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GIFI'S CAUSA MORTIS - VALIDITY OF GIFT OF ENTIRE ESTATE

GIFTS CAUSA MORTIS — VALIDITY OF GIFT OF ENTIRE ESTATE — A donor, being *in extremis*, told by a doctor that he was dying, and having no near relatives, gave three bunches of keys to a donee with whose family he had lived for ten years, with the statement, "If I am going to die, everything I have belongs to this woman." This was *held* to be a valid gift *causa mortis* of so much of decedent's property as was thereby made available. *In re Elliott's Estate*, 312 Pa. 493, 167 Atl. 289 (1933).

Just what part of his belongings a donor may dispose of by means of a gift *causa mortis* is a nice question. An early Pennsylvania case,[1] controlling in that State until the principal case and specifically overruled by it, held that a gift of an entire estate could not be valid, no matter what delivery of the subject-matter had taken place. Two reasons seem to be relied upon by courts for this position: (1) The gift is felt to be in the nature of a testamentary disposition and necessarily to controvert the policy and requirements of the statutes of wills, so the extrinsic circumstances surrounding the gift are not allowed to influence the result.[2] (2) The possibilities of fraud are thought great.[3] Where the entire estate or the principal part of it has consisted of a single chattel, some courts have distinguished from this rule,[4] although not necessarily denying its validity, feeling that these objections do not apply so strongly. Other courts, in upholding a gift *causa mortis* of an entire chattel estate, say either that there is no rational basis of distinction between a part and the whole,[5] or that no such limitation was recognized at common law.[6] The requirements as to proof of the intent of the donor and as to actual or constructive delivery, enforced with reference to a single chattel, are felt to be sufficient safeguards when an entire estate is sought to be given.[7] It is also felt that gifts *causa mortis* are not merely an exception to the statutes of wills, and should not be tied down by the rules as to wills.[8] The inherent difficulty in allowing a gift *causa mortis* of an entire estate would seem to be in conconstruing the intent of the donor. If the court in any given situation can feel that the donor intended presently to divest himself of all his property, subject to revocation by his recovery, there would seem to be no reason for distinguishing it from other gifts *causa mortis*. But if, as is possibly more natural, the donor meant to divest himself of title only after his death, the disposition would seem to be testamentary in nature, and should comply with the requirements of the statutes of wills. In the instant case, where the chattels were not enumerated by the donor, and the donee was not a relative, the court seems to have overridden most of the usual difficulties in upholding the gift.[9] T. M. D.

[1] Headley v. Kirby, 18 Pa. 326 (1852).

[2] 59 UNIV. PA. L. REV. 95 at 97 (1910): "The policy which gives a statute precedence over the common law of a subject it purports to cover, demands that this class of gifts [*causa mortis*], which is an exception to the spirit of statutes governing the disposition of property by wills in practically all the jurisdictions in this country, be closely construed so as not to further infringe upon those statutes."

[3] Headley v. Kirby, 18 Pa. 326 (1852); Marshall v. Berry, 13 Allen (Mass.) 43 (1866); THORNTON, GIFTS AND ADVANCEMENTS, sec. 41, p. 39 (1893).

[4] Michener v. Dale, 23 Pa. 59 (1854); Debinson v. Emmons, 158 Mass. 592 (1893).

[5] Meach v. Meach, 24 Vt. 591 (1852).

[6] Thomas' Adm'r v. Lewis, 89 Va. 1, 15 S. E. 389, 37 Am. St. Rep. 848 (1892).

[7] Seabright v. Seabright, 28 W. Va. 412 at 481 (1886): "But, where a gift . . . *causa mortis* of almost the whole of a donor's personal estate is attempted to be set up, courts may very properly require the most clear and satisfactory proof of the delivery of the property as a gift . . . *causa mortis*, but they can go no further." Also Scott v. Union and Planters' Bank and Trust Co., 123 Tenn. 258, 130 S. W. 757 (1910).

[8] 32 COL. L. REV. 702 at 705 (1932).

[9] The court, in holding the delivery of the key to a safe deposit box, under the circumstances of a gift *causa mortis*, to be a good delivery of the contents, is amply sup-