c. 3, § 63) from remarrying, but married again in Florida. Her second husband later returned to the District of Columbia, and there died. Plaintiff sued in the District of Columbia to enforce her dower interest in his estate and recovered. *Held*, the decision of the District Supreme Court be reversed. Plaintiff, having contracted this second marriage in violation of the statute, could not use the courts of the District to gain for herself any of the incidents of the second marriage. *Loughran v. Loughran*, 66 F. (2d) 567 (D.C. 1933).

The court relies completely on *Olverson v. Olverson*, 54 App. D.C. 48, 293 Fed. 1015 (1923), where a divorced adulteress who had remarried was denied a divorce *a mensa et thoro* from her second husband. There the court held that though the marriage would be treated as valid to protect the interests of children or third persons, they would not consider it as establishing any marital obligations between the parties. But the parties in that case went outside the state for the wedding solely to evade the statute and returned immediately thereafter. In the present case, although it is not entirely clear from the report, it appears that the parties had removed their domicil from the District of Columbia prior to their wedding. Thus the court on the facts goes beyond *Olverson v. Olverson*, 54 App. D.C. 48, 293 Fed. 1015 (1923), for the element of intentional evasion of the law of the domicil is here missing. "The fact of such an intended evasion has been repeatedly recognized as the basis of invalidity when otherwise validity would have been declared." *In re Stull's Estate*, 183 Pa. 625, 630, 39 Atl. 16, 17, 39 L.R.A. 539, 542, 63 Am. St. Rep. 776, 778 (1898). *Nelson v. Nelson*, 200 Ill. App. 584 (1916); *Lincoln v. Riley*, 217 Ill. App. 571 (1920); *People v. Steere*, 184 Mich. 556, 151 N.W. 617 (1915); *State v. Fenn*, 47 Wash. 561, 92 Pac. 417 (1907); *Pierce v. Pierce*, 58 Wash. 622, 109 Pac. 45 (1910); Uniform Marriage Evasion Act, 9 U.L.A. 225.

The statute of the District of Columbia here involved only prohibits the marriage of the guilty party to the divorce and is penal in nature. It follows that it is not entitled to extraterritorial effect and was no impediment to the validity of the second marriage when celebrated. *Ponsford v. Johnson*, 2 Blatchf. 51, Fed. Cas. No. 11,266 (1847); *Inhabitants of Phillips v. Inhabitants of Madrid*, 83 Me. 205, 22 Atl. 114, 12 L.R.A. 862, 23 Am. St. Rep. 770 (1891); *Commonwealth v. Lane*, 113 Mass. 458, 18 Am. Rep. 509 (1873); *In re Crane*, 170 Mich. 651, 136 N.W. 587, 40 L.R.A. (N.S.) 765,