Cases of this description distinguished from gifts *inter vivos*, and *donationes mortis causa*, to perfect which, there must be an actual delivery according to the manner in which the particular thing, the subject of the gift, is capable of being delivered, and without which delivery, the gift is invalid, both at law and in equity.

This decree, being against an executor, who is acting simply in the proper discharge of his office, will be without costs.

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THE CHANCELLOR :

This is a bill, asking that a sealed note given by the complainant, on the 2nd of October, 1843, to Slingsby Linthicum, deceased, for $623,91, may be given up to be cancelled.

The bill is filed against the executor of the obligee, who admits that the assets of the testator, independent of the single bill, are quite sufficient to pay all the claims of creditors.

The proof taken under the commission shows, I think, satisfactorily, that the testator did not intend to exact payment of the money due upon this instrument, that he either intended it originally as a gift, or that he afterwards treated it as such, and abandoned it as a debt. The answer of the executor in fact, proves, that the testator did not regard the whole sum expressed in the note as a debt, and looking to the relation in which the parties stood to each other, (father and son), and at the transaction in which the claim originated, I am strongly persuaded, the testator did not in the first instance, design to claim payment of the whole debt, or that he afterwards, for reasons satisfactory to himself, thought fit to forgive it to his son.

The question then is, whether this court can, consistently with the cases which have been decided upon the subject, order this note to be given up to be cancelled.

The difficulty grows out of the quality of the proof, being only of the parol declarations of the testator, unaccompanied by any other statements, or papers of any description.

In the case of *Byrn vs. Godfrey*, 4 *Ves.*, 6, the Lord Chancellor expressed a strong disinclination to the introduction of parol proof, but still, I think the inference is a very fair one, that if the assets of the testator had been sufficient, without the bond sought to be surrendered, to pay debts and legacies, he would have given effect to the proof.