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Descent and Distribution—Advancements

An advancement is a gift by a parent to a child, or to one to whom he stands in loco parentis, which is intended as an anticipation of the share which such child would take if the parent were to die intestate.¹ In North Carolina, if an intestate gives realty or personalty to any of his children, the value of the property so given will be deducted from the child’s share upon distribution of the estate in order to equalize the shares of the children or their descendents.² If a child refuses to account for his advancements, he shall be considered to have received his share of the parent’s estate and shall not be entitled to receive any further part.³

In order to constitute an advancement, there must be an actual delivery and change of possession.⁴

Whether there was an absolute gift, loan, or advancement depends upon the intention of the grantor at the time of the transaction, taking into consideration the circumstances surrounding the parties at the time; and the intention existing at a prior or subsequent date will not so determine.⁵ Thus, a gift absolute when it is made, cannot be converted into an advancement by an subsequent statement of a wish to that effect by the parent, short of a legally executed will.⁶ The fact that the donee of a grant regarded it as an advancement will not of itself determine the character of the transaction.⁷

Unless there is something in the circumstances tending to raise the inference of a different purpose, a substantial gift of money or property from a parent to a child will ordinarily be presumed to be an advancement.⁸ But money expended for the education and maintenance of a

² N. C. GEN. STAT. § 29-1 (2) (1943, recompiled 1950); N. C. GEN. STAT. § 28-150 (1943, recompiled 1950).
³ To illustrate: if a parent advanced $1,000 to his son A, $2,000 to his son B, and nothing to his son C, and then died intestate possessed of an estate of $12,000 with the three sons as his sole heirs, to compute the share of each son, they must add to the estate left by the decedent the sums which he had given by way of advancements. This would be $15,000. The share of each son would be $5,000, and this is the amount to which C is entitled; but as A and B received $1,000 and $2,000 respectively, their shares will be $4,000 and $3,000.
⁶ Bradsher v. Cannady, 76 N. C. 445 (1877).
⁸ Harrelson v. Gooden, 229 N. C. 654, 50 S. E. 2d 901 (1948); Creech v.
child is not presumed to be an advancement, because they are the natural
duties which parents are required to perform. However, the pre-
sumption applies when property given is intended to help the child in a
business or profession, or the settling of a child in life. These pre-
sumptions are not conclusive, but are rebuttable by parol evidence.

When the parent is indebted to a child and gives the latter property
or money, the presumption is that this is a payment of debt and not an
advancement. A conveyance for a nominal consideration or the
purchase by a parent who takes title in name of the child are presumed
to be advancements to the child. Parol evidence is competent to rebut
the presumption arising on the face of the deed and show the real in-
tention of the parent. The presumption of advancement is not affected
by the reservation of a life estate.

If an advancement is presumed from the conveyance, the burden of
proof rests upon the party claiming that an advancement was not in-
tended; but when the presumption is that there is no advancement, the
burden of proof shifts to the party claiming an advancement. Thus
where a deed from a parent to a child recites a consideration near the
value of the property conveyed, the presumption is that the conveyance
was not intended as an advancement, and the burden of proving it to be
an advancement is upon him who alleges it to be such.

Evidence of the parent's declarations, which are not so close in point
of time to the transaction as to form in fact a part of it and not in the
presence of the child, that a conveyance from the parent to the child
was intended as an advancement, or otherwise, is inadmissible.

Since the law of representation always applies to the descent of real
property in North Carolina, grandchildren must always account, in

Creech, 222 N. C. 656, 24 S. E. 2d 642 (1943); Nobles v. Davenport, 183
N. C. 207, 111 S. E. 180 (1922); Kiger v. Terry, 119 N. C. 456, 26 S. E. 38
(1896); Thompson v. Smith, 160 N. C. 256, 75 S. E. 1010 (1912); Ex-Parte Griffin, 142
N. C. 116, 54 S. E. 1007 (1906); Habler v. McCombs, 66 N. C. 346 (1872).

Creech v. Creech, 222 N. C. 656, 24 S. E. 2d 642 (1943); Nobles v. Davenport, 183
N. C. 207, 111 S. E. 180 (1922); Kiger v. Terry, 119 N. C. 456, 26 S. E. 38
(1896); Thompson v. Smith, 160 N. C. 256, 75 S. E. 1010 (1912); Ex-Parte Griffin, 142
N. C. 116, 54 S. E. 1007 (1906); Ex-Parte Griffin, 142 N. C. 116, 54 S. E. 1007 (1906).

Nobles v. Davenport, 183 N. C. 207, 111 S. E. 180 (1922).
dividing land lineally descended, for advancements made to their ancestors.\textsuperscript{21} If personalty is given by an intestate to one of his children, who died, leaving issue, in the lifetime of the intestate, such grandchildren take per stirpes and will be required to bring the advancements into hotchpot.\textsuperscript{22} But if personalty is transferred to children, all of whom die, leaving issue, during intestate's life time, such grandchildren take per capita and do not account for advancements made to their respective parents.\textsuperscript{23} When an intestate gives property directly to the grandchildren, they do not have to account for the property, regardless of whether they take per capita or per stirpes.\textsuperscript{24}

North Carolina is contra to the majority of jurisdictions with its rule that advancements of personal property made by an intestate in his own life time to his children are to be brought into distribution for the benefit of the widow.\textsuperscript{25} Where the widow dissents from her husband's will, she is entitled, in ascertaining her distributive share, to have advancements of personalty made to legatees (children) under the will estimated as part of her husband's estate, though as between themselves, there being but a partial intestacy, such advancements are not subject to be brought into hotchpot.\textsuperscript{26}

An agreement by an heir of the intestate that he will take no part in the distribution of the intestate's estate does not operate as an estoppel against a subsequent assertion of his right.\textsuperscript{27}

The doctrine of advancements is based on the idea that parents are presumed to intend, in the absence of a will, an equality of division among the children;\textsuperscript{28} therefore, in a case of partial intestacy, the doctrine of advancements does not exist. There must be entire intestacy.\textsuperscript{29} So where a father died intestate as to his real property, but testate as to his personal property, such of the children who had been advanced lands before the father's death were not compelled to account

\textsuperscript{21} Crump v. Faucett, 70 N. C. 345 (1874) ; Cromartie v. Kemp, 66 N. C. 382 (1872).
\textsuperscript{22} Parker v. Eason, 213 N. C. 115, 195 S. E. 360 (1938); Headen v. Headen, 42 N. C. 159 (1850).
\textsuperscript{23} Skinner v. Wynne, 55 N. C. 41 (1854); II Mordecai's Law Lectures 1345 (2d ed. 1916).
\textsuperscript{25} Eller v. Lillard, 107 N. C. 486, 12 S. E. 462 (1890); Headen v. Headen, 42 N. C. 159 (1850); Duke v. Duke, 1 N. C. 526 (1801); see note 76 A. L. R. 1420 (1932). The question of whether a child advanced more than his total share of the estate must account to the widow in computing her share has not been decided by the North Carolina Supreme Court.
\textsuperscript{26} Arrington v. Dortch, 77 N. C. 367 (1877); Worth v. McNeil, 57 N. C. 272 (1858).
\textsuperscript{27} Melvin v. Bullard, 82 N. C. 34 (1880); Cannon v. Nowell, 51 N. C. 436 (1859).
\textsuperscript{28} Thompson v. Smith, 160 N. C. 256, 75 S. E. 1010 (1912).
\textsuperscript{29} Jenkins v. Mitchell, 57 N. C. 207 (1858); Donnell v. Mateer, 40 N. C. 7 (1847); Richmond v. Vanhook, 38 N. C. 581 (1845).
for them in the division among all his children of his real estate.\(^\text{30}\) It is frequently necessary to use parol evidence to construe advancements or equivalent terms used in the will itself, but extrinsic evidence is not admissible to contradict terms of the will as to the fact or amounts of advancements, where such sums are absolutely charged against such legatees.\(^\text{31}\) Thus where there is an express declaration on the part of the testator that before a daughter is permitted to share in the distribution of his estate she shall account for an advancement, it is not open to her to show that she received more than the sum or less, or that she received nothing at all.\(^\text{32}\)

The amount which should be charged as an advancement is the value of the property as of the date that it is made, and not as of any subsequent time.\(^\text{33}\) If the value of the advancement increases, the child has the benefit; if it decreases, it falls on the child.\(^\text{34}\) So where the value of the property advanced to a son was completely diminished, the son was still charged with the value at the time of delivery.\(^\text{35}\)

Even if value of some sort is paid by the grantee, a conveyance may be an advancement as to its value in excess of such consideration.\(^\text{36}\) Where a father conveyed to his son a tract of land worth $1,200 for which the son paid $400, the $800 excess of value over the price paid was charged as an advancement.\(^\text{37}\)

No interest should be charged against an advancement on accounting, provided the accounting is had within two years allowed by law for the settlement of the estate.\(^\text{38}\)

The personalty of the estate is made the primary fund for the equalization of advancements of personalty, and the realty is made the primary fund for the equalization of advancements of realty, and it is only when and to the extent that there is an excessive advancement in either category of property over and above the share which may come to the other beneficiaries that such excess may be considered in the distribution of the other category.\(^\text{39}\) So where an advancement in real estate to a son was

\(^{30}\) Jenkins v. Mitchell, 57 N. C. 207 (1858).
\(^{31}\) Dodson v. Fulk, 147 N. C. 530, 61 S. E. 196 (1908).
\(^{32}\) Dodson v. Fulk, 147 N. C. 530, 61 S. E. 196 (1908).
\(^{33}\) Langsford v. Yarborough, 189 N. C. 476, 127 S. E. 426 (1925); Tart v. Tart, 154 N. C. 502, 70 S. E. 929 (1911); Ward v. Riddick, 57 N. C. 22 (1858); Raiford v. Raiford, 41 N. C. 490 (1849); Meadows v. Meadows, 33 N. C. 148 (1850); Lamb v. Carroll, 28 N. C. 4 (1845).
\(^{34}\) Banks v. Shammonhouse, 61 N. C. 284 (1867); Walton v. Walton, 42 N. C. 138 (1850); Hicks v. Forrest, 41 N. C. 528 (1850).
\(^{35}\) Banks v. Shammonhouse, 61 N. C. 284 (1867); Walton v. Walton, 42 N. C. 138 (1850); Hicks v. Forrest, 41 N. C. 528 (1850).
\(^{38}\) Langsford v. Yarborough, 189 N. C. 476, 127 S. E. 426 (1925); Tart v. Tart, 154 N. C. 502, 70 S. E. 929 (1911); Hanner v. Winburn, 42 N. C. 142 (1850).
of greater value than an equal share descending to the other children, the one so advanced was charged in the distribution of the personal estate of the parent with the excess in value over an equal share.\(^4\)

The Legislature has passed statutes which permit the clerk of the Superior Court to advance portions of a nonsane person’s estate to certain of the latter’s relatives, which must be accounted for at death.\(^4\)

**Wm. Whitfield Smith**

Federal Jurisdiction—Diversity of Citizenship—Multiple Corporations

Plaintiff, a citizen of Massachusetts, brought a personal injury action in the federal district court for Massachusetts against defendant railroad corporation, alleging it to be incorporated under the laws of New York. Defendant was in fact a multiple corporation existing under the laws of New York, New Hampshire, and Massachusetts. The court of appeals, in affirming the dismissal of the action for lack of jurisdiction, held that for purposes of federal jurisdiction a multiple corporation must be regarded in each state of its incorporation as solely domesticated therein, and that there is no diversity of citizenship jurisdiction where such corporation is sued in one of the states of its incorporation by a citizen of that same state.\(^1\)

The district courts of the United States have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $3000 and is between citizens of different states.\(^2\) When the Supreme Court first considered the status of corporations in connection with the jurisdiction of the federal courts, it held that a corporation was not a citizen and that the citizenship of the stockholders would control.\(^3\) The Court later adopted the fiction that there is a conclusive presumption that all the stockholders of a corporation are citizens of the state of incorporation.\(^4\) Under this fiction,\(^5\) a corporation created under the laws

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123 (1950). No North Carolina case has passed on the question of recovery from an heir of an excess of advancements over his whole distributive share in the estate. But cases outside of North Carolina are in accord in ruling that the heir cannot be required to refund the excess, but can only be excluded from participating in the division of the estate. See note, 46 A. L. R. 1428 (1927).

\(^4\) Harrelson v. Gooden, 229 N. C. 654, 50 S. E. 2d 901 (1948).


\(^1\) Seavey v. Boston & Maine R. R., 197 F. 2d 485 (1st Cir. 1952).


\(^3\) Bank of United States v. Deveaux, 5 Cranch 61 (U. S. 1809).

\(^4\) This doctrine was first announced in Louisville, C. & C. R. R. v. Letson, 2 How. 497 (U. S. 1844). It is forcefully stated in Muller v. Dows, 94 U. S. 444, 445 (1876), as follows: "For the purposes of jurisdiction it is conclusively presumed that all stockholders are citizens of the state which by its laws created the corporation."

\(^5\) The fiction has been severely criticized as judicial usurpation. McGovney, *A Supreme Court Fiction*, 56 Harv. L. Rev. 853, 1090, 1225 (1943).