

THE WILL OF JOSEPH GIBSON

"Know all men by these presents, that I, Joseph Gibson, Sen, have made, ordained, constituted, &c. Jacob Gibson, to be my true and lawful attorney, for me, and in my name and for my use, to ask, demand and receive from all that are indebted to me by bond, note or any other account; and upon non payment thereof, the said Jacob Gibson or his attorney, for me and in my name, to sue, arrest, imprison, to implead and prosecute for the same, (?)ing and holding firm all and whatever my said attorney or his substitute shall lawfully do, or cause to be done, in and about the premises; and I desire that my said attorney, do keep a record of all that he recovers or receives; and put the same to interest, or purchase any property with the same, that he may think most advantageous for my son Jacob Gibson, Jun. whom I claim and acknowledge to be mine; he is a son of Rose Harten, wife of Henry Hartin, and I have given him the name of Jacob Gibson; and I do allow him to have all that I now possess whenever he comes to the age of maturity; and that the same be held by my attorney until that time, and then be given up to him; and in the case he should die without issue, then property to revert back to Jacob Gibson, Sen. to be disposed of at his discretion. In witness whereof, I have hereunto set my hand and seal this sixth day of June 1796.

JOSEPH GIBSON, SEN. (L.S.)

Signed, sealed and delivered )  
in the presence of us )

DAVID GIBSON  
ABEL GIBSON

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"CASES ARGUED AND DETERMINED IN THE COURT OF CHANCERY OF SOUTH CAROLINA"  
JUNE 1810 - PG 140-143

Columbia-Heard before Chancellor Desaussure

JACOB HARTEN alias GIBSON vs. JACOB GIBSON, Sen. and others.

A deed by a stranger, providing for his natural child by a married woman is valid and will be enforced against the trustee, administrator and representatives of the of the (?) although imperfect in its form, and although the immediate possession of property be given by the grantor.

It would be more immoral for the father of such a child, to deceive the nominal father, and leave him to support a child not his own, than to avow the truth, and make the provision.

THE bill states that the complainant was always reported to be the illegitimate son of a certain Joseph Gibson, of Fairfield district, who departed this life about five years since, without wife or any lawful issue; that in the old man's lifetime, he uniformly acknowledged the complainant as his child, and treated him with tenderness and regard; that the said Joseph Gibson had, by frugality and industry, accumulated a little property, viz. a valuable slave called Anthony, some notes of

hand, and other things, the precise amount not known; and he had always declared his intention, that the complainant should have all he possessed; and a little before his death, for the purpose of securing to complainant the property, aforesaid, he executed an instrument of writing to his brother Jacob above mentioned. but complainant does not know the precise purport of said writing, which is in the possession of said Jacob Gibson. After the death of the said Joseph, the said Jacob administered on his property, and refuses to give the complainant any thing. That Messieurs McGraw and Jones, mentioned in the complainant's bill, were security in the administration bond, which Jacob gave, and took the administration from him, sold the negro Anthony to one Clanpitt (?); and they also refused to give complainant any of the estate. The complainant, therefore, prays for a discovery and amount of the estate of said Joseph Gibson, founding his claim thereto on the declaration of the deceased, and the instrument of writing aforesaid, and prays that the said Gibson and others may be compelled to produce said writing, &c.

The answer admits the death of Joseph Gibson without wife or children. It admits the execution of deed, constituting Jacob Gibson his attorney, to sue, find and recover money, and desires his attorney to employ the funds he might collect, for the use of his natural son, Jacob Gibson, the complainant. That no property was delivered to defendant by Joseph Gibson, who kept the estate in his own hands till his death. But defendant has administered and possessed himself of the property. Defendant denies any acceptance of trust; and insists that the deed was only a power of attorney, which died with the maker. The defendant asks the direction of the court, in the construction of the said deed, as the same does not appear to be a regular or legal deed. The case came to a hearing.

Mr. Egan for complainant, argued that the deed is not testamentary; it was a trust deed, to be executed immediately, and was irrevocable. Whether the child can be recognized by the law as the son of Gibson, or not, is not of importance. He might make a gratuitous gift to the child, and that is good, unless creditors are injured, which is not alleged in this case.

Mr. Nott for the defendants:-Gifts by deed are valid though consideration; but where the deed shows a particular consideration which is not supportable, the deed is void.-Pow.on Con.ss.

As to the policy: Does the law permit any man to claim the child of a family, and dishonor a husband and wife? There is no consideration here: for there can be love and affection for a natural child like this.

As to a gift to a mere stranger, there must be an actual delivery of the property, in this case no delivery of the property took place. Will the court say this was a revocable deed? This court will be governed by the construction which the party himself seems to have put upon it. Can it be supposed it was the intention of Joseph Gibson, to have divested himself of the property, so that his trustee or attorney might have recovered the property, and taken it out of the hands of Gibson himself? He lived for ten years after the deed, and never gave possession of any part of it to the trustee or attorney. Could it be supposed he meant to bind himself in such a manner as to preclude him from revoking it? Where a person undertakes to express a consideration, and that is not justifiable one, (such as love and affection for a natural child by a married woman,) then it must be void: differing in that respect from the case where no consideration at all is expressed.

The court delivered the following decree:

This case turns on the validity and operation of a deed executed by Joseph Gibson, deceased, to Jacob Gibson, the defendant, for the benefit of the complainant, whom Joseph Gibson, claimed as an illegitimate son.

It appears that Joseph Gibson had neither wife nor lawful issue; so that the case stands clear of any objection drawn from the bastardy act; and Joseph Gibson was free to dispose of his property to any person by deed or will.

One objection to this deed is, that the deed was either gratuitous, and no possession being given of any property, but it being to take effect at a future and uncertain time, it cannot legally take effect; such gifts being void at law. And that it cannot be supposed the executor of this deed, intended to preclude himself from altering or recalling the deed if he had chosen; which could be inconsistent with an absolute gift, and shews the same to be void.

I am of opinion, however, that this deed, though gratuitous, and unaccompanied by possession of the property, is valid. Verbal gifts, unaccompanied by possession, are indeed void. But the law considers the deliberate execution of a deed, sufficiently evincive of a settled purpose to give, which may take effect at a future day; and it is the duty of courts to so construe deed, at *res magis valeat quam pereat*. And though this deed be badly drawn, and awkward in its provisions, the intent of the donor is sufficiently clear. It intended to create a trust to the defendant Jacob Gibson, of all Joseph Gibson's property, for the benefit of the complainant.

It is not necessary for the court to embarrass itself with the question, whether the deed was revocable, and what effect that ought to have on the case. It is enough to say, that the deed was not revoked, and must have its effect, unless some legal or moral principle be violated thereby.

It is further objected that this deed expresses a consideration of an immoral tendency, and which this court ought not to sanction. That it is a gift or property for a child, whom the donor recognizes to be the child of a woman, who was the wife of another man, which is a moral turpitude, that cannot receive the support of this court. God forbid that I should lend the sanction of the court to any thing which would shake or loosen those great moral ties, which hold society together; but we must not permit our feelings and apprehensions to mislead our judgement. Although it is morally as well as legally improper to have illegitimate children, the law not only permits, but enjoins it on the father to maintain the illegitimate child. The immorality is in the act and not in the provision; for if this man had really violated the marriage bed of another, and had a child by the wife, it was more proper that he should provide for it out of his substance, than that he should have allowed the injured husband to remain the dupe of his artifices and crimes, and to bear the burden of the fruit of them. Besides, the child is innocent at all events and it is he who is to be benefitted by the deed, I see no solid objection therefore, against the deed being supported.

It is ordered and decreed, that the defendants to account with the complainant for the whole amount of the property left by Joseph Gibson, including the price brought by the sale of the negro, and that the costs of this suit be paid out of the estate of Joseph Gibson.

There was no appeal from this decree.

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THE COURT ADDED THIS FOOTNOTE:

This is not an encouragement of any corrupt or vicious habits. If the donor had made use of this as a mode of slandering a virtuous family, the gift would be repelled with indignation, and the donor, if living, punished for the slander. But if it were really true, that a man had intruded himself into a family, and was the father of one of the children of the family, it was his duty to make some compensation for the evil he had done, by providing for the child: which was, at all events, innocent, and at liberty to accept such provision. Settlements made by men on their mistresses, and their children, have been supported in equity, when made in *praemium pudicuae*, as a compensation for the injury done, though not where it is a reward for the continuance of the vicious connection, which would be *pro turpi causa*.