In re: Estate of Evans, 467 Pa. 336, 356 A.2d 778 (1976)

ROBERTS, Justice (dissenting).I dissent. The central issue in this case is whether donor made an adequate delivery of the gift to donee. The majority finds that adequate delivery was not made because the safe deposit box was leased solely in donor's name and supports this conclusion by pointing out that there were several alternative means of delivering the gift which would have been adequate. I believe that the inquiry should not be what form of delivery would have been clearly sufficient, but rather whether the delivery made by donor was adequate. I believe that it was.

In Rynier Estate, 349 Pa. 471, 32 A.2d 736 (1943), we said that delivery is determined on the facts of each case, with reference to the donor's intent.
*346 'As the chief factor in the determination of the question whether a legal delivery has been effected is the intention of the donor to transfer title to the donee, as manifested by his words and actions and by the circumstances surrounding the transaction, it is evident that each case must depend largely upon its own facts.'
Id. at 475, 32 A.2d at 738. We affirmed this statement in Tallarico Estate, 425 Pa. 280, 286, 228 A.2d 736, 740 (1967), and Pronzato v. Guerrina, 400 Pa. 521, 529, 163 A.2d 297, 300 (1960).
The majority suggests that donor was 'obviously a shrewd investor, familiar with banking practices. . . .' From this 'familiar(ity) with bankign practices,' which is nowhere shown on the record, and the absence of a joint lease for the box, it apparently concludes that donor did not intend a gift.

There are two reasons why this result is not correct.

First, there is no doubt in this case that donor intended a gift. He told many people that he had given the contents of the box to appellant. In fact, there is competent testimony that donor directed donee to display the keys, hidden under her mattress, to several witnesses.

Second, it is apparent from the record that donor believed undisputed and unconditional delivery of the keys to be sufficient to complete the gift. Most of this Court's cases dealing with inter vivos gifts of the contents of safe deposit boxes turn on the delivery or nondelivery of the keys to the box to the donee. If the key was delivered, the gift was normally upheld;[1] if the key was not delivered, the gift was set aside, whether or not *347 the box was jointly leased.[2] I have found no case which **784 turned on the presence or absence of a joint lease. Given this line of authority, and accepting the majority's conclusion that donor was sophisticated in these matters, it must be concluded that donor believed delivery of the keys to the box completed the gift. If this were not so, why would donor cause donee to take several witnesses into her bedroom to show them that she had the keys and why would he speak in terms that indicated a completed gift—'I Gave to Vivian . . . the keys and the contents Are hers.' Because it is donor's intention to transfer title which is crucial to a valid delivery, and because this donor intended to transfer title, I dissent from the majority's conclusion.

This record firmly establishes appellant has shown a prima facie gift. I would, therefore, vacate the decree and remand to give the estate an opportunity to present its evidence.
MANDERINO, J., joins in this dissenting opinion.