Pennington & Anor v Waine & Ors [2002] EWCA Civ 227 (4th March, 2002)
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Pennington & Anor v Waine & Ors [2002] EWCA Civ 227 (4th March, 2002)

Neutral Citation Number: [2002] EWCA Civ 227

Case No: A3/2000/3448 CHANF

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM LIVERPOOL DISTRICT REGISTRY (HIS HONOUR JUDGE HOWARTH)

Royal Courts of Justice
Strand,
London, WC2A 2LL

4th March 2002

B e f o r e :

LORD JUSTICE SCHIEMANN
LORD JUSTICE CLARKE
and
LADY JUSTICE ARDEN

Jack Pennington **John Stephen Breen**	**Claimants**
- and -	
Philip Joseph Waine	**Respondent**
Harold Crampton Junior	
Elizabeth Crampton	
Deborah Crampton	**Appellant**
William Crampton	**Appellant**
Stephen Crampton	
John H Gibson	
John Crampton	
Yvonne Linney	
Shirley Russ	
Janice Waine	
Jennifer Ward	

Penelope Studholme
James Crampton
Barbara crampton
Linda Crampton
Judith Fisher

Defendants

(Transcript of the Handed Down Judgment of
Smith Bernal Reporting Limited, 190 Fleet Street
London EC4A 2AG
Tel No: 020 7421 4040, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Mr B Weatherill QC and Mr John McCarroll instructed by Mace & Jones for the fifth and sixth Defendants/Appellants
Mr John McGhee instructed by DLA for the second Defendant/Respondent
The other parties were not represented and did not appear.

HTML VERSION OF JUDGMENT
AS APPROVED BY THE COURT

Lady Justice Arden :

1. This is an appeal by the fifth and sixth defendants in this action with the permission of the judge and this Court against the order of His Honour Judge Howarth dated 27 October 2000 whereby the judge determined that 400 of the shares in Crampton Bros. (Coopers) Ltd ("the Company") registered in the name of the late Mrs Ada Crampton ("Ada") were transferred by her by way of gift to her nephew, Harold Crampton Junior ("Harold") in October 1998 prior to her death. Harold is a respondent to this appeal. The parties, other than the fifth and sixth defendants and Harold, are not represented on this appeal and do not appear.

2. The background is as follows. The issued share capital of the Company is £2,000 divided into 2,000 shares of £1 each, all of which have been issued and are fully paid. Prior to the death of Ada's husband, Leslie Crampton, on 8 February 1997, 1,399 shares in the Company were registered in Lesley's name, 101 were registered in Ada's name and the balance were registered in the name of Harold Crampton Senior. After Lesley's death his shares were transferred to Ada. Ada died in November 1998. At that date she and Harold Senior were the sole directors. Ada was the beneficial owner of 75 per cent of the issued share capital.

3. On 30 September 1998 Mr Pennington, a partner in the Company's auditors, had a meeting with the deceased when she said that she wanted to transfer immediately 400 of her shares to her nephew, Harold. Mr Pennington gave instructions to a member of his staff to prepare a share transfer form for the 400 shares. Ada signed the transfer form and returned it to Mr Pennington. He gave it to his member of staff who placed it "on the company's file" and took no further action prior to Ada's death in November 1998.

4. Ada indicated to Harold that she wanted to give him some of her shares. Ada also wanted Harold to become a director of the company. On 15 October 1998 Mr Pennington wrote to Harold enclosing form 288A (a prescribed form of consent to act as a director), stating that he had been appointed on

1 September 1998, with instructions for its completion and stating that Ada had instructed him to arrange the transfer to him of 400 shares in the company. He added that this required no action on Harold's part. Harold signed this form and Ada countersigned it.

5. Neither Ada nor Mr Pennington nor Harold took any further action in relation to the stock transfer form. Nothing turns on the absence of the share certificates as Ada's share certificates were held by the Company.

6. The Company's articles of association contain pre-emption articles. Ada's shares could not be transferred to Harold under the articles without complying with article 8 (B) which provides as follows:

> "(B) A share shall not be transferred otherwise than provided in paragraph (A) of this article unless it is firstly offered to the members at a fair value to be fixed by the company's auditors. Any member desiring to sell a share (here and after referred to as a "retiring member") shall give notice thereof in writing to the company (here and after referred to as "a sale notice") constituting the company as his agent for the purpose of such sale. No sale notice shall be withdrawn without the directors' sanction ……."

The article then contains provisions for offering the retiring member's shares to other members. (The range of transferees permitted by article 8(A) did not include Harold at the date of the transfer.) It appears that Ada, Harold and Mr Pennington were unaware of these articles. No sale notice was served on the Company under article 8(B).

7. The Company's articles also require directors to hold one share in the Company. Under section 291 of the Companies Act 1985, Harold would vacate office as a director on 30 October 1998 if he had not obtained his share qualification by that date. In practice Harold could only obtain his qualification shares from Ada at that time. It is not clear whether Ada and Harold realised Harold needed to obtain a share qualification.

8. On 10 November 1998, Ada executed a will whereby she made specific gifts of the balance of her shareholding (1,100 shares) but made no specific mention of the remaining 400 shares.

9. The issue which the judge had to determine was whether those 400 shares formed part of her residual estate or were held on trust for Harold absolutely. If they were effectively given to Harold, Harold has by virtue of that gift and a specific legacy of shares by Ada a majority of 51% of the issued shares of the Company.

Judgment of HHJ Howarth

10. The judge held that Mr Pennington was not the Company's agent when he received the form of transfer signed by Ada. Nonetheless, the judge held that the gift of 400 shares became effective when Ada executed the share transfer form and that there was no legal requirement for the form to be delivered to the donee or to the Company.

11. The judge noted that there was no evidence or suggestion that the gift was intended to be subject to any condition precedent or that it was signed in escrow.

12. The judge held that the transfer was executed in breach of article 8(B), but that the articles did not render the gift ineffective as between Ada and Harold.

13. In the circumstances, the judge concluded that Ada had transferred the whole beneficial interest in the 400 shares to Harold thereby rendering herself and her executors bare trustees of the legal interest.

Appellants' submissions

14. Mr Bernard Weatherill QC, for the appellants, submits that the judge was right to hold that neither Mr Pennington nor his firm retained the signed share transfer form as agent for the Company. There is

no respondent's notice challenging that finding. Nor were Mr Pennington's firm agents for the donee. They held the form as Ada's agent.

15. Mr Weatherill submits that Ada had intended an immediate gift and did not intend to constitute herself as trustee of the 400 shares.

16. Mr Weatherill submits that the test to be applied to determine whether the gift was complete in law is whether the donor had done all in her power irrevocably to transfer ownership in the subject matter of the gift of the donee. Mr Weatherill submits that for this to occur either the subject matter had to be delivered to the donee or some indicia of title thereto. Unless or until such delivery occurred, Ada could recall the gift for any reason: *Re McArdle* [1951] Ch 669, at 677 per Jenkins LJ. If the gift is incomplete

> "the donor has a locus poenitentiae and can change his mind at any time. No question of conscience enters into the matter, for there is no consideration, and there is nothing dishonest on the part of an intending donor if he chooses to change his mind at any time before the gift is complete."

17. Delivery to either the Company or the transferee would be sufficient to complete the gift. However, neither occurred so the test was not satisfied in this case. Legal title only passed on registration of the share transfer by the company.

18. In support of these submissions Mr Weatherill relies on *Milroy v Lord* (1862) 4 De G.F. & J 264, *Jones v Lock* (1865) LR 1 Ch App Cas 25, *Warriner v Rogers* LR 16 Eq 340, *Richards v Delbridge* (1874) LR 18 Eq 11, *In re Griffin* [1899] 1 Ch 408, *Macedo v Stroud* [1922] 2 AC 330, *In re Fry* [1946] Ch 312, *Re Rose, Midland Bank Trustee Co Ltd v Rose* [1949] Ch 78 and *In re Rose, Rose v IRC* [1952] Ch 499.

19. In *Milroy v Lord*, above, the donor executed a deed purporting to transfer 50 shares to the defendant. The shares were only transferable by entry in the books of the bank. No such transfer was ever made. The defendant had a power of attorney authorising him to transfer the donor's shares and after the execution of the deed the donor gave him a further power of attorney authorising him to receive dividends on the shares. The donor died and an action was bought to enforce the transfer. The matter came before Knight-Bruce LJ and Turner LJ. Knight-Bruce LJ held that the transaction was imperfect and incomplete and that the donor might have perfected it and completed it by a transfer. In a passage that has come to be a classic statement of the law in this field, Turner LJ held as follows:-

> "I take the law 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 necessary 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; 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. These are the principles by which, as I conceive, this case must be tried."

20. In *Jones v Lock*, above, a father put a cheque into the hands of his baby son of nine months saying 'I give this to baby for himself' and he then took back the cheque and put it away. The donor died and the cheque was found among his effects. Lord Cranworth LJ held that there had been no valid gift. There was no declaration of trust and no gift.

21. In *Warriner v Rogers,* above, the donor wrote on pieces of paper that her servant was to have certain property on her death, but these documents did not amount to a valid will. Sir James Bacon VC held that the gift was imperfect as these documents did not constitute a valid declaration of trust.

22. In *Richards v Delbridge*, above, the donor purported to make a voluntary gift of leasehold premises and stock in trade by endorsing on the lease "This deed and all thereto belonging I give to E from this time forth, and all the stock in trade". This document was delivered to E's mother on his behalf. Sir George Jessel MR held that there was no valid declaration of trust in favour of E. For a man to make himself a trustee, he must express an intention to become a trustee.

23. In *re Griffin*, above, Byrne held that the endorsement and delivery of a banker's deposit receipt with the intention to make a gift operated as a good equitable assignment of the amount on deposit at the bank. The instruction had been handed to the donee. It did not matter that no notice had been given to the bank.

24. In *Macedo v Stroud*, above, the donor purported to give real property (in part) by memorandum which was not registered. Under the law of Trinidad the transfer was accordingly ineffectual to pass any estate or interest in the land. The donor delivered the instrument to his solicitor telling him to keep the document and not to register it. The document accordingly remained in the solicitor's custody unregistered until the death of the donor, who during his life continued to receive the rents. The judge found that the instrument was intended to operate as an immediate and unconditional gift to the donee. The Privy Council held that the memorandum not having been registered nor delivered to the donee for that purpose there was an imperfect gift of the properties with which it dealt to which equity could not give effect. At page 337, the Privy Council said this:-

> "The memorandum of transfer, …. was never made the subject of registration, nor did Ribeiro [the donor] present it, or hand it to the transferee, for that purpose. It therefore, having regard to the terms of the ordinance, transferred no estate or interest either at law or in equity. At the most it amounted to an incomplete instrument which was not binding for want of consideration. Had it been in terms a declaration of trust, a Court of equity might have compelled the trustee to carry out the trust, which would have been binding on him, even if voluntary. But it does not purport to be a declaration of trust, or anything else than in inchoate transfer. As such, and as it is voluntary, their Lordships think that it is no more than an imperfect gift of which a Court of equity will not compel perfection. The judgments of Lord Eldon in *Ellison v Ellison* (1), and of Turner LJ in *Milroy v Lord* (2), have placed this principle beyond question."

25. In *Re Fry,* above, a settlor executed a transfer of shares but failed to obtain the consent of the Treasury under the Defence (Finance) Regulations 1939. The transferees argued that the testator had executed documents which were appropriate to the subject matter of the gift, namely the share transfers, that those documents being under seal were irrevocable and that the settlor had done everything he could that was necessary for him to do to divest himself of the legal and equitable interest in the shares in favour of the transferees. Further they argued that even if the donor had failed to succeed in his purpose, so far as the legal title was concerned, he must be regarded as having passed his equitable interest in the shares. Romer J held that the gift was incomplete. He said:-

> "Now I should have thought it was difficult to say that the testator had done everything that was required to be done by him at the time of his death, for it was necessary for him to obtain permission from the Treasury for the assignment and he had not obtained it. Moreover, the Treasury might in any case have required further information of the kind referred to in the questionnaire which was submitted to him, or answers supplemental to those which he had given in reply to it; and, if so approached, he might have refused to concern himself with the matter further, in which case I do not know how anyone could have compelled him to do so. Apart, however, from consideration of this kind, it appears to me that reg. 3A of the Defence (Finance) Regulations prevents me from giving effect to the argument, however, formulated, that at the time of the testator's death a complete equitable assignment had been effected. The interest in the shares so acquired by the assignees would indubitably be an "interest in securities" within the meaning of reg. 3A and inasmuch as they are prohibited from acquiring such an interest except with permission granted by the

> Treasury, this court cannot recognise a claim to such an interest where the consent of the Treasury was never given to its acquisition. The assignment and acceptance of the interest would both be equally incapable of recognition in the absence of Treasury sanction, and that sanction was never in fact obtained; it might indeed (although the probabilities are certainly otherwise) never have been forthcoming at all."

26. In *Re Rose, Midland Bank v Rose*, above, the testator handed a transfer of the relevant shares to the donee, Mr Hook, together with the relevant certificates. The transfer had not been registered by the date of his death. Jenkins J held:-

> "In *Milroy v Lord* (1) the imperfection was due to the fact that the wrong form of transfer was used for the purpose of transferring certain bank shares. The document was not the appropriate document to pass any interest in the property at all. In *In re Fry* (2) the flaw in the transaction, which was a transfer or transfers of shares in a certain company, was failure to obtain the consent of the Treasury which in the circumstances surrounding the transfers in question was necessary under the Defence (Finance Regulations) Act, 1939, and, as appears from the headnote, what was held was that the donor's executors ought not to execute confirmatory transfers. That is, of course, exactly in accordance with the principle that equity will not compel an imperfect gift to be completed. Something had to be done by the donor's executors if the gift was to be completed, and that was the execution of further transfers which were not open to the objection of the absence of Treasury consent. In this case, as I understand it, the testator had done everything in his power to divest himself of the shares in question to Mr Hook. He had executed a transfer. It is not suggested that the transfer was not in accordance with the company's regulations. He had handed that transfer together with the certificates to Mr Hook. There was nothing else the testator could do. It is true that Mr Hook's legal title would not be perfected until the directors passed the transfer for registration, but that was not an act which the testator had to do, it was an act which depended on the discretion of the directors. Therefore it seems to me that the present case is not in pari materia with the two cases to which I have been referred."

27. In *re Rose, Rose v IRC* [1952] 1 Ch. 499, the Court of Appeal approved *re Rose, Midland Bank v Rose* in a case where the deceased had executed instruments of transfer and delivered them with the relevant certificates to the transferees. Jenkins LJ at page 517 held that the transfers were nothing more nor less than transfers of the whole of the deceased's title both legal and equitable in the shares and all advantages attached to the shares as from the date on which the transfers were executed and delivered subject as regards legal title to the provisions of the articles as to registration and the directors' discretionary power to refuse registration. At page 518 Jenkins LJ said:-

> "In my view, a transfer under seal in the form appropriate under the company's regulations, coupled with delivery of the transfer and certificate to the transferee, does suffice, as between transferor and transferee, to constitute the transferee the beneficial owner of the share, and the circumstance that the transferee must do a further act in the form of applying for and obtaining registration in order to get in and perfect his legal title, having been equipped by the transferor with all that is necessary to enable him to do so, does not prevent the transfer from operating, in accordance with its terms as between the transferor and transferee, and making the transferee the beneficial owner."

28. In the same case Evershed MR held that *Milroy v Lord* did not prevent the imposition of a trust as a matter of law if the gift was complete but the donor retained the subject-matter.

29. Mr Weatherill also relies on *Mascall v Mascall* (1984) 50 P&CR 119 and *The Trustee of the Property of Pehrsson, v von Greyerz* (unreported) (Privy Council, 16 June 1999).

30. In *Mascall v Mascall*, above, the question was whether a gift of land was completely constituted by delivery of the land certificate and a form of transfer. Browne-Wilkinson LJ held:-

> "The basic principle underlying all the cases is that equity will not come to the aid of a volunteer. Therefore, if a donee needs to get an order from a court of equity in order to complete his title, he will not get it. If, on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from

> the donor, the donee needs no assistance from equity and the gift is complete. It is on that principle, which is laid down in *Re Rose*, that in equity it is held that a gift is complete as soon as the settlor or donor has done everything that the donor has to do, that is to say, as soon as the donee has within his control all those things necessary to enable him, the donee, to complete his title."

31. Browne-Wilkinson LJ also held that in *Milroy v Lord* Turner LJ was saying that the settlor must have done everything that was necessary *for him* to do. He held that there was no inconsistency in the authorities. In that case, however, the transfer had been put under the control of the donee.

32. In *Trustees of the Property of Pehrsson v von Greyerz,* above, the Privy Council held that the mere appointment of trustees of shares without the delivery to the trustees of forms of transfer did not give rise to a trust. The Privy Council said:-

> "So in this case it seems to their Lordships that the gift was intended to take effect by a transfer of the shares and it is therefore impossible to construe it as having taken place by a change in the beneficial interest before the transfer had been registered. It is true that in accordance with the decision in *In re Rose* [1952] Ch. 499, a gift of shares will be regarded as completed even before registration when the donor has clothed the beneficiary with the power to obtain registration. Thus when the donor has executed a transfer and delivered it to the beneficiary or his agent, equity regards the gift as completed. No further act on the part of the donor is needed to vest the legal title in the beneficiary and the donor has no power to prevent it. But this principle could not apply to the present case until the nominee shareholders had executed transfers to Miss von Greyerz or her nominee and delivered them into her possession or constituted themselves agents for her. Until that time, they remained nominees for Mr Pehrsson and it was open to him to countermand the gift. Since the transfers to Miss von Greyerz and Mr Pehrsson (treating him as Miss von Greyerz's nominee) were not executed until the same day as registration took place, the principle in *In re Rose (supra*) is of no assistance to her."

33. Mr Weatherill submits that *Standing v Bowring* (1885) 31 Ch 282 is distinguishable. In that case registration of the transfer was actually completed and so the gift was completely constituted.

34. Mr Weatherill submits that there is an alternative test, namely whether Harold obtained an absolute and unconditional right to have the transfer registered in his name: see per Lord Selborne in *Société Generale v Walker* (1885) 11 App Ca. 20, 29. He relies on Palmer's Company Law paragraphs 6.605 - 6.607 and Pennington's Company Law (1995) 7 pages 508 – 509. However, this test was also not satisfied because the form of transfer was never delivered to Harold or the Company.

35. Mr Weatherill accepts that Ada did not promise to secure registration of the transfer by the Company.

36. Mr Weatherill submits that if the gift had been by way of deed and this was permitted by the Company's articles, the gift would not have been completed upon execution of the deed. Thus, for example, in *Nanney v Morgan* (1888) 37 Ch. D 346, it was held that the deed of transfer did not pass the legal interest to the transferee until it was delivered to the secretary of the company. It was held that the transfer did not take effect until it had been left with the secretary and accepted by him. On the first occasion it was rejected because it was not properly stamped. The transfer had to be properly stamped in order to make the transfer effectual as between the company and the transferee. The legal title to the stock remained with the transferors until then. Accordingly, effectual delivery to the company is required: see also *Vandervell v IRC* [1967] 2 AC 291 at 329 per Lord Wilberforce and *MacMillan Inc v Bishopsgate Investment Trust plc (No.3)* [1995] 1 WLR 978 at 1004 F-G per Millett J, but these observations were also concerned with the passing of the legal estate.

37. Mr Weatherill accepts that it would not be inconsistent with Ada's instructions for Mr Pennington to give the form of transfer to Harold or the Company but he submits that Mr Pennington would have sought Ada's instructions before complying with any request from Harold to deliver the transfer to him.

38. Mr Weatherill submits that questions of unconscionability arise only where there is a transfer to a trustee.

39. In *Re Way's Trusts* (1864) 2 De G.J. & S 365, relied on by the respondent, the gift was effected by a deed which was delivered.

40. Contrary to the respondent's submission, the effect of the Stock Transfer Act 1963 is not to place a share transfer on the same footing as a deed.

Respondent's submissions

41. Mr McGhee, for the respondent, Harold, submits that the judge was correct to conclude that there was a valid equitable assignment of the shares. A transfer can have effect in equity even though the Company has no notice of it. Mr McGhee submits that the failure of Ada to hand over the stock transfer form to Harold does not prevent the assignment from taking effect in equity. He submits that it is well established that a gift can take effect even if the donee is unaware of it. The gift vests immediately subject to the donee's right to repudiate it once he becomes aware of it: *Standing v Bowring*, above. The principle applies to equitable assignments: *Re Way's Trusts,* above.

42. A transfer of the equitable interest in shares in breach of article 8(B) would nonetheless be effective: see *Hawks v McArthur* [1951] 1 AER 22.

43. A gift can be made either by direct assignment, by a transfer to trustees or by a declaration of trust. Mr McGhee accepts that if one of those ways fails the court will not render the gift effective by construing it in some other way. He submits, however, that *Pehrsson v Greyerz* is merely an application of that principle. The trust which the judge found in the present case was a constructive trust, arising by operation of law, not an express trust, and accordingly his conclusion does not infringe the principle that an imperfect gift will not be construed as a declaration of trust.

44. Mr McGhee distinguishes various authorities relied on by the appellant. In *Milroy v Lord* the gift failed because the form used was incapable of amounting to an assignment. Likewise in *Richards v Delbridge* the instrument was incapable of transferring title. *In re Fry* a statutory consent was required before the assignment could take effect and without it any assignment was prohibited.

45. It is not and cannot be literally true that the donor has to do everything which he can to transfer the property to the donee: see *T.Choithram International SA v Pagarina* [2001] 1 WLR 1 (P.C.) where a gift of shares was valid though vested in one only (the donor) of a number of trustees. The donor intended to create a trust. As a trustee he could not retire from the trust. The donor's conscience as one of the trustees was affected and it would be unconscionable and contrary to the principles of equity to allow him to resile from his gift. At an earlier point in his judgment, at the start of an analysis of the rules of equity as to completed gifts, Lord Browne-Wilkinson said:-

> "Although equity will not aid a volunteer, it will not strive officiously to defeat a gift."

46. Ada would only have power to recall the transfer from Mr Pennington if the assignment was ineffective. On the evidence, she retained no right to recall the transfer since:

i) she told Harry she intended to give him the shares;

ii) she executed the share transfer form;

iii) Mr Pennington placed the executed form of transfer not on his file, which he held for Ada but on the company's file;

iv) Mr Pennington wrote to Harry on Ada's instructions informing him about the transfer of shares;

v) Ada knew that Mr Pennington was a partner in the firm of J & D Pennington who were the Company's auditors and that Harry was company secretary and presumably also that the share certificates were at the Company's registered office;

vi) Ada did not dispose of the shares by her Will and so presumably regarded the transfer executed by her as effective.

47. Mr McGhee submits that if the test is one of unconscionability: (see Choithram, above) it is amply satisfied in this case. It would clearly be unconscionable for Ada to revoke the gift in her life time. It was not so revoked and is, therefore, valid. Mr McGhee relies on Lord Browne-Wilkinson's dictum that equity does not strive officiously to defeat a gift.

48. Mr McGhee submits that the court should hold either that at the date of Ada's death Mr Pennington's firm was no longer holding the transfer for Ada or alternatively that as from the time Ada delivered the share certificate to Mr Pennington, Ada was holding the transfer for Harold. However, as explained above, the respondent has not served a respondent's notice challenging the judge's finding of fact that Mr Pennington did not hold the form of share transfer executed by Ada as agent for the Company.

49. Mr McGhee submits that the execution of a form of transfer would have the same effect as a deed after the Stock Transfer Act 1963.

Conclusions

50. Counsel have taken the court through the authorities in detail and it will thus be unnecessary for me to cite from the authorities at length. To reduce confusion, I will refer to the decision of Jenkins J in *Re Rose* [1949] Ch 78 as *Re Rose, Midland Bank v Rose* and to the decision of this court in the (unconnected) case of *Re Rose* [1952] Ch 449 as *Re Rose, Rose v IRC.*

51. The legal title to a share may today be conveyed by the execution and registration of an instrument of transfer (section 182(1) of the Companies Act 1985). However, the equitable interest in a share may pass under a contract of sale even if the contract is not completed by registration (*Hawks v McArthur* [1951] 1 AER 22). In addition, a share may also be the subject of a valid equitable assignment: see for example *Re Rose, Rose v IRC.*

52. This appeal raises the question of what is necessary for the purposes of a valid equitable assignment of shares by way of gift. If the transaction had been for value, a contract to assign the share would have been sufficient: neither the execution nor the delivery of an instrument of transfer would have been required. However, where the transaction was purely voluntary, the principle that equity will not assist a volunteer must be applied and respected. This principle is to be found in *Milroy v Lord* and other cases on which Mr Weatherill relies, such as *Jones v Lock, Warriner v Rogers* and *Richards v Delbridge* : see in particular the citation from the judgment of Turner LJ set out above. Accordingly the gift must be perfected, or "completely constituted".

53. The principle that equity will not assist a volunteer has been lucidly explained in Maitland's *Lectures on Equity* (1932) at page 73:

> "I have a son called Thomas. I write a letter to him saying 'I give you my Blackacre estate, my leasehold house in the High Street, the sum of £1000 Consols standing in my name, the wine in my cellar.' This is ineffectual – I have given nothing – a letter will not convey freehold or leasehold land, it will not transfer Government stock, it will not pass the ownership in goods. Even if, instead of writing a letter, I had executed a deed of covenant – saying not I do convey Blackacre, I do assign the leasehold house and the wine, but I covenant to convey and assign – even this would not have been a perfect gift. It would be an imperfect gift, and being an imperfect gift the Court will not regard it as a declaration of trust. I have made quite clear that I do not intend to make myself a trustee, I meant to give. The two intentions are very different – the giver means to get rid of his rights, the man who is intending to make himself a trustee intends to retain his rights but to come under an onerous obligation. The latter intention is far rarer than the former. Men often mean to give things to

> their kinsfolk, they do not often mean to constitute themselves trustees. An imperfect gift is no declaration of trust. This is well illustrated by the cases of *Richards v Delbridge*, L.R. 18 Eq.11 and *Heartley v Nicholson,* L.R. 19 Eq. 233. ”

54. Thus explained, the principle that equity will not assist a volunteer at first sight looks like a hard-edged rule of law not permitting much argument or exception. Historically the emergence of the principle may have been due to the need for equity to follow the law rather than an intuitive development of equity. The principle against imperfectly constituted gifts led to harsh and seemingly paradoxical results. Before long, equity had tempered the wind to the shorn lamb (i.e. the donee). It did so on more than one occasion and in more than one way.

55. Firstly it was held that an incompletely constituted gift could be upheld if the gift had been completed to such an extent that the donee could enforce his right to the shares as against third parties without forcing the donor to take any further step. Accordingly, if a share transfer has been executed by the donor and duly presented to the company for registration, the donee would be entitled, if necessary, to apply to the court for an order for rectification of the share register under section 359 of the Companies Act 1985. Such an order would not, of course, be granted if for example the directors had a discretion to refuse to register the transfer and had timeously passed a valid resolution to decline to register the transfer (see *Buckley on the Companies Acts* 15 ed (2000) paragraph [359.277]).

56. That exception was extended in *Re Rose, Rose v IRC* and other cases by holding that for this exception to apply it was not necessary that the donor should have done all that it was necessary to be done to complete the gift, short of registration of the transfer. On the contrary it was sufficient if the donor had done all that it was necessary for him or her to do.

57. There is a logical difficulty with this particular exception because it assumes that there is a clear answer to the question, when does an equitable assignment of a share take place? In fact the question is circular. For if by handing the form of transfer to Mr Pennington in this case, Ada completed the transaction of gift and the equitable assignment of the 400 shares, Harold can bring an action against Mr Pennington to recover the shares as his property, and the principle that equity will not assist a volunteer is not infringed. If on the other hand, by handing the share transfer to Mr Pennington, Ada did not complete the transaction of gift or the equitable assignment of the shares, Harold cannot recover the shares because to do so would mean compelling the donor or the donor’s agent to take some further step. The equitable assignment clearly occurs at some stage before the shares are registered. But does it occur when the share transfer is executed, or when the share transfer is delivered to the transferee, or when the transfer is lodged for registration, or when the pre-emption procedure in article 8 is satisfied or the directors resolve that the transfer should be registered? I return to this point below.

58. According to Counsel’s researches, the situation in the present case has not arisen in any reported cases before. I note that in her recent work, Personal Property Law Text and Materials (Hart Publishing, 2000) Professor Worthington takes it as at axiomatic that:

> “notwithstanding any demonstrable intention to make a gift, there will be no effective gift in equity if the donor simply places matters (such as completed transfer forms accompanied by the relevant share certificates) in the hand of the *donor’s* agents. In those circumstances the donor remains at liberty to recall the gift simply by revoking the instructions previously given to the agent. The donor has not done all that is necessary, and the donee is not in a position to control completion of the transfer. It follows that the intended gift will not be regarded as complete either at law or in equity.” (page 241)

59. Secondly equity has tempered the wind (of the principle that equity will not assist a volunteer) to the shorn lamb (the donee) by utilising the constructive trust. This does not constitute a declaration of trust and thus does not fall foul of the principle (see *Milroy v Lord* and *Jones v Lock*, above) that an imperfectly constituted gift is not saved by being treated as a declaration of trust. Thus, for example, in the *Choitram* case the Privy Council held that the assets which the donor gave to the foundation of which he was one of the trustees were held upon trust to vest the same in all the trustees of the foundation on the terms of the trusts of the foundation. This particular trust obligation was not a term of the express trust constituting the foundation but a constructive trust adjunct to it. So, too, in *Re*

Rose, Rose v IRC the Court of Appeal held that the beneficial interest in the shares passed when the share transfers were delivered to the transferee, and that consequently the transferor was a trustee of the legal estate in the shares from that date. At one stage in his judgment Evershed MR went further and held that an equitable interest passed when the document declaring a gift was executed. Evershed MR said (at 510):

> If a man executes a document transferring all his equitable interest, say, in shares, that document, operating, and intended to operate, as a transfer, will give rise to and take effect as a trust, for the assignor will then be a trustee of the legal estate in the shares for the person in whose favour he has made an assignment of his beneficial interest. For my part, I do not think that *Milroy v Lord* is an authority which compels this court to hold that in this case, where, in the terms of the judgment of Turner LJ the settlor did everything which, according to the nature of the property comprised in the settlement, was necessary to be done by him in order to transfer the property, the result necessarily negatives the conclusion that, pending registration, the settlor was a trustee of the legal interest for the transferee.

I will need to return to this point below.

60. Thirdly equity has tempered the wind to the shorn lamb by applying a benevolent construction to words of gift. As explained above an imperfect gift is not saved by being treated as a declaration of trust. But where a court of equity is satisfied that the donor had an intention to make an immediate gift, the court will construe the words which the donor used as words effecting a gift or declaring a trust if they can fairly bear that meaning and otherwise the gift will fail. This point can also be illustrated by reference to the *Choitram* case. In that case the donor signed the trust deed setting up the foundation and then simply made an oral declaration of gift of all his wealth to the foundation. The Privy Council held that the gift to "the foundation" could only properly be construed as a gift to the purposes declared by the trust deed and administered by the trustees. Lord Browne-Wilkinson giving the judgment of the Privy Council referred to the arguments that the courts below had accepted, namely that

> "… the court will not give a benevolent construction so as to treat ineffective words of outright gift as taking effect as if the donor had declared himself a trustee for the donee (see *Milroy v Lord*). So, it is said, in this case TCP used words of gift to the foundation (not words declaring himself a trustee): unless he transferred the shares and deposits so as to vest title in all the trustees, he had not done all that he could in order to effect the gift. It therefore fails. Further it is said that it is not possible to treat TCP's words of gift as a declaration of trust because they make no reference to trusts. Therefore the case does not fall within either of the possible methods by which a complete gift can be made and the gift fails."

Lord Browne-Wilkinson disagreed with this conclusion:

> *" Although equity will not aid a volunteer, it will not strive officiously to defeat a gift*. This case falls between the two common-form situations mentioned above. Although the words used by TCP [the donor] are those normally appropriate to an outright gift—'I give to X'—in the present context there is no breach of the principle in *Milroy v Lord* if the words of TCP's gift (ie to the foundation) are given their only possible meaning in this context. The foundation has no legal existence apart from the trust declared by the foundation trust deed. Therefore the words 'I give to the foundation' can only mean 'I give to the trustees of the foundation trust deed to be held by them on the trusts of the foundation trust deed'. Although the words are apparently words of outright gift they are essentially words of gift on trust.
>
> But, it is said, TCP vested the properties not in *all* the trustees of the foundation but only in one, ie TCP. Since equity will not aid a volunteer, how can a court order be obtained vesting the gifted property in the whole body of trustees on the trusts of the foundation? … In their Lordships' view there should be no question. TCP has, in the most solemn circumstances, declared that he is giving (and later that he has given) property to a trust which he himself has established and of which he has appointed himself to be a trustee. All this occurs at one composite transaction taking place on

> 17 February. There can in principle be no distinction between the case where the donor declares himself to be sole trustee for a donee or a purpose and the case where he declares himself to be one of the trustees for that donee or purpose. In both cases his conscience is affected and it would be unconscionable and contrary to the principles of equity to allow such a donor to resile from his gift." [emphasis added].

61. Accordingly the principle that, where a gift is imperfectly constituted, the court will not hold it to operate as a declaration of trust, does not prevent the court from construing it to be a trust if that interpretation is permissible as a matter of construction, which may be a benevolent construction. The same must apply to words of gift. An equity to perfect a gift would not be invoked by giving a benevolent construction to words of gift or, it follows, words which the donor used to communicate or give effect to his gift.

62. The cases to which Counsel have referred us do not reveal any, or any consistent single policy consideration behind the rule that the court will not perfect an imperfect gift. The objectives of the rule obviously include ensuring that donors do not by acting voluntarily act unwisely in a way that they may subsequently regret. This objective is furthered by permitting donors to change their minds at any time before it becomes completely constituted. This is a paternalistic objective, which can outweigh the respect to be given to the donor's original intention as gifts are often held by the courts to be incompletely constituted despite the clearest intention of the donor to make the gift. Another valid objective would be to safeguard the position of the donor: suppose, for instance, that (contrary to the fact) it had been discovered after Ada's death that her estate was insolvent, the court would be concerned to ensure that the gift did not defeat the rights of creditors. But, while this may well be a relevant consideration, for my own part I do not consider that this need concern the court to the exclusion of other considerations as in the event of insolvency there are other potent remedies available to creditors where insolvents have made gifts to defeat their claims. (see for example sections 339 and 423 of the Insolvency Act 1986). There must also be, in the interests of legal certainty, a clearly ascertainable point in time at which it can be said that the gift was completed, and this point in time must be arrived at on a principled basis.

63. There are countervailing policy considerations which would militate in favour of holding a gift to be completely constituted. These would include effectuating, rather than frustrating, the clear and continuing intention of the donor, and preventing the donor from acting in a manner which is unconscionable. As Mr McGhee points out, both these policy considerations are evident in Choitram. It does not seem to me that this consideration is inconsistent with what Jenkins LJ said in Re McArdle, quoted above. His point is that there is nothing unconscionable in simply (without more) changing your mind. That is also the point which Professor Worthington makes in the passage I have cited above.

64. If one proceeds on the basis that a principle which animates the answer to the question whether an apparently incomplete gift is to be treated as completely constituted is that a donor will not be permitted to change his or her mind if it would be unconscionable, in the eyes of equity, vis a vis the donee to do so, what is the position here? There can be no comprehensive list of factors which makes it unconscionable for the donor to change his or her mind: it must depend on the court's evaluation of all the relevant considerations. What then are the relevant facts here? Ada made the gift of her own free will: there is no finding that she was not competent to do this. She not only told Harold about the gift and signed a form of transfer which she delivered to Mr Pennington for him to secure registration: her agent also told Harold that he need take no action. In addition Harold agreed to become a director of the Company without limit of time, which he could not do without shares being transferred to him. If Ada had changed her mind on (say) 10 November 1998, in my judgment the court could properly have concluded that it was too late for her to do this as by that date Harold signed the form 288A, the last of the events identified above, to occur.

65. There is next the pure question of law: was it necessary for Ada deliver the form of transfer to Harold? I have referred above to the difference of view between Evershed MR and Jenkins LJ. In *Re Rose, Rose v IRC* the issue was whether the gift was perfected by 10 April 1943, by which date the donor had executed the declarations of gift and delivered the share transfers to reflect the gifts to the transferees. Argument was not therefore directed to the question whether a beneficial interest in the shares passed on the dates of the declarations of trust or on the date on which the share transfers were handed over. For my own part I do not consider that it was necessary to the conclusions of

Evershed MR that the gift should have taken effect before the transfers were delivered to the transferees. Indeed for him so to hold would not in my view be consistent with the second sentence cited from the relevant part of his judgment (set out above) or with the fact that he went on to approve as a correct statement of the law the decision of Jenkins J in *Re Rose, Midland Bank v Rose* (where, the share transfers having been delivered to the donee, the gift was held to be perfect because there was nothing else the donor could do) or with the fact that Morris LJ agreed with both judgments. Moreover if this were the view of Evershed MR it seems to me that it would not in my view be possible to reconcile it with *Milroy v Lord*, and in particular with the principle that the court will not convert an imperfect gift into a declaration of trust. There could not be a constructive trust until the gift was perfected. The conclusion of Jenkins LJ was predicated on the basis that delivery of the transfer to the donee was necessary and had occurred. Likewise the decision of this court in *Mascall v Mascall* and of the Privy Council in *Pehrsson v von Greyerz* were predicated on the same basis. I have summarised those cases earlier in this judgment. Accordingly the ratio of *Re Rose, Rose v IRC* was as I read it that the gifts of shares in that case were completely constituted when the donor executed share transfers and delivered them to the transferees even though they were not registered in the register of members of the company until a later date.

66. However, that conclusion as to the ratio in Re Rose, Rose v IRC does not mean that this appeal must be decided in the appellants' favour. Even if I am correct in my view that the Court of Appeal took the view in Re Rose, Rose v IRC that delivery of the share transfers was there required, it does not follow that delivery cannot in some circumstances be dispensed with. Here, there was a clear finding that Ada intended to make an immediate gift. Harold was informed of it. Moreover, I have already expressed the view that a stage was reached when it would have been unconscionable for Ada to recall the gift. It follows that it would also have been unconscionable for her personal representatives to refuse to hand over the share transfer to Harold after her death. In those circumstances, in my judgment, delivery of the share transfer before her death was unnecessary so far as perfection of the gift was concerned.

67. It is not necessary to decide the case simply on that basis. After the share transfers were executed Mr Pennington wrote to Harold on Ada's instructions informing him of the gift and stating that there was no action that he needed to take. I would also decide this appeal in favour of the respondent on this further basis. If I am wrong in the view that delivery of the share transfers to the company or the donee is required and is not dispensed with by reason of the fact that it would be unconscionable for Ada's personal representatives to refuse to hand the transfers over to Harold, the words used by Mr Pennington should be construed as meaning that Ada and, through her, Mr Pennington became agents for Harold for the purpose of submitting the share transfer to the Company. This is an application of the principle of benevolent construction to give effect to Ada's clear wishes. Only in that way could the result "This requires no action on your part" and an effective gift be achieved. Harold did not question this assurance and must be taken to have proceeded to act on the basis that it would be honoured.

68. Accordingly in my judgment the judge was right in the conclusion that he reached.

69. I have not in general found the cases cited by Counsel on gifts of property other than securities of great assistance as securities are usually required to be transferred in a particular way. Nor have I in general found the cases which they have cited on gifts by deed helpful because, where deeds are effective to transfer property, actual delivery of the deed is often unnecessary (see e.g. Re Way's Trusts, above, which concerned the equitable assignment of a reversionary interest in annuities). Nothing in this judgment is intended to detract from the requirement that a donor should comply with any formalities required by the law to be complied with by him or her, such as, in the case of a gift of shares, the completion of an instrument of transfer or, in the case of a gift of land, the requirements of section 2 of the Law Reform (Miscellaneous Provisions) Act 1989 or, in the case of a gift of a chattel, delivery of the chattel. That is one of the points made by Maitland in the passage which I have quoted above and the authorities such as Milroy v Lord justify his proposition.

70. In the circumstances I would dismiss the appeal.

Lord Justice Clarke:

71. I agree that this appeal should be dismissed. I add a judgment of my own because I have not found this an easy case. I gratefully adopt Arden LJ's account of the facts.

72. As I read his judgment, the judge held that this is not a case in which equity is being asked to complete an imperfect gift, but a case in which there was a valid equitable assignment of Ada's beneficial interest in the 400 shares when she executed the stock transfer form in circumstances which showed that she intended that Harold should thereby become the owner of the shares without at any stage retaining any power to recall the share transfer from Mr Pennington. Mr McGhee submits that he was right so to hold.

73. Mr Weatherill submits, on the other hand, that the judge was wrong because of the principle adverted to by Arden LJ that equity will not intervene or assist to perfect an imperfect gift. He submits that the crucial feature of a case like this is that there is no consideration for the gift and that, in such circumstances, equity will only assist the donee where the donor has done everything in his or her power to perfect the gift. He submits that here Ada did not deliver the transfer form either to Harold or to the company, with the result that she did not do all in her power to perfect the gift of the shares to Harold.

74. It is certainly true that Ada could have done more. She could have delivered the transfer form to Harold or to the company. She could indeed have applied to the company to enter Harold's name in its register of members because section 183(4) of the Companies Act 1985 provides:

> "On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee."

Mr McGhee submits that the principle that equity will intervene only where the donor has done everything in his or her power to perfect the gift cannot be literally true because there is almost always something more that the donor could have done. There seems to me to be some force in that submission and I shall return to it below.

75. As I understood his position during the course of the argument, Mr McGhee does not challenge the judge's conclusion that, although Mr Pennington acted both as adviser to Ada and as the company auditor and although the executed transfer form was put into a company file, it was not at any stage delivered to the company. In these circumstances, at any rate in the absence of a respondent's notice, I accept Mr Weatherill's submission that it is not open to us to hold that the form came into the possession of the company. It would not therefore be right to speculate as to the conclusion which I might have reached if the respondent had challenged that finding.

76. I am bound to say that if the matter were free of authority, I would hold that the beneficial interest in the shares passed to Harold. Ada executed the correct share transfer form, which on its face has the effect of transferring the shares to Harold, and gave it to Mr Pennington. She did not think that it was necessary for her to take any further step to effect the transfer to Harold. She did not at any stage intend to reserve a right to withdraw the form. It is plain from the number of shares which she bequeathed to Harold in her will that she intended him to have a controlling share of the company and that, up until her death, she thought that the transfer of the 400 shares was valid. It is a reasonable inference that otherwise she would have bequeathed a larger number of shares to him. If at any stage before her death, she had been asked how many shares were owned by Harold, she would have said 400. Moreover, if she had been asked to take some further step to perfect Harold's legal title to the shares, she would have taken it.

77. In these circumstances, although I know that hard cases make bad law, I would have expected Harold to be entitled both to the 400 shares apparently transferred by stock transfer form and the shares bequeathed to him, with the consequence that, on Ada's death, he became entitled to 51 per cent of the issued shares in the company. I should add that, if unconscionability is the test, I agree with Arden LJ that it would have been unconscionable of Ada, as at the time of her death (if not earlier), to assert that the beneficial interest in the 400 shares had not passed to Harold. It would certainly be unconscionable of the estate to seek to resile from the transfer after Ada's death because, as at her death, she plainly intended Harold to own the shares.

78. The difficulty is to identify the correct approach in law and equity to the facts of this case. In addition to the facts just set out, a feature of the case which has particularly struck me stems from the role and wording of the stock transfer form. Section 1 of the Stock Transfer Act 1963 ("the 1963 Act") provides, so far as relevant, as follows:

> (1) Registered securities to which this section applies may be transferred by means of an instrument under hand in the form set out in Schedule 1 to this Act (in this Act referred to as a stock transfer), executed by the transferor only and specifying (in addition to the particulars of the consideration, of the description and number or amount of the securities, and of the person by whom the transfer is made) the full name and address of the transferee.
>
> (2) The execution of a stock transfer need not be attested; ….
>
> (3) Nothing in this section shall be construed as affecting the validity of any instrument which would be effective to transfer securities apart from this section; …."

Section 1(4) sets out the securities to which the section applies. They include shares in a company.

79. Schedule 1 sets out the basic stock transfer form, which was the form which was used here. The form describes the consideration as nil, sets out the number of shares transferred, namely 400, and gives Ada's name as transferor. The form continues: "I/We hereby transfer the above security out of the name(s) aforesaid to the person(s) named below". Ada signed her name in the box immediately under that declaration and Harold's name and address then appears as the transferee. Under Harold's name there appears the further statement: "I/We request that such entries be made in the register as are necessary to give effect to the transfer." To my mind none of the remainder of the form is relevant for present purposes. It was dated 12th October 1998.

80. On the face of the form, by her signature Ada thereby transferred 400 shares in the company to Harold. It seems to me that when the form as so executed is read with section 1 of the 1963 Act, the apparent effect of Ada's signature on the form was to transfer the 400 shares to Harold. The question is what, if any effect that signature has. It is true, as is (as I understand it) common ground, that such a transfer cannot have the effect of transferring the legal title to the shares because the transferee cannot become the legal owner of the shares until they are registered in his or her name. It is, however, also common ground that a transferee can become the owner of shares in equity without becoming the legal owner for want of registration: *Re Rose, Rose v IRC* [1952] Ch 499.

81. As I see it, a potentially important question in this appeal is whether the execution of a stock transfer form can have effect as an equitable assignment without the necessity of a transfer or delivery of the form or the share certificates either to the transferee or to the company. In the absence of binding authority to the contrary, I can see no reason in principle why the answer to that question should not be yes.

82. There is nothing in the provisions of the 1963 Act which suggests that delivery is necessary to effect the transfer. On the contrary, section 1(1) provides that that registered securities "may be transferred by means of an instrument under hand". It does not provide that they may, let alone may only, be transferred by *delivery* of such an instrument, whether to the transferee or to the company.

83. Moreover, there is, so far as I am aware, no case which is authority for the proposition that an equitable assignment of shares, or perhaps strictly of the shareholder's rights to and under the shares, cannot be effective without delivery of the share certificates or the instrument of transfer. It is not, to my mind, surprising that there is no authority for such a proposition because there is no need for such a principle.

84. Delivery of the instrument of transfer to the transferee has never been necessary to effect a transfer of shares, whether at law or in equity. Thus in *Standing v Bowring* (1885) 31 Ch D 282 the plaintiff executed an instrument transferring shares into the joint names of herself and her godson. It is not clear from the report whether the instrument was under hand or was a deed. The plaintiff did not deliver the instrument to her godson, although, as Lindley LJ put it, she caused the shares to be so transferred in the books of the Bank of England. Two years later she married and wanted to recover

the shares for herself. Her godson only learned of the shares when asked to re-transfer them to her. It was held by this court that she was not entitled to have them (or strictly his interest in them) re-transferred because both the legal and beneficial interest in the shares had passed to him.

85. Cotton LJ expressed the position thus (at p 288):

> "Now, I take the rule of law to be that where there is a transfer of property to a person, even although it carries with it some obligations which may be onerous, it vests in him at once before he even knows of the transfer, subject to his right when informed of it to say, if he pleases, "I will not take it"".

The court there held both that the plaintiff was not entitled to have the legal title to the shares re-transferred and also that there were no equitable grounds on which the plaintiff was entitled to relief. It is, I think, plain that in this latter respect the court was impressed by the fact that the plaintiff deliberately transferred the shares into her joint names after being advised that she would not be able to rescind the transaction and, as Lindley LJ put it (at p 288), clearly intending her godson to keep the shares for his own benefit after her death. Although the court did not put in these terms, it plainly thought that it would have been unconscionable to allow the plaintiff to resile from the transaction.

86. The case is not of course on all fours with the instant case, but it shows that delivery to the transferee is not required to effect a transfer in law or in equity. Thus, in the instant case, if Ada had procured the registration of Harold as the owner of the shares in the books of the company, the legal title to the shares would have passed to him. In these circumstances I can see no reason for holding that there was no valid equitable assignment to him without delivery of the transfer or shares to him.

87. Nor can I see any reason why delivery to the company of either the share certificates or the transfer form should be necessary to perfect an equitable assignment. In this regard it does not seem to me to matter whether the stock transfer form was executed under hand or under seal. In either event, absent registration, the transfer could only take effect as an equitable assignment. Even if the transfer had been by deed, it would only have operated as an equitable assignment until the shares had been registered in the name of the transferee. Yet, in that case, there can I think be no doubt that on the facts set out by Arden LJ, there would have been a valid equitable assignment of the shares.

88. That is I think clear from cases such as *Macedo v Stroud* [1922] AC 330. Arden LJ has referred to the purported transfer of part of the real property in that case by unregistered memorandum. Another part of the property was transferred by deed, which stated that it was signed and delivered by Ribeiro, who was the donor. He did not in fact deliver the deed to the donee. The Judicial Committee nevertheless held that gift was effective to pass the property. In giving the judgment of the Board Viscount Haldane said (at p 337):

> "Their Lordships entertain no doubt that the conveyance of the unregistered property was a deed which was duly delivered. As was said by Blackburn J in *Xenos v Wickham* (1867) 2 HL 296, 312 no particular technical form of words or acts is necessary to render an instrument the deed of the party who has executed it. For as soon as there are acts or words showing that it was intended to be executed as his deed that is sufficient. The usual way of showing this is formal delivery: "but any other words or acts that sufficiently show that it was intended to be finally executed will do as well. And it is clear on the authorities, as well as the reason of the thing, that the deed is binding on the obligor before it comes into the custody of the obligee, nay before he even knows of it, though, of course, if he has not previously assented to the making of the deed, the obligee may refuse it." He goes on to point out that the grantor may deliver to his own servant, if the grantor makes delivery, intending to make the deed his own deed.
>
> That a deed may be validly executed, even though it remains in the custody of the person who made it or his agent, appears from what was laid down in *Doe v Knight* 5 B&C 671. It is no doubt true that a deed may be delivered on a condition that it is not to be operative until some event happens or some condition is performed. In such a case it is until then an escrow only. But in the present case there was no event or condition specified to qualify the

> delivery which Ribeiro is said in the attestation clause to have made, and which the Courts below have found that he made. As it is not possible to contend successfully that the conveyance was a nullity, it must be taken to have operated completely to transfer the title to the respondent.".

89. In that case the deed was held to be effective to pass the legal title to the land, but the same or similar reasoning would have led to the conclusion that the execution of the deed was in principle sufficient to operate as an equitable assignment. Such a conclusion was reached in *In Re Ways Trusts* (1864) 2 DJ&S 365, where a person entitled to an equitable reversionary interest in some stock made a voluntary assignment of it by deed to trustees. Such an assignment could, of course, only have effect as an equitable assignment. Although the report states (at p 366) that the deed was formally signed, sealed and delivered by Lady Cholmeley, the delivery must have been made in the limited sense described by Viscount Haldane in *Macedo v Stroud,* because no notice of the deed was given to the trustees named in it or to any person interested under it, or to the original trustees of the stock and Lady Cholmeley retained the deed and subsequently destroyed it. She thereafter made a different disposition of it by will. The stock remained in the names of the original trustees throughout.

90. The case came before Knight Bruce and Turner LJJ. Their decision can be seen from this passage in the judgment of Knight Bruce LJ (at pp 371-2):

> "Upon the materials before the court the deed of 1852 must, in my judgment, be taken to have been duly and completely executed by Lady Cholmeley. There is no evidence before us that its execution was unfairly or improperly obtained, or that she executed it under any mistake, misapprehension or erroneous advice. In these circumstances the deed must be supported, although no notice of it was ever given to the trustees or to any other person. That the deed was retained by Lady Cholmeley and afterwards destroyed by her does not, in my judgment, alter the case."

The court thus held that on its face such a deed would have effect as an equitable assignment, even though it had not been delivered to anyone but retained by the donor, although it was also held that the deed could in principle be impeached on grounds of "misapprehension, mistake and erroneous advice".

91. The question is whether the instant case is a case of the kind discussed in many of the cases relied upon by Mr Weatherill to which Arden LJ has referred and to which I refer further below. Mr Weatherill submits that it is a case in which there was an imperfect gift of Ada's legal interest in the shares because she failed to do everything in her power to transfer her legal interest in the shares to Harold, which was the purpose of the gift. Put another way, as it is put in some of the cases, Harold, as donee, did not have under his control everything which was necessary to constitute his legal title to the shares without the assistance of Ada, as donor, or the court. In order to perfect the gift the shares would have to be registered but Mr Weatherill accepts that, if Ada had delivered the form either to Ada or to the company, she would have done everything in her power to transfer the shares with the result that equity would assist Harold to become the legal owner. That is because she, Ada, would have done everything in her power to perfect the gift.

92. The essential question is whether that principle applies where the donor has executed a valid equitable assignment of her beneficial interest in the shares. Mr Weatherill submits that it does because any other solution is circular. He submits that, since the question is whether equity will intervene to perfect the gift, that question cannot be answered by saying that there is an equitable assignment. However, for my part I am not persuaded that that is correct. When Ada executed the stock transfer form she had both a legal and a beneficial interest in the shares. In these circumstances I do not see in principle why she should not divest herself of her equitable interest in them by an appropriate document of assignment. She would then hold the legal interest in the shares on "trust" for Harold, she being the legal owner of the shares until registration in his name and he being beneficially entitled, for example, to any dividends declared on the shares.

93. If such an approach is permissible, it seems to me to apply to the facts here because this is a case in which there was, on the face of it, a completed equitable assignment when Ada signed the stock transfer form. It also contained Ada's request that "such entries be made in the register to give effect

to the transfer". As I read that expression, it is a request to give legal effect to the transfer contained in the form. It thus assumes that the transfer has been made and that a further step is or may be required to give legal effect to it. As indicated earlier, the form itself constitutes the transfer, by the expression "I/We *hereby* transfer" (my emphasis).

94. It seems to me that the signature of a donor on a stock transfer form in the statutory form used here is or should be capable, without more, of amounting to an equitable assignment. However, it does not follow that it will necessarily operate as an effective equitable assignment. Thus, the cases show that there are circumstances in which the court will not give effect to such an 'assignment'. For example, the evidence may show that, although the document was signed, the donor did not intend the assignment to take immediate (or perhaps any) effect. The classic example of such a situation is the case contemplated by Viscount Haldane in the passage from *Macedo v Stroud* quoted above, where the deed or instrument is delivered, or indeed executed, on the basis that it is not to have effect until some event happens or some event is performed. There is no reason why, in those circumstances, the court should not give effect to that intention.

95. Unless there is authority binding on this court to the contrary, I would hold that absent such an intention or some other compelling reason why equity should not give effect to the transfer, the execution of the transfer, either by itself or coupled (as here) with delivery by the transferor, as Viscount Haldane put it in the case of a deed, intending to make the transfer his own, the transfer had effect as an equitable assignment to transfer the shares in equity to the transferee. However, since Mr Weatherill submits that the authorities prevent such a conclusion, I turn to consider the authorities relied upon by Mr Weatherill and referred to by Arden LJ.

96. Mr McGhee submits that the appellants' case is based on a misunderstanding of the dictum of Turner LJ in *Milroy v Lord* (1862) 4 De G F & J 264 at 272 which has been quoted by Arden LJ, who has also set out the facts. He submits that the problem with the transfer relied upon by the plaintiff was that the deed poll used to transfer the 50 shares to the defendant was not in the correct form to pass either a legal or beneficial interest in the shares. He relies in that regard upon *Re Rose, Midland Bank v Rose* [1949] Ch 78 per Jenkins J at p 89, *Re Rose, Rose v IRC* [1951] 2 All ER 959 per Roxburgh J at first instance and [1952] Ch 499 per Sir Raymond Evershed MR at pp 509 and 512 and *Mascall v Mascall* (1984) P & C R 119 per Lawton LJ at p 123 and 124 and per Browne-Wilkinson LJ at p 127.

97. To my mind, those cases do support the submission that the transfer relied upon in *Milroy v Lord* was indeed insufficient to pass either a legal or a beneficial interest in the shares, or at least that that is how *Milroy v Lord* has been subsequently understood. This can perhaps best be seen from the judgment of Sir Raymond Evershed MR in *Re Rose, Rose v IRC* at p 511, where he quoted with approval the following passage from the judgment of Jenkins J in *Re Rose, Midland Bank v Rose* [1949] Ch 78 at p 89, where Jenkins J said this with regard to *Milroy v Lord* and *Re Fry* [1946] Ch 312 :

> "Those cases, as I understand them, turn on the fact that the deceased donor had not done all in his power, according to the nature of the property given, to vest the legal interest in the property in the donee. In such circumstances, it is, of course, well settled that there is no equity to complete the imperfect gift. If any act remained to be done by the donor to complete the gift at the date of the donor's death the court will not compel his personal representatives to do that act and the gift remains incomplete and fails. In *Milroy v Lord* the imperfection was due to the fact that the wrong form of transfer was used for the purpose of transferring certain bank shares. The document was not the appropriate document to pass any interest in the property at all."

By the reference to "any interest in the property at all", Jenkins J must have meant any beneficial or legal interest in the property.

98. The question is whether the position is different where the form used, while not sufficient, by itself, to transfer the transferor's legal interest in the shares is sufficient to transfer his beneficial interest in the shares. It seems to me that the position is, or should be, different because there is then a complete gift of the beneficial interest, to which the court should be able to give effect. There are to my mind strong indications in the judgment of the Master of the Rolls in *Re Rose, Rose v IRC* to

suggest that he agreed or would have agreed with that approach, although I recognise that *Re Rose, Rose v IRC* is not authority for it because, on the facts, the transfer form had been delivered to the assignee before the crucial date. As appears from Arden LJ's account of the facts, the deceased both executed instruments of transfer under seal and delivered them together with the relevant certificates to the transferees.

99. As it seems to me, the question is whether the decision depended upon delivery to the transferees or whether the same conclusion would have been reached absent delivery. Roxburgh J held that, as from the date of the transfer (not delivery) the court would compel a registered holder of the shares who has made a voluntary equitable assignment of shares to transfer them to his assignees. Roxburgh J said (at p 964):

> "It seems to me to follow that, if the company refused to register the transfers, the registered holder would be compelled to hold the shares as trustees for the assignees."

100. In the Court of Appeal, the Master of the Rolls and Jenkins LJ did not to my mind entirely speak with one voice, although it may be noted that Morris LJ agreed with both. The question for decision was whether the gift was completed before 10th April 1943 in order to avoid estate duty. Two transfer documents, which were deeds, were executed and delivered to the transferee before that date but the shares were not registered by the company until 30th June 1943. It is not absolutely clear when the documents were delivered to the transferee. Both the transfers were executed on 30th March 1943. In his account of the facts Roxburgh J said (at p 960) that the two transfers were executed by all parties between 30th March and 5th April 1943. It thus does not seem that the delivery of the transfers took place on 30th March. That is perhaps less clear from the judgment of Evershed MR in the Court of Appeal, but Jenkins LJ described the facts in this way (at p 514):

> "There is no doubt, as my lord has said, that on March 30, 1943, the deceased did execute, under seal, instruments of transfer purporting in each case to transfer 10,000 shares in the company, the instruments of transfer complying strictly with the clause in the company's articles, which states the manner in which the shares are to be transferred. Furthermore before April 10, 1943, those transfers, and the relative share certificates, were duly delivered to the respective transferees or their agent."

It thus appears that the case was being approached on the basis that delivery took place after the date of execution but before the crucial date for estate duty purposes, namely 10th April 1943.

101. The Crown's argument, as identified by the Master of the Rolls (at p 505) was put on alternative grounds, first that the shares were not taken under a voluntary disposition purporting to operate as an immediate gift, or, second, if they were, that bona fide possession and enjoyment were not assumed on the date of the transfers by the donee and thereafter retained to the entire exclusion of the donor. The Crown's case was that until the shares were registered in the name of the donee in the books of the company on 30th June 1943 either there was no effective transfer of the shares to the donee or, alternatively, there was not until that date an entire exclusion of the donor from all benefit in respect of the shares. Both Roxburgh J and this court rejected the Crown's case on both points.

102. Both Roxburgh J and the Master of the Rolls were struck by the terms of the deed of transfer, which was in similar terms to the form of transfer in the present case in that it expressly stated that "I [ie the transferor] do hereby transfer" the shares to the transferee. The form was in precisely the form required by the articles of association of the company. The Master of the Rolls said this with regard to the form (at p 507):

> "Now I agree that on the face of the document it was obviously intended (if you take the words used) to operate and to operate immediately as a transfer – "I do hereby transfer to the transferee" these shares to hold unto the said transferee, subject to the several conditions on which I held the same at the time of the execution hereof." It plainly was intended to operate *immediately* [my emphasis] as a transfer of rights. To some extent at least, it is said, it could not possibly do so. To revert to the illustration which has throughout been taken, if the company had declared a dividend during this interregnum, it is not open to question that the company must have paid that dividend to the deceased. So that, vis-à-vis

> the company, this document did not, and could not, operate to transfer to Mrs Rose the right against the company to claim and receive that dividend. …. It has followed from [the Crown's] argument that if such a dividend had been paid, the deceased could, consistently with the document to which he has set his hand and seal, have retained that dividend, and, if he had handed it over to his wife, it would have been an independent gift. I think myself that such a conclusion is startling."

A little later he said (at p 508) that the assertion that nothing passed under the two deeds, except the right to possess the deeds themselves as pieces of paper, was not right.

103. The Master of the Rolls then analysed *Milroy v Lord*, with particular regard to the much cited passage from the judgment of Turner LJ which has been quoted by Arden LJ, and expressed his conclusions as follows (at p 510):

> "Those last few sentences form the gist of the Crown's argument and on it is founded the broad, general proposition that if a document is expressed as, and on the face of it intended to operate as, a transfer, it cannot in any respect take effect by way of trust – so far I understand the argument to go. In my judgment, that statement is too broad and involves too great a simplification of the problem; and is not warranted by authority. I agree that if a man purporting to transfer property executes documents which are not apt to effect that purpose, the court cannot extract from those documents some quite different transaction and say that they were intended merely to operate as a declaration of trust, which ex facie they were not; but, if a document is apt and proper to transfer the property – is in truth the appropriate way in which the property is to be transferred – then it does not seem to me to follow from the statement of Turner LJ that, as a result, either during some limited period or otherwise, a trust may not arise, for the purpose of giving effect to the transfer. The simplest case will, perhaps provide an illustration. If a man executes a document transferring all his equitable interest, say, in shares, that document, operating, and intended to operate as a transfer, will give rise to and take effect as a trust; for the assignor will then be a trustee of the legal estate in the shares for the person in whose favour he has made an assignment of his beneficial interest. And, for my part, I do nor think that the case of *Milroy v Lord* which compels this court to hold that in this case – where, in the terms of Turner LJ's judgment, the settlor did everything which, according to the nature of the property comprised in the settlement, was necessary to be done by him in order to transfer the property – the result necessarily negatives the conclusion that, pending registration, the settlor was a trustee of the legal interest for the transferee."

104. It appears to me that the logic of those passages from the judgment of the Master of the Rolls supports the proposition that where the document used to transfer the property is, as he put it, "apt and proper to transfer the property" and "is in truth the appropriate way in which the property is to be transferred", the court will give effect to the transfer on the basis that the transferor has done everything in his power to effect the transfer. In this context, since the transfer form evidences a present transfer, the property being transferred is the equitable interest in the shares. It cannot be the legal interest in them because the legal interest can only be transferred on registration. In these circumstances the Master of the Rolls thought that the equitable interest was transferred as at the date of execution, whereafter the transferor held the legal interest as trustee for the transferee.

105. It is true that there are parts of his judgment in which the Master of Rolls adverts to the fact that the transfer form had been given to the transferee, both in the *Midland Bank Re Rose, Midland Bank v Rose* case and in *Re Rose, Rose v IRC* : see eg pp 506 and 512. Indeed, after the passage quoted above from the judgment of Jenkins J in the *Midland Bank* case, he quoted the following further passage from the judgment of Jenkins J:

> "In this case, as I understand it, the testator had done everything in his power to divest himself of the shares in question to Mr Hook. He had executed a transfer. It is not suggested that the transfer was not in accordance with the company's regulations. He had handed that transfer together with the certificate to Mr Hook. There was nothing else the testator could do."

The Master of Rolls added (at p 512):

> "I venture respectfully to adopt the whole of the passage I have read which, in my judgment, is a correct statement of the law. If that be so, then it seems to me that it cannot be asserted on the authority of *Milroy v Lord,* and I venture to think it cannot be asserted as a matter of logic and good sense or principle, that because, by the regulations of the company, there had to be a gap before Mrs Rose could, as between herself and the company, claim the rights which the shares gave her vis-à-vis the company, the deceased was not in the meantime a trustee for her of all his rights and benefits under the shares. That he intended to pass all those rights, as I have said, seems to me too plain for argument."

A little later he said (at p 513):

> "If, as I have said, the phrase "transfer the shares" is taken to be and to mean a transfer of all rights and interests in them, then I can see nothing contrary to law in a man saying that so long as, pending registration, the legal estate remains in the donor, he was, by the necessary effect of his own deed, a trustee of that legal estate. Nor do I think that that is an unjustifiable addition to or gloss upon the words used in the transfer."

106. It seems to me that the Master of the Rolls regarded the execution of the deed as the key moment at which the equitable assignment took effect and at which the "trust" to which he referred came into being. There is no indication in his judgment that he regarded delivery to the transferee as the key moment. As I see it, he was right to regard the case in that way (if he did) because, as appears from the wording of the transfer, it was the execution of the transfer (and not any subsequent delivery) which the transferor intended to effect the transfer and not some subsequent event. It was at that moment that it could fairly be said that he had done everything that he could to transfer the beneficial interest in the shares to the transferee. It does not seem to me to make sense to hold that that moment only came after some further event such as transfer to the donee or to the company.

107. Of course, as indicated earlier, evidence in a particular case might lead to the conclusion that the transferor did not intend the assignment to have effect until a later date, as in the case of an escrow or other indication of an intention that the transfer should not have effect until later. However, there was no such indication either in *Re Rose Re Rose, Rose v IRC* or the M*idland Bank Re Rose, Midland Bank v Rose* case or in the present case. The fact that the deed was delivered to the transferee in *Re Rose, Rose v IRC* and indeed in the *Re Rose, Midland Bank v Rose* case was an indication of the fact that the donor did indeed intend to transfer the shares to the transferee by the transfer document. So too were Ada's actions in this case, as set out by Arden LJ.

108. Reading the judgment of Sir Raymond Evershed, I have no doubt that he would have held that Ada's beneficial interest in the 400 shares was transferred to Harold by the stock transfer form and that her intention was amply proved by what happened thereafter. It is true that he placed some emphasis upon the fact that a deed had been used, and executed by both parties in *Re Rose*, *Rose v IRC* but I do not read his judgment as depending upon that point.

109. Jenkins LJ agreed with the Master of the Rolls, although it is fair to say that he placed more emphasis on the delivery of the transfer form to the donee. Nevertheless, he too emphasised the form of the transfers. Thus he said (at p 516) that the directors, when they registered the transfers, registered them because "by virtue of the transfers" the transferees had become owners of the shares and as such had become entitled to "get in the legal estate" by becoming registered as owners. However he also said this by way of conclusion:

> "In my view, a transfer under seal in the form appropriate under the company's regulations, coupled with delivery of the transfer and certificate to the transferee, does suffice, as between the transferor and the transferee, to constitute the transferee the beneficial owner of the share, and the circumstance that the transferee must do a further act in the form of applying for and obtaining registration in order to get in and perfect his legal title, having been equipped by the transferor with all that is necessary to enable him to do so, does not prevent the transfer from operating, in accordance with its terms as between the transferor and the transferee, and making the transferee the beneficial owner. After all, where duty is concerned, the only relevant type od ownership is beneficial ownership, and the situation of the legal estate does not affect the question."

110. In considering the decision in *Re Rose, Rose v IRC* it is important to note that the form had in fact been delivered to the transferee. As I see it, the ratio of *Re Rose, Rose v IRC* was that the gifts of the shares were completely constituted by the crucial date, which was 10th April 1943, by which time the deeds had been executed and delivered to the donee. It does not, however, follow that the decision would have been different if no such delivery had taken place. The court did not have to decide that question. I do not think that the decision would have been different because, as already stated, it seems to me that that the transferor had done everything that was necessary in order to transfer his *equitable* interest in the shares to the transferee. There was nothing further that the transferee had to do. The effect of that transfer was to create a form of trust under which the donor could have been compelled to procure the registration of the shares in the donee's name.

111. For my part, I do not think that that conclusion is inconsistent with any of the decided cases, including *Milroy v Lord*, *Mascall v Mascall* and the unreported decision of the Privy Council in *Pehrsson v Greyerz*. In none of the cases was there a completed document evidencing a present transfer of the donor's beneficial interest as in this case. In *Milroy v Lord* the form used did not transfer either the relevant beneficial or legal interest. Nor did it in *Pehrsson v von Greyerz* and in *Mascall v Mascall* the court was concerned with a gift of real property. Moreover, I do not think that the conclusion which I have reached falls foul of the principle that the court will not convert an imperfect gift into a declaration of trust. As I see it, there was here a perfect gift of Ada's beneficial interest in the 400 shares, which, as Sir Raymond Evershed MR explained in the passage on page 510 of his judgment quoted above, took effect as a trust of the legal estate in the shares. It follows that, in my judgment, the decision in *Re Rose, Rose v IRC* does not require the appeal in the instant case to be allowed.

112. With two potential exceptions, the other cases to which we were referred are of no real assistance because in none of them, save perhaps *Re Griffin* [1899] 1 Ch 408, was there a completed equitable assignment of a chose in action. For example in *Jones v Lock* (1865) LR 1 Ch App 25, where a father put a cheque into the baby's hands and then took it back, the cheque was, as I read the judgment of Lord Cranworth LC, treated as personalty. He held in effect that there was no present delivery of the cheque or the money it represented to amount to a gift. In any event he held that the facts did not lead him to the conclusion "that the testator meant to deprive himself of all property in the note, or to declare himself a trustee for the child".

113. The cases of *Warriner v Rogers* (1873) LR 16 Eq 340 and *Richards v Delbridge* (1874) LR 18 Eq 11 were also cases of imperfect gifts of real or personal property. So too was *Mascall v Mascall.* In *Moore v Moore* (1874) LR 18 Eq 474 there was no document which could amount to an equitable assignment. As I read *Heartley v Nicholson* (1874) 19 LR Eq 233, it was not alleged that there was a complete equitable assignment of the shares. On the other hand *Re Griffin* [1899] 1 Ch 408 does seem to be an example of an equitable assignment, although on different facts from these. It does not seem to me to affect the conclusion set out above.

114. The first of the two possible exceptions is *Pehrsson v von Greyerz*, to which I have already referred. In that case Mr Pehrsson intended to give his shares in a company to Miss von Greyerz. However, as I read the report, he did not execute an appropriate form of transfer and Lord Hoffmann, giving the judgment of the Judicial Committee, said that there was no evidence that he intended to transfer a beneficial interest in the shares to her. As Lord Hoffmann put it, all his dealings were concerned only with procuring the registration of the shares in her name. It was held that it was impossible to construe the gift as having taken by a change in the beneficial interest before the transfer was registered. In these circumstances that case seems to me to be very different from this because here the terms of the stock transfer form show that Ada intended there and then to transfer her beneficial interest in the shares to Harold. It seems to me that the Privy Council's conclusion on this part of *Pehrsson v von Greyerz* would probably have been different if the transfer had, on its true construction, transferred Mr Pehrsson's beneficial interest in the shares to Miss von Greyerz. Since it did not, the problem with which we are faced in this case did not arise.

115. Finally, the second possible exception is another decision of the Privy Council, namely *Choithram International SA v Pagarini* [2001] 1 WLR 1, to which Arden LJ has referred. It seems to me to give some assistance to the analysis set out above. As Arden LJ has observed, (at p 11) Lord Browne-Wilkinson highlighted the contrast between the maxim that equity will not aid a volunteer and the maxim that it will not strive officiously to defeat a gift. It seems to me that if equity refuses to aid Harold on the facts of this case, it will prefer the former maxim to the latter, whereas all the

circumstances of the case lead to the conclusion that it should give effect to the gift which Ada intended.

116. The *Choithram* case seems to me to be an example of a case in which the court held that enough had been done to enable equity to assist the donee. I would accept Mr McGhee's submission that equity will intervene only where the donor has done everything in his power to perfect the gift cannot be absolutely true since there is always something more that the donor could have done. Thus, even if Ada had delivered the transfer form to Harold, she could have done more by making a specific request to the company to register the shares in Harold's name. In my opinion Ada executed a valid equitable assignment in favour of Harold by signing the form in circumstances in which she had no intention of revoking it in the future. This is not, therefore a case of an imperfect gift (or assignment) of her equitable interest. As I see it, she thereafter held the legal interest in the shares in trust for Harold, who, as between him and her, would thereafter have been beneficially entitled to any dividend declared on the shares.

117. However, if (contrary to that view) some further step was required on her part, she took that step by the actions described by Arden LJ. Finally, if it is necessary for Harold to show that it is or would have been unconscionable for Ada's executors or Ada herself to resile from the transfer, I agree with Arden LJ, for all the reasons which she has given, that he can discharge that burden and that, whatever the position would have been before Ada's death, it is now unconscionable to permit them to resile from the transfer, contrary to her intentions. In all these circumstances I agree that the appeal should be dismissed.

Lord Justice Schiemann:

118. For the reasons given by Arden L.J. I also would dismiss this appeal.

Order: Appeal dismissed; Appellants to pay Respondents' costs; PTA to House of Lords refused.

(Order does not form part of the approved judgment)