

No. 508.—HIGH COURT OF JUSTICE, NORTHERN IRELAND (KING'S BENCH DIVISION).—12TH MAY AND 3RD JULY, 1923.

COURT OF APPEAL, NORTHERN IRELAND.—13TH NOVEMBER AND 19TH DECEMBER, 1923.

HOUSE OF LORDS.—20TH JANUARY, 1925.

THE COMMISSIONERS OF INLAND REVENUE v. ALLAN.⁽¹⁾

Super-tax—Total income—Alienation of income—Parol trust—Finance (1909-10) Act, 1910 (10 Edw. VII, c. 8), Section 66.

In August, 1916, the Respondent decided to make provision for his wife and daughter, and early in 1917 a draft deed of settlement was submitted to him by which the trust funds were to be held by him and his wife as trustees as to one-half for the benefit of the wife for her life and after her death as the other half which was to be accumulated for the benefit of the daughter on attaining 25. The trusts were to take effect as from 1st January, 1917, as regards property vested in the trustees before that date, and as from the date of vesting as regards all other trust property. Owing to unavoidable delays the deed was not actually completed until the 29th April, 1919.

The trust funds covered by the settlement included:—

- (i) £1,500 6 per cent. Exchequer Bonds, £4,500 5 per cent. War Loan and £10,000 5 per cent. War Loan purchased by the Respondent in the joint names of himself and his wife on the 12th December, 1916, 17th February, 1917, and 12th June, 1917, respectively. Prior to these purchases the Respondent had informed his wife that the securities were to be held by them jointly in trust for her and the daughter as part of a trust fund which he was creating for their benefit, and he never personally received any part of the income therefrom.
- (ii) £36,700 shares in a company of which the Respondent was a Director. At a Directors' meeting on the 22nd February, 1917, the transfer was authorised of these shares from the Respondent (who, informed the Directors that he was holding the shares on trust) to the Respondent and his wife as trustees. Prior to the meeting he informed his wife that the said shares were

⁽¹⁾ Reported H.L. 122 L.T. 9.

to be transferred into their joint names as part of the trust fund, and that until the transfer was completed he would himself hold the shares on trust. On the 1st March, 1917, an account was opened in the company's books in the names of the Respondent and his wife as trustees for the daughter, and as from that date all dividends were paid into and accumulated in that account, neither the Respondent nor his wife receiving any part thereof, but owing to the aforesaid delays the shares in fact remained in the Respondent's name until the 31st March, 1919.

Held, (i) *that, as regards the £1,500 6 per cent. Exchequer Bonds, the £4,500 5 per cent. War Loan and the £10,000 5 per cent. War Loan, there were perfected gifts in trust as from the 1st January, 1917, 17th February, 1917, and 12th June, 1917, respectively, so that the interest thereon ceased to form part of the Respondent's income for Super-tax purposes as from those dates; but*

(ii) that the Respondent had not effectively divested himself of the company shares, or the dividends thereon, by the creation of a valid trust, until the execution of the settlement on the 29th April, 1919.

CASE

Stated under the Finance (1909-10) Act, 1910, Section 72 (6), and the Taxes Management Act, 1880, Section 59, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice in Northern Ireland.

1. At meetings of the Commissioners for the Special Purposes of the Income Tax Acts held on 4th November, 1919, and 13th February, 1920, for the purpose of hearing appeals, Mr. Charles E. Allan (hereinafter called "the Respondent") appealed against assessments to Super-tax in the sums of £40,000 and £50,000 for the years ending 5th April, 1918, and 5th April, 1919, respectively, made upon him under the provisions of the Finance (1909) Act, 1910, and subsequent enactments.

2. There is no dispute as to figures, if our decision is correct, and the only question which was raised at the hearing of the appeals and on which the opinion of the High Court is desired is whether the several sums hereinafter mentioned should be included in the computation of the Respondent's total income for the purposes of Super-tax under the provisions of Section 66 of the Finance (1909-10) Act, 1910.

3. The following are the facts of the case as given in the evidence of the Respondent who was the only witness examined before us :—

In August, 1916, the Respondent, who had no Marriage Settlement, decided to make provision for his wife and daughter. A draft Deed was submitted to him for his approval in January, 1917, but owing to various circumstances—including the illness of his former Solicitor and the absence on active service of his then Solicitor—the Deed could not be finally completed until 29th April, 1919.

The Respondent and his wife were the Trustees under the said Deed and the income of one moiety of the Trust was to be applied, at the discretion of the said Trustees, for the benefit of the Respondent's wife during her lifetime and after her death on the same trusts as the other moiety. The income of the said other moiety was to be accumulated for the Respondent's daughter and other children (if any) equally, subject to such allowances for maintenance, etc., as the Trustees might make, the share of each child to vest absolutely on attaining the age of 25.

Clause 9 of the said Deed recites that "The Trusts hereof shall, so far as the same relate to property vested in the Trustees on or prior to the 1st day of January, 1917, take effect as from that date and as to all other property specified in the Schedule hereto as from the date on which the same became vested."

The items in the Schedule referred to were :—

£1,500 6 per cent. Exchequer Bonds	} All paid for out of the Respondent's own monies.
£18,750 5 per cent. War Loan	
£36,700 Shares in Workman, Clark & Co., Ltd. (of which Company the Respondent was an active Director).	

The £1,500 6 per cent. Exchequer Bonds were bought and registered in the names of the Respondent and his wife on 12th December, 1916.

£4,000 4½ per cent. War Loan was purchased early in 1917 by the Respondent in whose name it stood when subsequently converted into £4,210 10s. 5 per cent. War Stock in March, 1917.

£10,000 5 per cent. War Loan was registered in the names of the Respondent and his wife on 12th June, 1917.

£4,500 5 per cent. War Loan was inscribed in the names of the Respondent and his wife on 17th February, 1917. (The balance of the sum of £18,750 was made up of £39 10s. Interest converted into Capital.)

Prior to the purchase of the said £1,500 6 per cent. Exchequer Bonds, £10,000 5 per cent. War Loan and £4,500 5 per cent. War Loan, the Respondent informed his wife that he was going to create a trust fund for her benefit and that of their daughter

and with that object was going to purchase the said Exchequer Bonds and War Loan in their joint names, same when so purchased to be held by them upon trust for her and her daughter.

The said Exchequer Bonds and War Loan were purchased in the joint names of the Respondent and his wife in pursuance of the said arrangement and as portion of the said trust fund and the Respondent so informed his wife after the purchase thereof.

The Respondent has not received any portion of the income of the said Exchequer Bonds or War Loan since the purchase thereof.

At a Directors' Meeting of Workman, Clark & Company, Limited, held on 22nd February, 1917, the Transfer was authorised of the above-mentioned Shares from the Respondent (who had stated that he held the shares on trust) to the Respondent and his wife, Trustees of Miss M. S. Allan, and on 1st March, 1917, an account was opened in the Company's Books for "C. E. Allan and Mrs. J. G. Allan, Trustees of Miss M. S. Allan." From that date the dividends were paid into the Trustee Account, but owing to the legal delay hereinbefore referred to the Shares remained in the Respondent's name until 31st March, 1919.

Prior to the said Directors' Meeting the Respondent informed his wife that he was going to transfer the said Shares into the joint names of himself and his wife as part of the said trust fund and that in the meantime and until such transfer was completed he would himself hold the said Shares upon trust.

In pursuance of said Declaration and in order to give effect to same the Respondent applied to the Directors of Workman & Clark, Ltd., as required by the Articles of Association of said Company, to authorise the transfer of said Shares from the Respondent to the Respondent and his wife, stating to the said Directors that he was holding the said Shares as trustee, and it was by the direction of the Respondent that the Trustee Account hereinbefore mentioned was opened and the dividends of said Shares paid into said Account.

The Respondent has not since the date of the said application to transfer the said Shares received the dividends on the said Shares or any of them but all such dividends have been regularly paid to the credit of the said Trustee Account.

The Respondent's wife has received no part of the income of the Trust, but same has been accumulated and stands in the books of the firm to the credit of the Trustees' Account.

4. Counsel, on behalf of the Respondent, contended—

That the income of the Trust did not form part of the Respondent's income for Super-tax purposes for the years under review.

5. On behalf of the Commissioners of Inland Revenue it was contended—

That the income received from the property before 29th April, 1919, should be treated as the Respondent's income for the purposes of the Super-tax for the years in question.

6. We, the Commissioners who heard the appeal, having considered the evidence in this case, were of opinion that the Respondent's declaration of his intention, coupled with his actions, was sufficient to prove a valid declaration of trust except as regards the sum of £4,210 10s. 5 per cent. War Loan hereinafter referred to.

As to the £1,500 Exchequer Bonds, these were transferred into the joint names of the Respondent and his wife on 12th December, 1916, and under the Deed of Settlement of 29th April, 1919, there was in our opinion a complete trust as from 1st January, 1917.

As regards the £4,500 5 per cent. War Loan there was, in our opinion, a complete trust as from 17th February, 1917, and as regards the £10,000 5 per cent. War Loan an equally complete trust as from 12th June, 1917.

The "Workman Clark" Shares, in our opinion, stand in a somewhat different position inasmuch as they have never become vested in the names of the Respondent and his wife, with the result that they do not fall under the operation of the Deed of 29th April, 1919. We were, nevertheless, of opinion that the evidence adduced to us proves a valid declaration of trust—as to those Shares—apart from the operation of the Deed of 29th April, 1919; and that the trust dates from 1st March, 1917, when an account was opened in the Company's books in the joint names of the Respondent and his wife.

The sum of £4,210 10s. 5 per cent. War Loan is, in our opinion, on an entirely different footing, and no evidence has been adduced in support of the Respondent's contention that there was a trust as regards that holding. This Stock, therefore, does not fall under the operation of the Deed of 29th April, 1919, and we were not satisfied that there was any verbal trust with respect thereto. In these circumstances we held that the income arising therefrom must be regarded as forming part of the Respondent's total income for the purposes of Super-tax. In the result we reduced the assessment for the year ending 5th April, 1918, to £36,581, and that for the year ending 5th April, 1919, to £29,693.

7. The following documents were produced before us and are embodied in, and form part of this Case⁽¹⁾ :—

- (1) Copy Deed of Settlement dated 29th April, 1919.
- (2) Copy Minute of Directors' Meeting (Workman, Clark & Co., Ltd.), dated 22nd February, 1917.
- (3) Copy Contract Note (£4,000 $4\frac{1}{2}$ per cent. War Loan) dated 10th January, 1917.
- (4) Copy Conversion Note of £4,000 $4\frac{1}{2}$ per cent. War Loan to £4,210 10s. 5 per cent. War Loan dated March, 1917.
- (5) Copy Certificate of £1,500 6 per cent. Exchequer Bonds dated 12th December, 1916.

⁽¹⁾ Only the Copy Deed of Settlement dated 29th April, 1919, is included in the present print.

- (6) Copy Certificate of £10,000 5 per cent. War Loan dated 12th June, 1917.
- (7) Copy Certificate of £4,500 5 per cent. War Loan dated 17th February, 1917.
- (8) Copy Extracts from Articles of Association of Messrs. Workman, Clark & Co., Ltd.
- (9) Copy Summary of Share Capital in same Company for years to 28th August, 1917, and 23rd August, 1918.
- (10) Copy Return of Allotments made 2nd April, 1919.
- (11) Copy Agreement dated 2nd April, 1919, as to allotment of New Ordinary Shares out of capitalised profits.
- (12) Copy Summary of Share Capital in same Company for year to 12th August, 1919.

8. The Representative of the Crown, immediately upon the determination of the appeal, declared to us his dissatisfaction therewith (except as to the holding of £4,210 10s.) as being erroneous in point of law, and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance (1909-10) Act, 1910, Section 72 (6), and the Taxes Management Act, 1880, Section 59, which Case we have stated and do sign accordingly, the question for the decision of the Court being whether upon the evidence before us we were correct in drawing the inference that such a declaration of trust or settlement existed as to exclude from the income of the Respondent for the years 1917-18 and 1918-19 the interest arising from the above-mentioned £1,500 Exchequer Bonds, £4,500 5 per cent. War Loan, £10,000 5 per cent. War Loan and the "Workman Clark" Shares.

A. GRASEMAN,
N. ANDERSON,
• Commissioners for the Special Purposes
of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
14th November, 1922.

COPY SETTLEMENT DATED 29TH APRIL, 1919.

(Stamps £48 10s. 0d.)

THIS INDENTURE made the 29th day of April 1919 Between CHARLES EDWARD ALLAN of Stormont Castle Belfast Shipbuilder and Engineer (hereinafter usually called "the Settlor") of the one part and the said CHARLES EDWARD ALLAN and JESSIE GEORGINA ALLAN his wife (hereinafter usually called "the Trustees") of the other part WHEREAS the Settlor is desirous of making provision for his wife the said Jessie

Georgina Allan and for their infant daughter Monica Stewart Allan and any other child or children who may be born to them the said Charles Edward Allan and Jessie Georgina Allan and has therefore decided to transfer to the Trustees the stock shares and securities which are set out in the Schedule hereto AND WHEREAS it is in the contemplation of the Settlor from time to time to purchase and acquire other property real and personal either in his own name or in the names of the Trustees and to transfer to the Trustees such of the same as shall be vested in him or standing in his name and that all such property whether already transferred or vested or which shall hereafter be transferred or vested shall be held by the Trustees upon the trusts and subject to the powers and provisions hereinafter expressed NOW THIS INDENTURE WITNESSETH that in pursuance of the said desire and in consideration of the premises it is hereby agreed and declared that the Trustees shall stand seized and possessed of or entitled to the stocks shares and securities specified in the Schedule hereto and of all other property which may hereafter be transferred to or vested in them for the purpose of these presents (hereinafter called "the said trust premises") UPON THE TRUSTS and subject to the powers and provisions following that is to say :—

1. UPON TRUST as to one equal moiety of the said trust premises to pay or apply the income thereof or so much thereof as they shall in their uncontrolled discretion think fit to or for the benefit of the said Jessie Georgina Allan during her life and after her death upon the trusts hereinafter declared with regard to the other moiety thereof.

2. ANY portion of the income of the said moiety which shall not in any year be paid or applied as aforesaid shall be invested and accumulated and added to and shall form part of the capital of the said trust premises but without prejudice to the power of the Trustees to resort to such accumulations in any subsequent year as if same were income of such year.

3. As to the remaining moiety of the said trust premises IN TRUST for the said Monica Stewart Allan and all and every other child or children of the Settlor and the said Jessie Georgina Allan their heirs exors. and admors. in equal shares the share of each child including the said Monica Stewart Allan to vest absolutely if such child shall attain the age of 25 years or shall be living at the expiration of 20 years and 6 calendar months from the death of the last survivor of the Settlor the said Jessie Georgina Allan and the said Monica Stewart Allan whichever contingency shall first happen and in case any child shall die before the absolute vesting of his or her share in the said trust premises leaving a child or children the share of the child so dying to be held IN TRUST for his or her child or children living at his or her death his her or their heirs exors. and admors. and if more than one in equal shares. And if there shall be only

one child of the Settlor and the said Jessie Georgina Allan who or whose issue as aforesaid shall attain an absolutely vested interest in the said trust premises then the whole for such child or such issue as the case may be his her or their heirs exors. and admors. and if more than one such issue in equal shares as aforesaid.

4. UNTIL the absolute vesting of the share of any child of the Settlor and the said Jessie Georgina Allan under the trusts hereby declared the Trustees shall pay or apply such portion of the income of the presumptive share of such child as they shall in their absolute discretion think fit to or for the maintenance education or benefit of such child and shall accumulate the surplus income of such share by investing the same and the resulting income thereof in any form of investment hereby authorised with power at their discretion in any subsequent year to resort to such accumulations as if the same were income of such year and shall during the minority of any such child and so long as the said Jessie Georgina Allan shall be living pay such portion of the income of his or her share as they shall think necessary or desirable to be applied for his or her maintenance education or benefit to the said Jessie Georgina Allan without being liable to see to the application thereof.

5. IN case there shall be no child of the Settlor and the said Jessie Georgina Allan who or whose issue shall take an absolutely vested interest in the said trust premises then from and after the failure of the trusts hereby declared in favour of such children or their issue the Trustees shall hold the entire of the said trust premises UPON TRUST for the said Jessie Georgina Allan for her life if she shall be then alive and subject to the life estate of the said Jessie Georgina Allan therein shall hold the same upon trust for the Settlor his heirs exors. admors. and assigns.

6. THE Trustees may with the consent in writing of the Settlor during his life and after his death with the like consent of the said Jessie Georgina Allan during her life raise any part or parts not exceeding in the whole one half of the expectant or presumptive share of any beneficiary in the said trust premises other than the said Jessie Georgina Allan and apply the same for the advancement or benefit of such beneficiary.

7. ANY moneys requiring to be invested under the trusts hereof may be invested by the Trustees in any investment for the time being authorised by Statute as a trust investment or in or upon the stocks funds shares debentures mortgages or securities of any Company Corporation or Public Body Municipal Commercial or otherwise in the United Kingdom or India or any Colony or Dependency of the United Kingdom or any Foreign Country or on Deposit receipt with or without security with any Company person or firm. And the Trustees shall have power

from time to time to sell all or any part of the property vested in them hereunder and to re-invest the proceeds and to vary and transpose the investments or any of them.

8. THE Trustees may manage or superintend the management of any hereditaments forming part of the said trust premises with all the powers in that behalf of absolute owners and may from time to time sell or dispose of the same or any of them or any part or parts of same and may let or demise the same or any of them or any part or parts thereof in fee or for any term of years as they shall think fit and may on any sale reserve a rent or rents and may sell and dispose of such rents and may enter into contracts for and make leases at such rents and with and without fines and on such terms and conditions as the Trustees may think fit and any moneys received from such sales or as fines on the making of leases or grants shall be treated as part of the capital of the said trust premises.

9. THE trusts hereof shall so far as the same relate to property vested in the Trustees on or prior to the 1st day of January 1917 take effect as from that date and as to all other property specified in the Schedule hereto as from the date on which the same became vested.

10. THE Statutory power of appointing a new Trustee or new Trustees of these presents shall be vested in the said Charles Edward Allan and Jessie Georgina Allan during their joint lives and the survivor of them during his or her life and after the death of the survivor in their children or child for the time being in existence and of full age and the guardian or guardians of any infant child or children.

11. THE Trustees shall not be bound to act personally but may employ and pay a Solicitor or any other agent and may authorise such agent to receive and give a good discharge for money belonging to the trust and shall not be answerable for the default of such Solicitor or agent or any loss occasioned by his employment and any Trustee of these presents being a Solicitor or other person engaged in any profession or business may charge and be paid all usual professional or other charges for business done by him or his firm in connection with the trust.

12. THE expression "the Trustees" shall where the context requires or admits include the Trustees or Trustee for the time being hereof and a sole Trustee may act for all the purposes of the trust.

13. IT shall be lawful for the Settlor during his life with the consent of the said Jessie Georgina Allan or other the Trustee or Trustees for the time being of these presents and after his death for the said Jessie Georgina Allan if she shall survive him during her widowhood and after the death of the Settlor and the death or remarriage of the said Jessie Georgina Allan and before

the expiration of 21 years from the death of the survivor of them for the Trustees or Trustee for the time being of these presents by any Deed or Deeds to appoint or declare any new or other trusts of or concerning the said trust premises or any part thereof or confer any new or additional powers over the same or alter or abridge any existing power or powers and for that purpose to revoke these presents so far as may be necessary PROVIDED that all trusts powers or limitations so appointed declared or created shall be for the benefit of the said Jessie Georgina Allan and Monica Stewart Allan and any after born child or children of the Settlor and his said wife or some or one of them or their or some of their issue to the entire exclusion of the Settlor save that the said trusts may include an ultimate trust similar to the trust herein contained on the failure or determination of the limitations in favour of the said Jessie Georgina Allan and the issue of her marriage with the Settlor whether children or more remote issue and that subject to such trusts powers and limitations and so far as the provisions of the present Deed shall not be inconsistent therewith these presents shall remain and be in full force and effectual IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals the day and year first herein written.

Signed Sealed and Delivered by
the said Charles Edward Allan
(twice) in presence of (the
word "eighteen" being first
struck out in the date hereof
and the word "nineteen"
substituted therefor)

George E. Smith, Witness,
Stormont Castle,
Belfast,
Butler.

Frank Keany, Witness,
12, Park Avenue,
Dundonald,
Motor Man.

Signed Sealed and Delivered by
the said Jessie Georgina Allan
in the presence of

George E. Smith, Witness,
Stormont Castle,
Belfast,
Butler.

Frank Keany, Witness,
12, Park Avenue,
Dundonald,
Motor Man.

CHAS. E. ALLAN (Seal).
CHAS. E. ALLAN (Seal).
JESSIE G. ALLAN (Seal).

SCHEDULE.

£1,500 Six per cent. Exchequer Bonds.
 £18,750 Five per cent. War Loan.
 £36,700 Workman Clark & Co.'s shares.

SIGNED by the said Charles
 Edward Allan in presence of
 George E. Smith, Witness,
 Stormont Castle,
 Belfast,
 Butler. } CHAS. E. ALLAN.
 Frank Keany, Witness,
 12, Park Avenue,
 Dundonald,
 Motor Man. }

The case came on for hearing in the King's Bench Division of Northern Ireland before Henry, *C.J.* and Brown, *J.*, sitting as a Divisional Court, on the 12th May, 1923, when judgment was reserved.

The Attorney-General for Northern Ireland (Rt. Hon. Richard Best, K.C., M.P.), Mr. R. D. Megaw, K.C., M.P., and Mr. J. C. Davison appeared as Counsel for the Crown, and Mr. J. M. Whitaker, K.C., Mr. J. H. Robb, K.C., and Mr. A. Black for the Respondent.

Judgment was delivered on the 3rd July, 1923, in favour of the Respondent, with costs, the Court holding that the Special Commissioners, on the evidence before them, were correct in drawing the inference that such a declaration of trust or settlement existed in regard to the investments in question as to exclude the interest and dividends thereon from the income of the Respondent for Super-tax purposes for the years 1917-18 and 1918-19.

JUDGMENT.

The Lord Chief Justice delivered the judgment of the Court :

Henry, C.J.—This is a Case stated under the provisions of the Finance Acts for the opinion of this Court by the Commissioners for the Special Purposes of the Income Tax Acts.

Having read the Stated Case, his Lordship continued :

The question stated for our decision is whether upon the evidence before the Commissioners they were correct in drawing the inference that such a declaration of trust or settlement existed as to exclude from the income of the Respondent for the years 1917-18 and 1918-19 the interest arising from £1,500 Exchequer Bonds, £4,500 5 per cent. War Loan, £10,000 5 per cent. War

Loan, and the "Workman Clark" shares. The bona fides of the Respondent is not in question, and it is found that no portion of the income of the Exchequer Bonds or War Loan has been received by him since the purchase thereof.

So far as the Workman and Clark shares were concerned the transfer was authorised to the Respondent and his wife as Trustees on 22nd February, 1917, and on the 1st March, 1917, an account was opened in the Company's books for the Respondent and his wife as Trustees for Miss M. S. Allan and the dividends were paid into that account, but owing to legal delays the shares remained in his (Respondent's) name until 31st March, 1919.

The Case further finds that the £1,500 6 per cent. Exchequer Bonds were bought and registered in the names of the Respondent and his wife on the 12th December, 1916, that the £10,000 War Loan was registered in the names of Respondent and his wife on 12th June, 1917, and the £4,500 War Loan was inscribed in the names of the Respondent and his wife on the 17th February, 1917.

The Special Commissioners find that so far as the £1,500 Exchequer Bonds are concerned there was a complete trust as from 1st January, 1917, as regards the £4,500 War Loan a complete trust from 17th February, 1917, and as regards the £10,000 5 per cent. Loan an equally complete trust from 12th June, 1917. They regard, in our opinion properly, the Workman and Clark shares as in a different position, but they find a valid declaration of trust as from the 1st March, 1917, when the account was opened in the Company's books in the joint names of Respondent and his wife.

In our opinion the trusts in respect of these various sums and shares were enforceable on the evidence as from the dates found, and we answer the question put to us in the affirmative.

Notice of appeal having been given by the Crown against the decision in the King's Bench Division, the case came before the Court of Appeal of Northern Ireland (Moore and Andrews, *L.J.J.*) on the 13th November, 1923, when judgment was reserved.

The Attorney-General for Northern Ireland (Rt. Hon. Richard Best, K.C., M.P.), Mr. R. D. Megaw, K.C., M.P., and Mr. J. C. Davison appeared as Counsel for the Crown, and Mr. Herbert Wilson, K.C., Mr. J. H. Robb, K.C., M.P., and Mr. Arthur Black for the Respondent.

Judgment was delivered on the 19th December, 1923, varying the decision of the Court below, the Lords Justices holding that, while, as regards the investments of £1,500 6 per cent. Exchequer Bonds, £4,500 5 per cent. War Loan, and £10,000 5 per cent. War Loan, there were perfected gifts in trust as from the

1st January, 1917, the 17th February, 1917, and the 12th June, 1917, respectively, so that the interest thereon ceased to form part of the Respondent's income for Super-tax purposes as from those dates, the Respondent had not effectively divested himself of the Workman and Clark shares, or the dividends thereon, by the creation of a valid trust, until the actual transfer of the shares into the names of himself and his wife as Trustees on the 31st March, 1919.

JUDGMENT.

Moore, L.J.—This is a Case stated under the Finance (1909–10) Act, 1910, Section 72 (6), and the Taxes Management Act, 1880, Section 59, by the Commissioners for the Special Purposes of the Income Tax Acts.

Having read the Stated Case, the Lord Justice continued:

I agree with the finding of the Special Commissioners that there was a perfected gift in trust as from 1st January, 1917, of the £1,500 Exchequer Bonds transferred into the joint names of Mr. Allan and his wife as from 1st January, 1917, subject to the Deed of Settlement of 29th April, 1919.

I also agree with their finding as regards the £4,500 5 per cent. War Stock.

I further agree as to the £10,000 War Loan.

Everything necessary was done to transfer these securities into the names of the trustees, the gift to them was completed, and from the several periods in each case respectively the property in them ceased to be the property of Mr. Allan and the income derivable from it ceased to be his income and therefore not taxable as against him.

As regards the £36,700 shares in Workman and Clark there is more difficulty. We must look at the case as it stood at the close of the second financial year, 1918–19, in respect of which the Revenue authorities claim tax, and for the purpose of this case as if nothing more had been done.

At that period these shares, in spite of everything that Mr. Allan had done, still legally remained his property. Mr. Wilson, I suppose, feeling the effect of this has ingeniously argued that up to the date of the Deed of 29th April, 1919, Mr. Allan had only declared himself trustee of the income and that this passed. This argument was apparently not made use of before the Special Commissioners because their judgment in favour of Mr. Allan deals not with the income but with the whole share capital. In the Case as stated I find no distinction as to mere income.

Further, the evidence of Mr. Allan's original intention as regards these shares is not limited to the dividends from them but to the whole capital itself without distinction between capital and income. The Case on this is stated as follows :—“ Prior to

“ the said Directors’ Meeting the Respondent informed his wife
 “ that he was going to transfer the said shares into the joint
 “ names of his wife and himself as part of the said trust fund,
 “ and that in the meantime and until such transaction was com-
 “ pleted he would himself hold the said shares upon trust.”

Dealing with the capital alone, he proceeded on 22nd February, 1917, to get authority from the Board of Directors to complete the intended transfer of the shares, but during the period under review no steps were taken to carry this into execution.

It is well settled that equity will not in favour of a volunteer execute an imperfect gift. *Donatio mortis causa* is the only exception to this rule. See *Porter v. Walsh*, [1895] I. R. 284. For the law generally see *Milroy v. Lord*, 4 De G.F. & J. 264; *Heartley v. Nicholson*, (1875) 19 Eq. 233; etc.

If the matter rested there I am of opinion at no time during the period in question could the beneficiaries, Mrs. Allan or her daughter, have compelled Mr. Allan to carry out his intention. I cite *Milroy v. Lord*, 4 De G.F. & J. 264, as establishing the proposition that, where the gift is intended to take effect by transfer, the Court will not hold the intended transfer to operate as a declaration of trust. Here, apparently pending transfer, the testator retained the scrip in his own possession, while naturally the stock remained in his own name.

The Commissioners have, however, found that there was a special declaration of trust by Mr. Allan pending the transfer of the shares in his name to the trustees. We are not told in terms what the trust was and we are not told at what precise period Mr. Allan used the cabalistic formula of a declaration of trust which raises the question as to whether this case is governed by the judgment in *Milroy v. Lord*, 4 De G.F. & J. 264, and without which his property would remain taxable. The Commissioners, however, believing him to be a man of veracity and honour, which I do not for a moment impugn, have accepted his statement that this declaration by parol of some trust was made at some time prior to the assent to the transfer given by the Board, and of course it is not impossible that in law under certain circumstances a valid declaration of trust could be made. But what is the effect of this in the present case? I think it is plain what the trust really was. It was admittedly only a temporary one. In my opinion the shares were impressed with a trust on the part of Mr. Allan to legally transfer them to the trustees as soon as he could do so. That was the real trust, and it is borne out by all the circumstances in the case. I consider that I must look at the whole transaction. Such a transfer was always the intention, and, in my opinion, the making of it was the primary, paramount and overriding intention, and an explanation is actually given in the documents before us of the reason for its non-fulfilment forthwith. If this was the intention, as I believe

it was, then, temporary trust notwithstanding, the gift remained incomplete till the intention was carried out, and equity cannot aid the defect in the intention in favour of a volunteer.

If Mr. Allan intended to pass the beneficial interest in the shares by his declaration of trust, so constituting himself a trustee by a valid declaration, he could have done so absolutely and not temporarily, and there was no urgent necessity to do anything more. He could, and as trustee should, have applied the dividends as he saw fit and either handed over or retained the scrip. But, quoting the words of Turner, L.J., in *Milroy v. Lord*, 4 De G.F. & J., at p. 274: "The cases go to this extent that, if the settlement is intended to be effectuated by one of the modes to which I have referred, the Court will not give effect to it by applying another of these modes. If it is intended to take effect by transfer the Court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust." This passage is quoted with approval by Sir George Jessel in his judgment in *Richards v. Delbridge*, (1874) 18 Eq. 11.

The difficulty in the present case arises from the fact that on the Respondent's contention the donor appears to have used for different periods not one of the modes referred to by Turner, L.J., but two of them. The Lord Justice only appears to contemplate the failure of one of them. The result of the donor's action is that No. 1 mode, read as an absolute declaration of trust as the Respondent argues, would enable the fund to escape taxation for the years sued for without No. 2 at all, whereas No. 2 (the uncompleted transfer) without No. 1 would render him still liable. Reading No. 1 as I read it, the two modes are not inconsistent and he remains liable.

In this state of affairs I think it is our duty, as I have said, to look at what was the paramount intention of the donor in the whole transaction. I am of opinion that it was to vest the shares by legal transfer in the names of himself and his wife as joint trustees as the other securities had been vested by purchase, and that if for the years in question he omitted to do so, although a trustee for the purpose of doing so, the gift in consequence remained imperfect and the property in the shares remained his own, subject to his intention only and not to a valid trust, equivalent to an equitable transfer, which would have bound it.

I do not think, therefore, that the so-called declaration of trust, reading it as I have read it, would have been enforced against him by his wife and daughter had he subsequently made the case that his real intention was to make a legal gift of the shares but had changed his mind and had chosen to revoke the gift at any time before the transfer by deed of the shares.

The question of the dividends is in some way connected with this because the Special Commissioners, as the Case is stated, appear to have considered that the dealing with the dividends

amounted to some evidence of an equitable assignment of the capital, and that from the date of the matters next mentioned the property in the whole capital passed from Mr. Allan.

It appears by the Case Stated that, following the authorisation of the proposed transfer at the Board meeting an account was opened in the books of Messrs. Workman and Clark for "C. E. Allan and Mrs. J. G. Allan, Trustees of Miss M. S. Allan," and it further appears that from that date all dividends accruing in respect of the shares were paid into this new account by the Company. In my opinion there is nothing in this to implement the intention to transfer the capital share fund by regular assignment. But how far is it evidence of a separate trust for income? As I have said, on the evidence no separate trust for income was ever declared. In my opinion the firm were acting as bankers for Mr. Allan which they were not bound to be. It was their duty *prima facie* to pay him his dividends as they accrued on his own share capital. Instead of that they act on an order from him to pay the dividends to himself and another as they accrued. He continued to have full control over the income arising from what I have held remained his own property, and, though he did not do so, he could, so far as the Company was concerned, have revoked the direction or order to pay given to the Company at any moment up to the date of registration with them of the intended transfer. That he did not do so does not affect the question of his right and power to do so had he wished, and this goes to the root of the question, whether or not the income on his own capital remained his property subject to a trust and certainly an intention to transfer the capital; or had he absolutely divested himself of the right to deal with it? In my opinion, under the foregoing circumstances he had not done so, and, therefore, for the period in question he should be treated as owner, with an unenforceable duty on him to transfer, as I think in fact he was.

We therefore think that the question should be answered thus, that the Special Commissioners were correct in their determination as to the first three sums mentioned but not as to the Workman and Clark shares, the dividends on which formed part of the Respondent's income.

The Order of the King's Bench Division will be varied. As each of the parties have succeeded in part and failed in part, we order that each do abide their own costs in the King's Bench Division and in this Court.

Andrews, L.J.—The question to be determined in this case is whether the interest arising from the £1,500 Exchequer Bonds, £4,500 and £10,000 War Loan, and the shares of Workman and Clark, Limited, formed part of the income of the Respondent for the financial years 1917-18 and 1918-19, so as to be included in the computation of his total income for the purposes of Super-tax under the provisions of Section 66 of the Finance (1909-10)

Act, 1910. As all the Bonds, Stock and shares were either purchased with his own money, or were otherwise his own absolute property, it is obvious that the interest derived therefrom was properly included in an assessment of the Respondent's total income unless by valid gift or declaration of trust he had ceased to be the beneficial owner of the dividends prior to the commencement of the financial years referred to.

For the law applicable to valid voluntary settlements it is not necessary to look further back than the authoritative judgment of Turner, L.J., in *Milroy v. Lord*, 4 De G.F. & J. 274 :—" I take " the law," he says, " of this Court to be well settled that in " order to render a voluntary settlement valid and effectual the " settlor must have done everything which, according to the " nature of the property comprised in the settlement, was neces- " sary to be done in order to transfer the property and render the " settlement binding upon him. He may of course do this by " actually transferring the property to the persons for whom he " intends to provide, and the provision will then be effectual, and " it will be equally effectual if he transfers the property to a " trustee for the purposes of the settlement, or declares that he " himself holds it in trust for those purposes (*i.e.*, of the settle- " ment), and if the property be personal, the trust may, as I " apprehend, be declared either in writing or by parol; but in " order to render the settlement binding, one or other of these " modes must, as I understand the law of this Court, be resorted " to, for there is no equity in this Court to perfect an imperfect " gift. The cases, I think, go further to this extent, that if the " settlement is intended to be effectuated by one of the modes to " which I have referred, the Court will not give effect to it by " applying another of those modes. If it is intended to take " effect by transfer, the Court will not hold the intended transfer " to operate as a declaration of trust, for then every imperfect " instrument would be made effectual by being converted into a " perfect trust."

This statement of the law has been frequently approved of, and, with perhaps two exceptions, it has never been seriously challenged in any subsequent case. In *Warriner v. Rogers*, (1873) 16 Eq. 340, at p. 348, Sir James Bacon, V.C., briefly expresses the same principles thus :—" Now the rule of law upon " this subject I take to be very clear, and with the exception of " two cases, which have been referred to, the decisions are all " perfectly consistent with that rule. The one thing necessary " to give validity to a declaration of trust—the indispensable " thing—I take to be, that the donor or grantor, or whatever he " may be called, should have absolutely parted with that interest " which had been his up to the time of the declaration, should " have effectually changed his right in that respect and put the " property out of his power, at least in the way of interest."

The two cases referred to—*Richardson v. Richardson*, (1867) 3 Eq. 686, and *Morgan v. Malleson*, (1870) 10 Eq. 475—were subsequently disapproved of by Sir George Jessel, M.R., in *Richards v. Delbridge*, (1874) 18 Eq. 11, and in my opinion they cannot now be accepted as sound law. After considering them Sir George Jessel, M.R., states his view of the law in terms which differ only in the language used from the statements which I have already cited :—“ The principle,” he says, “ is a very simple one. “ A man may transfer his property without valuable consideration “ in one of two ways ; he may either do such acts as amount in “ law to a conveyance or assignment of the property, and thus “ completely divest himself of the legal ownership, in which case “ the person who by those acts acquires the property takes it “ beneficially, or in trust, as the case may be ; or the legal owner “ of the property may, by one or other of the modes recognised “ as amounting to a valid declaration of trust, constitute himself “ a trustee, and without an actual transfer of the legal title may “ so deal with the property as to deprive himself of its beneficial “ ownership and declare that he will hold it from that time for- “ ward on trust for the other person.” Later on in his judgment he considers these two ways of transferring property without valuable consideration, and adds :—“ The distinction appears to “ me to be plain and beyond dispute : for a man to make himself “ a trustee there must be an expression of intention to become “ a trustee, whereas words of present gift show an intention to “ give over property to another, and not retain it in the donor’s “ hands for any purpose fiduciary or otherwise.”

These two methods of transferring such property are, it should be added, wholly distinct from one another ; indeed, if applicable to the same period of time, inconsistent with one another ; and as a consequence an imperfect or incomplete transfer or gift can never be treated by the Court as a valid declaration of the trust. A person who intended to transfer but never actually transferred cannot if there be nothing more be treated as a trustee, thereby assuming an office with its incidental responsibilities which he never intended to hold. There is, however, one feature common to the two methods of transfer, namely, that in both cases the donor or grantor must have, by complete gift or transfer in the one case, or by acts which admit of no other interpretation in the other case, parted with the beneficial interest in the subject matter of the gift. The donor must denude himself and part with the whole control over the fund. Everything must have been done to make either the legal transfer or the declaration of trust complete.

In applying these principles to the facts of the present case we turn first to the £1,500 Exchequer Bonds and to the £4,500 and £10,000 War Loan. These securities were respectively bought by the Respondent out of his own moneys and registered in the names of himself and his wife on 12th December, 1916, 17th February, 1917, and 12th June, 1917. The purchases were,

as appears in the Case, made in fulfilment of a prior promise made by the Respondent to his wife that he was going to create a trust fund for her benefit and that of her daughter, and that with that object he was going to make the purchases in their joint names. The Respondent informed his wife of the purchases after they had been made, and has not personally received any portion of the income therefrom. Indeed, in my view he could not under the circumstances have received any such income and applied the same for his own purposes without committing a breach of trust. The Bonds and Stock were never his own from the day of their purchase. They always stood in the joint names of himself and his wife, impressed with the trust in favour of his wife and daughter which he had previously declared. The legal title to the moneys had been transferred to the trustees when the securities were purchased, and he had parted with all control over the fund otherwise than as one of two trustees, whose duty it was to apply the income for the years in question in accordance with the trust which he had declared, the terms of which, no doubt with somewhat greater particularity, are to be found in the Settlement subsequently executed on 29th April, 1919. I, accordingly, agree that the finding of the Commissioners and of the King's Bench Division in reference to the interest derived from these funds should be affirmed.

The facts relating to the Workman and Clark shares call for separate consideration. On and prior to 22nd February, 1917, these shares stood in the name and were the exclusive property of the Respondent. On that day he applied at a meeting of the Directors for a transfer of the shares from his own name into the names of himself and his wife, Trustees of Miss Monica S. Allan. It appears from the Case that he stated on that occasion that he held the shares on trust, and the minutes of the meeting show that the transfer was duly authorised. In pursuance of such authority an account was, on 1st March, 1917, opened by the direction of the Respondent in the Company's books in the names of "C. E. Allan and Mrs. J. G. Allan, Trustees of Miss M. S. Allan." All dividends were from that date paid into the trustee account, and none of them have been since received by the Respondent, or applied by him for his own purposes. Owing, however, as is alleged, to the legal delay referred to in the Case, the actual transfer of the shares was not perfected until 31st March, 1919, the end of the second financial year with which we are concerned.

If the matter rested here there could be no doubt that the dividends in question would necessarily be treated in law as part of the income of the Respondent, for, the legal transfer not having been completed when the dividends became payable, the Court would not hold the intended transfer to operate as a declaration of trust. The donor having intended to effectuate the settle-

ment by one of the recognised modes to which I have referred, the Court would not render it effectual by applying another of these modes.

The only doubt which has arisen in my mind has been created by the statement in the Case that, prior to the Directors' meeting referred to, the Respondent informed his wife that he was going to transfer the said shares into the joint names of himself and his wife as part of the said trust fund (thereinbefore referred to as being for her benefit and that of her daughter), and that in the meantime, and until such transfer was completed, he would himself hold the said shares upon trust.

If I were satisfied that the trust upon which the Respondent so declared that he would hold the shares pending transfer necessarily meant the same trust as he had previously declared of the "trust fund," namely, for the benefit of his wife and daughter, I would be prepared to give effect to the declaration of trust, for, as Sir James Bacon, V.C., points out in *Heartley v. Nicholson*, (1875) 19 Eq. at p. 242, "it is not impossible that an intending donor may by acts or words in addition to and independent of an imperfect gift have constituted himself a trustee." But one can feel no confidence in the matter. Everything is left vague and indefinite. My colleague, Moore, L.J., considers it is quite plain what the trust really was, namely, that the Respondent would legally transfer the shares to the trustees as soon as he could do so. This may be correct, but personally I do not feel the same measure of confidence in expressing my opinion on the matter. It seems to me that the Respondent in declaring a trust pending transfer may have been intending to impress the shares with the same trust as is declared in the case of "the trust fund." If I were satisfied as to this I would be prepared to uphold the judgment of the King's Bench Division on the point; but I am not so satisfied; it is all mere speculation. One thing which makes me doubt if the impressed trust was the same as that of the trust fund is that, whilst the latter is stated in the Case to have been for the benefit of the Respondent's wife and daughter, the terms of the Directors' Resolution of 22nd February, 1917, and the title of the account opened in Workman & Clark's books suggest that the wife's interest in the shares was, for the time being at least, that of a trustee only, and that the sole beneficiary of the shares under the trust was the Respondent's daughter.

In the circumstances to which I have referred I find it impossible to say with confidence that the Respondent had, pending transfer, parted with the beneficial interest in the shares by acts which admit of no other interpretation, or that everything had been done to make the declaration of trust complete, both of which are, as above pointed out, essential conditions of a valid declaration of trust.

I have only to add that when regard is had to the terms of Articles 15 and 26 of the Articles of Association of the Company, under which the Company is not bound to recognise any equitable interest in a share, or any other right in respect of a share than an absolute right in the person registered in respect thereof, it seems to me that it is quite impossible to say that the Respondent had, in the financial years with which we are concerned, denuded himself and parted with the whole control over either the capital or income of the shares. In my opinion the Company could not pending transfer have declined to pay any accruing dividends on the shares to the Respondent had he demanded same; and, having regard to the vague and indefinite character of the parol trust referred to, no suit could have been maintained against him by either his wife or daughter in respect thereof.

For the reasons stated I agree with Moore, L.J., that the finding of the King's Bench Division in respect of these shares must be reversed, and that the dividends thereon must be included in the computation of the Respondent's income for Super-tax purposes for the years 1917-18 and 1918-19.

Mr. Allan having appealed against the decision in the Court of Appeal as regards the Workman and Clark shares, the case was heard in the House of Lords before Viscount Cave (Lord Chancellor) and Lords Dunedin, Atkinson, Sumner and Buckmaster on the 20th January, 1925, when judgment was delivered unanimously in favour of the Crown with costs, their Lordships holding that the Respondent had not effectively divested himself of the shares or the dividends thereon, by the creation of a valid trust, until the execution of the Deed on the 29th April, 1919.

The Attorney-General for Northern Ireland (Rt. Hon. Richard Best, K.C., M.P.), Mr. J. C. Davison and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. C. Clauson, K.C., Mr. Herbert Wilson, K.C., and Mr. Arthur Black for Mr. Allan.

JUDGMENT.

Cave, L.C.—My Lords, the question to be determined on this appeal is whether the dividends which accrued on certain shares in a well-known Company—Messrs. Workman, Clark and Company, Limited—during the tax years 1917-18 and 1918-19, ought, for the purposes of Super-tax, to be treated as part of the income of the Appellant, Mr. Allan.

The facts are found by the Commissioners in a Case Stated, and the material parts of their statement are to be found in paragraph 3 of the Case. They are shortly as follows:—As early as August, 1916, the Appellant, who had no marriage settlement,

decided to make provision for his wife and his infant daughter. A draft deed for that purpose was submitted to him in January, 1917, but owing to various circumstances—including the illness of his former solicitor and the absence on active service of his then solicitor—the deed was not completed until the 29th April, 1919, that is to say, until a date after the end of the second of the two tax years in question. When the deed was executed, the effect of it was that the Appellant and his wife were to be trustees of certain shares and securities, and were to hold those trust funds, as to one half in trust for the wife for life (subject to a discretion given to the trustees) and after her death upon the trusts of the second moiety, and, as to the other half in trust for the daughter and the other children, if any, of the marriage, on certain contingencies which I need not specify. Among the shares and securities so settled were these shares in Workman, Clark and Company, Limited. The Case further states that in February, 1917, or thereabouts, certain transactions took place upon which the Appellant relies. At a Directors' Meeting of the Company held on the 22nd February, 1917, the Appellant told the Board that he was a trustee of these shares and asked for their approval to the transfer of them to himself and Mrs. Allan as trustees for their daughter, Miss Monica Allan. The Board gave the authority, and, although no transfer was actually made or presented and the shares remained in the Appellant's name, the dividends were thenceforth paid into an account of those two persons as trustees for the daughter. Then the Case says this: "Prior to the said Directors' Meeting the Respondent" (the present Appellant) "informed his wife that he was going " to transfer the said shares into the joint names of himself and " his wife as part of the said trust fund and that in the mean- " time and until such transfer was completed he would himself " hold the said shares upon trust." It is added that since that date the Respondent did not receive any dividends on the shares nor did the wife receive any dividends, but they were accumulated and placed to the credit of the trustees' account.

Upon these facts the Commissioners stated their opinion that the present Appellant's declaration of his intention, coupled with his actions, was sufficient to prove a valid declaration of trust of the shares, and, accordingly, that the dividends were not part of his income for the purpose of Super-tax. That decision was affirmed by the King's Bench Division in Northern Ireland, but was reversed by the Court of Appeal, and it is against the decision of the Court of Appeal that the present appeal is brought.

My Lords, from this statement it is plain that the real question is whether the declaration which is found by the Commissioners to have been made by the Appellant to his wife in February, 1917, when considered together with his subsequent actions, was sufficient immediately to deprive him of his beneficial interest in the shares in question and the dividends thereon, and to impress them with a valid trust in favour of some other

person or persons. The law is clear that a trust cannot be created by an incomplete transfer, but can be created by a complete and unequivocal declaration of trust; and the point is whether there was here such a declaration.

My Lords, it is admitted that the deed did not create the necessary trust, partly because it was not executed until after the material period had elapsed, and partly because by a clause in that deed (Clause 9) it was provided that the deed should not affect any trust property therein mentioned until the date of its becoming vested in the trustees, and these shares did not become vested in the trustees until some time in March, 1919. The whole case therefore turns upon the effect and meaning of the parol declaration found by the Commissioners to have been made by the Appellant to his wife.

What then did that declaration mean? The exact terms of it are not given, and in this respect the statement of facts is somewhat vague and ambiguous. It is suggested on behalf of the Appellant that the effect of the declaration was to make Mr. Allan a trustee of these shares for his wife and his daughter absolutely and in equal shares. My Lords, I do not think it is possible to put that interpretation upon the declaration. The Appellant, Mr. Allan, at that date had in his pocket or in his possession a draft settlement of these shares which he, as it is found, intended to make—a settlement which, whatever its exact form, was plainly inconsistent with a declaration of trust for his wife and daughter absolutely. Further, the fact that two years afterwards he executed a deed wholly inconsistent with any such absolute trust for the wife and daughter cannot be put out of account. Reading all the facts as found by the Commissioners, I do not think it possible to infer that he meant at this period, namely, in February, 1917, to declare an absolute trust for his wife and daughter. Lord Justice Moore put a different interpretation upon the statement, for he thought that the intention and effect of the declaration was to impress the shares with a trust on the part of Mr. Allan to legally transfer them to the trustees as soon as he could do so. I am not sure that I entirely agree with that interpretation. It appears to me that, putting the matter as high as possible for the Appellant, the declaration came to this: The Appellant, Mr. Allan, in effect said to his wife, "I intend to settle these shares upon you and our daughter; it may take some time to complete the settlement, but in the meantime until the settlement is made I will consider myself a trustee of the shares, that is to say, I will not deal with them as my own and I will at the proper time transfer them to the trustees of the settlement upon the trusts which I may then declare." I am not sure that that construction is right; but at all events it gives an intelligible meaning to the Appellant's statement that he would hold the shares in trust and is consistent with the other facts of the case. But it is clearly not sufficient to enable the Appellant to succeed

in this appeal, for such a declaration left it open to him to frame and mould the trust at some future time as he might then think fit; it was not an immediate and complete declaration of trust, but merely a declaration of his intention to settle the shares and of his intention meanwhile to keep them *in medio*, so that they might be ready when the trust was effectively declared.

This view of the transaction is, I think, confirmed by the fact that for upwards of two years after the date when the statement was made the dividends were paid into a trust account and were not divided among the beneficiaries; no part of them was paid to the settlor's wife, but they were accumulated in the trustees' names, clearly in order that they might be dealt with according to the settlement as ultimately framed. At all events, I think that is the real meaning of the transaction; and, if so, there was plainly no definite and established trust in February, 1917, or at any later time before the deed was executed. During that time the settlor was at liberty either to alter the draft deed or to change his mind and to make no settlement at all, and neither his wife nor his daughter, nor anyone on their behalf, could, I think, have enforced the alleged trust.

I will only add that, on the Appellant's own showing, a serious question would arise whether what is in his view his wife's moiety of this income ought not to be brought into account for the purpose of assessing the Super-tax payable by him.

My Lords, I come to the conclusion that there was no effective trust declared of this income in February, 1917, that it remained the income of the Appellant, and, accordingly, that the decision of the Court of Appeal was right and this appeal ought to be dismissed with costs.

Lord Dunedin.—My Lords, I concur. I think the whole transaction was inchoate until 1919, and up to that date these dividends legally belonged to Mr. Allan.

Lord Atkinson.—My Lords, I concur.

Lord Sumner.—My Lords, I concur.

Lord Buckmaster.—My Lords, that property to which a title can be established at law is incapable of being voluntarily transferred by verbal declaration is well known, and no volunteer can come into a court of equity and ask that an intention that property was to be transferred, however plain and explicit, should be perfected by the assistance of the court. But it is also true that while the legal ownership remains unaltered it is possible that it may be impressed in the hands of the legal owner with a valid declaration of trust in favour of third parties. How far it is possible that such a declaration of trust should involve the intricacies of a complicated settlement I will not pause to inquire. It would appear that in principle it might be done if it were possible to show that the declaration had been sufficiently detailed and specific to cover all the varying conditions which such a settlement might contain. But one thing at least is

plain, that, whether the property of which the trust is declared is property which it is intended should be held so that the whole beneficial interest passes in favour of the *cestui que trust*, or whether it is intended that there should be partial interests created while the legal ownership remains unaltered, it is essential that something should be shown more than an expressed intention that a thing is going to be done instead of an actual declaration that the trusts have been made perfect.

My Lords, applying those principles to the present case I find this: The shares in Messrs. Workman, Clark and Company, Limited, which are the only subject matter of this appeal, were declared by the Commissioners for the Special Purposes of the Income Tax Acts to be bound by a verbal trust, stated in two paragraphs of the special Case to have been constituted in this way: At some time in December, 1916, Mr. Allan, the Appellant, was proposing to purchase certain Exchequer Bonds for the benefit of himself and his wife and daughter; he then stated to his wife "that he was going to create a trust fund for her benefit and that of their daughter, and with that object was going to purchase the said Exchequer Bonds and War Loan in their joint names, same when so purchased were to be held by them upon trust for her and her daughter." I will assume, although it appears to me that the matter is open to argument, that such a declaration would establish a valid trust of those War Bonds, when purchased, in favour of the wife and the daughter, but, if that were so, the trust that would follow would be a trust holding those War Bonds for the daughter and the wife in equal shares. The only other reference to a verbal declaration is to be found in another paragraph of the Case where the Appellant just before a Directors' Meeting of Workman, Clark and Company, Limited, which was held on the 22nd February, 1917, told his wife "that he was going to transfer the shares into the joint names of himself and his wife as part of the trust fund, and that in the meantime, and until such transfer was completed, he would himself hold the said shares upon trust," but upon what trust is not defined. Now it appears that at a later date a trust deed was, in fact, executed, which certainly did not carry out a trust declared in favour of the wife and the daughter in equal shares. It was a settlement of the shares, of which one half was to be settled for the benefit of the wife during her life and the remaining half was to be settled, upon terms which it is unnecessary to examine, for the benefit of the then existing daughter and any other daughters that might thereafter be born. It is now suggested that these shares were subject to two trusts—first, the declaration of trust in favour of the wife and the daughter, which made them the absolute owners in equal shares, and, secondly, the trust effected by the deed, which, it is said, has created different trusts in violation of the first, and which Counsel for the Appellant bravely, but quite accurately, argued were so inconsistent that

they ceased to bind the beneficiaries under the earlier trust. My Lords, that is not the view I take of the transaction; nor is it, as I read the Case of the Special Commissioners, the view that they took of the transaction. The view that they took of the transaction was, in my opinion, that the deed did nothing but carry into effect the expressed intention of the settlor made at the earlier dates. If that were so, then, in my opinion, the verbal statement made here of the trust which was purported to be declared was wholly inadequate to effect any such change of property. The consequence is that, so far as these shares, at least, were concerned, there is no proof of any valid verbal declaration of trust depriving the settlor of the enjoyment of the property in those shares up to the time when the deed was executed.

My Lords, for these reasons I am of opinion that this appeal should be dismissed with costs.

Questions put :

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed with costs.

The Contents have it.

