

order, the delivery, without endorsement, would not authorize the party receiving it to sue in his own name, so that the gift of the money, the thing intended to be given, would be incomplete, and the action, if one is brought for its recovery, would have to be brought in the name of the payee, or his executor, if he be dead. *Bradley and Wife vs. Hunt, Adm'r of Jack, 5 G. & J., 54.*

The case of *Grangiac vs. Arden, 10 Johns. Rep., 302*, relied upon by the plaintiff's counsel in support of the gift, does not, I think, establish the point for which it was cited. In that case, which was an action at law for money received by the defendant upon a lottery-ticket, alleged to have been given by a father to his daughter, who was at the time about eight years old, the jury upon the evidence of the declarations of the father, inferred a delivery, and the Court said that these declarations and acknowledgments afforded reasonable grounds for the jury to infer, that all the formality necessary to make a valid gift had been complied with, and the right and title of the plaintiff to the money complete and vested. That delivery of possession is necessary to constitute a valid gift, was most clearly and distinctly affirmed by the Court, and the verdict of the jury was permitted to stand, because facts and circumstances had been proved, upon which the jury might and did infer such delivery. The case of *Isaac vs. Williams, 3 Gill, 278*, simply proves that in the case of a parol gift of negroes, the delivery of possession need not be proved by a witness who saw it, but that like other facts, it may be proved by inferential testimony.

And in the case before the Court now, it is not meant to be said, that the plaintiff can make out title to the note in question only by a witness who saw the possession delivered. If the facts and circumstances of this case were sufficiently strong to create a fair and reasonable presumption that Mr. Betts, having endorsed his name upon this note, actually delivered it to his daughter as a gift, her title to hold it, it is believed, could not be disputed; but it is clear, he did no such thing. On the contrary, the bill alleges, and the proof clearly shows, he retained the possession during his lifetime, and upon his