Crichton v Crichton [1930] HCA 14; (1930) 43 CLR 536 (11 August 1930)

HIGH COURT OF AUSTRALIA

Crichton Plaintiff, Appellant; and Crichton and Others Defendants, Respondents.

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On appeal from the Supreme Court of Victoria.

11 August 1930

Isaacs C.J., Gavan Duffy, Rich, Starke and Dixon JJ.

Brennan K.C. and A. D. Ellis, for the appellant.

King, for the respondents Penelope Crichton and John Burns Crichton.

Ellis, in reply,

The following written judgments were delivered:—

Aug. 11

Isaacs C.J.

The appellant claims a declaration that certain Commonwealth Treasury bonds, now held by his wife and his son respectively, belong to him. The bonds in question are bonds which have been, by his wife and son respectively, converted from former bonds which in and prior to March 1920 belonged to him. He claims also as to the original bonds their return or their value—that is, in trover or detinue. If the former bonds, assuming them to be now in existence, were his, the bonds now in question would be equitably his also, unless some derivative title is proved to exist in the respondents respectively. The two sets of bonds, the wife's bonds and the son's bonds, have to be regarded separately, since the relevant facts affecting them radically differ. And, in view of the arguments, the facts need stating with some particularity.

1. *The Wife's Bonds*.—In July 1918 the appellant was possessed of two Commonwealth bonds actually issued. They were five per cent bonds, and were due in 1927, and were respectively for £500 and £1,500. The evidence as to the actual issue of these bonds prior to their cancellation is so clear that it would require an apology for referring to it but for the view expressed that the bonds never had any existence. The appellant says in his evidence that he purchased them about April 1918. He purchased one for £1,500 from the Travelling Tank, and the other for £500 he had not only previously purchased but had converted. True, he never had physical possession of the bonds, but he instructed the Bank to hold the bonds in his name for safe custody, and it is clear the Bank received and held them for him. On 11th July 1918 the appellant deposited the first and on 16th July 1918 he deposited the second with the Commonwealth Bank of Australia at Melbourne for safe custody. An official receipt of the Bank was given to the appellant. The Bank entered his holding in a book kept as a register of bonds held for safe custody. In that book there appeared a record showing that the number of

his official receipt was A6407, that he was the holder of the two bonds mentioned, that they were received on the dates mentioned, and there was, of course, a blank in the column for entries of date when given up. He collected the interest accruing on the £2,000 worth of bonds in 1918; it was paid into his bank account. How the interest could be paid by the Commonwealth on bonds, that is, on coupons of the bonds, which the Bank must have forwarded to the Treasury or have cancelled for the Treasury, without the bonds having been actually issued, it is difficult to imagine. It is equally difficult to understand how non-existing bonds could be converted. By way of internal practice for its own housing convenience, however, and without any direction of the customer, or, indeed, so far as appears, any knowledge on his part, all bonds lodged for safe custody are cancelled. An equivalent amount of the same issue and rate is inscribed in stock in the name of the Bank. The cancelled bonds are forwarded to the Treasury, and there destroyed. This was done with respect to the bonds of the appellant; for otherwise Mr. Jeffrey's evidence as to the practice would be nonsense in this case. The result as between the Bank and the appellant was that the bonds lodged still existed and were *demandable on production of the receipt*. The receipt represented the obligation of bailment. True, the identical pieces of paper called bonds could not be insisted upon, but bonds corresponding in rate and issue could. The appellant's right *vis-à-vis* the Bank was not and could not be a right by way of contract to issue bonds, but a right of property, a right to have restored to him in specie or in kind the bonds he had lodged and delivered to the bank as bailee. This right is beyond question (*Wilkinson v. Verity*[1]). The Bank, it must be remembered, does not issue bonds: that is the function of the Treasury.

In those circumstances, the appellant, being about to go abroad, conceived a plan for providing for his family in the event of his death, in a way which would preserve the ownership of the bonds while he lived, and yet, as he thought, would enable his wife and son to have them unaffected by probate duties, and would, in the meantime lessen his income tax. What he had in mind was to make a sort of donation *mortis causa*, though by a process not sanctioned by law. On 21st May he prepared to open an account in the Savings Bank department of the Bank at Melbourne, in the name of his wife, by getting a specimen signature card. That night he got his wife to sign it. Next day, 22nd May 1919, he opened the account by paying in 1s. On the same day also he interviewed Mr. Jeffrey, the officer in charge of bonds for safe custody, a department of the Commonwealth Bank. The substance of the interview was that the appellant said he was about to go abroad, and, being somewhat worried about influenza in England, wished to make provision for his wife and son *in case he died*. For that purpose he wished to transfer the bonds he held into the name of his wife, but he made it plain that he wished to retain the property in the bonds while he lived. The transaction, so far as his wife was concerned, was not, to use the words of Lord *Cozens-Hardy* M.R. in *In re Williams; Williams v. Ball*[2], "anything else than an attempt to give her an interest at his death in the event of his predeceasing her." He was told the transfer could be made into the name of his wife and, if he promised to get the necessary letter of deposit, it could be done straight away. He assented to that, and on that undertaking got the new receipt. He was told that in the case of his death the Bank could not disclose the bonds as his property, and Mr. Jeffrey added: "Other people would have to do that." Obviously, the Bank understood there was no intention to make a present gift or assignment. A new safe custody receipt in Mrs. Crichton's name, dated 22nd May 1919 and No. A8807, in respect of the same bonds, and stating that interest was to be dealt with in terms of instructions, was given by the Bank to the appellant. He verbally instructed Jeffrey to pay the half-yearly interest on the bonds into

the new account he had opened for his wife. The receipt he placed, together with the bank-book relating to the account, in his private drawer in the safe that stood in his private room at the office of John Cooke & Co. There it remained until his wife obtained possession when the safe was opened after the appellant was interned in 1920. He went abroad in 1919 with his wife and son, without having told her or his son anything whatever about the bonds, and therefore without having got from her the letter of deposit he had promised Jeffrey. She knew nothing of the matter of the bonds before February 1920.

So far, therefore, he had not, either by gift or trust, parted with his ownership in the bonds. Nor had he by deed parted with an intangible chose in action. Nor had the Bank assented to hold the bonds for Mrs. Crichton. He had certainly made it more difficult for *himself* to obtain possession of them or their proceeds, but neither at law nor in equity could Mrs. Crichton be considered to have any proprietary interest in them, or any equity to compel her husband to give her a proprietary interest, or any right, at all events while her husband lived, to compel the Bank to deliver the bonds to her. The change of name in the Bank's book did not make Mrs. Crichton the legal proprietor of the bonds. That was not a stock register, nor was there transfer by delivery. The Commonwealth Bank, in this respect, was in the same position as any private bank or other depositee for safe-keeping. On the return of the family to Australia the appellant on visiting the Bank found that the interest had not been paid into the bank account. Jeffrey told him there had been an irregularity, and gave him a document to get signed by his wife. About the end of February or early in March 1920, the point of time up to which the appellant by his statement of claim alleges the original bonds were his, and at which the wife alleges in her defence the gift was made or the trust declared, the appellant wrote out and handed to his wife for signature a letter of deposit of the bonds referred to. The letter desired the Bank to hold bonds for £2,000 taken up by her for safe custody on her account, and requested that interest should be paid half-yearly into her Savings Bank account opened by the appellant as already mentioned. Mrs. Crichton signed the letter, which was left undated. The appellant took it and handed it to the Bank. Obviously it was a *nunc pro tunc* fulfilment of the promise made by the appellant to Jeffrey on 22nd May 1919 as a condition precedent to the appellant obtaining his receipt No. A8807. The Bank made no further response, manifestly treating that receipt as the answer to the letter, and standing by the arrangement made in May 1919 whereby the real and present ownership was left in him.

At this point there occurs a vital conflict of testimony between the appellant and his wife as to the conversation that occurred on the occasion of the signing of the document. If the appellant's testimony were accepted, his wife acted simply as an obedient, trusting, unquestioning signatory to a document that the appellant for his own business reasons desired her to sign. The learned Chief Justice who heard the evidence of both parties accepted the story of the wife. Mr. *Brennan* made a vigorous and able attempt to induce the Court to reject Mrs. Crichton's story as opposed to the preponderance of probabilities. I do not say in which direction the balance would, in my opinion, lie if I were the primary tribunal. It is plain that the advantage of hearing the contestants is of prime importance in this case. The learned primary Judge had that advantage, and, as there is no indisputable fact rendering his finding too improbable to adhere to, this Court must accept that finding as correct. The wife's story, so far as it touches the crucial conversation, is as follows:—She says: "He came to me with a document from the Commonwealth Bank in his own handwriting." He showed her the document which she identified as exhibit D. That exhibit is a letter of deposit of the bonds for safe custody on her account. The bonds are therein described as "Treasury bonds in the Commonwealth war loan for £2,000 which have been taken up by me." The letter also

contains a direction to pay the interest half-yearly into her account, previously mentioned. She says the following conversation ensued:—"Penny, I am giving you £2,000 of bonds for all the work you have done for me. You should have signed this before we went away. I made arrangements for the interest to be paid to your account in the Commonwealth Bank. I will keep the safe custody receipt in my safe. I thanked him very kindly and said it was nice of him. That is all the conversation that took place." At no time was the safe custody receipt produced to her or taken into her presence, or seen by her, until years afterwards, when she obtained it from his drawer in the safe. Possession of it was always retained by the appellant, and it was taken from the safe without his consent or knowledge. In those circumstances the question is was there a gift or a trust of the bonds? *Irvine* C.J. held that there was a gift because, in addition to the undoubted *intention* of the appellant to transfer to his wife the property in the bonds, there was also in law the necessary *act* of delivery. The learned Chief Justice considered the words "I will keep the safe custody receipt in my safe" as meaning "for you." With that I agree. Once the wife's story is accepted, it is only consistent with the intention to transfer the property to her that the safe custody receipt should be kept for her, and not for the appellant. But the learned Chief Justice further thought that these words brought the case within the law of delivery as stated by *P. O. Lawrence* J. in *In re Hawkins; Watts v. Nash*[3], quoting *In re Wasserberg; Union of London and Smiths Bank Ltd. v. Wasserberg*[4]. The distinction between the two cases, however, is clear. To make the quoted passage applicable, the safe custody receipt would have had to be actually given to Mrs. Crichton and handed back to the appellant for safe custody. *P. O. Lawrence* J.[5] is careful to say that the subject matter of the gift had been "actually" delivered to the donee. To constitute a gift, there must be a change of property at law (see *Strong v. Bird*[6]). And "words of present gift show an intention to give over property to another, and not retain it in the donor's own hands for any purpose, fiduciary or otherwise" (*Richards v. Delbridge*[7] and *Heartley v. Nicholson*[8]). There must, in short, be a dispossession of the donor and an investment of possession in the donee. In *Milne v. Grant's Executors*[9] Lord *Young* says:—"Gifts inter vivos.—I quite agree that a gift of any amount of money or of any article of property may be completely made and well established by parole evidence. But it must be made. An expression of an intention to give anything—a piece of plate, or a horse—is nothing of itself, it will impose no legal obligation. But if the donation is once made, if the donee gets the money—if the donor hands the money or gift out of his own possession into that of the donee—then that he has so handed it over with the intention of bestowing it in gift is always capable of being proved by parole. But it must be handed over. The party giving must dispossess himself—put it entirely beyond his own control and his own use—and put it in possession of the party to whom he gives it." In *M'Nichol v. M'Dougall*[10] Lord *Young*, speaking of a deposit receipt, says:—"In order to make the gift thereof either inter vivos or mortis causa, the donor must divest himself of and invest the donee with the subject of the gift. I think that this is an essential of every gift, whether inter vivos or mortis causa. Taking the case of donation inter vivos, if anything remains to be done in this way, then there is no gift, for no Court will interfere to compel to be done that which remains ex hypothesi to be done. If there has been complete divestiture of one party and complete investiture of the other, then the gift is irrevocable, but otherwise there is no gift." In passing, I may observe that the authorities cited as to a pledgor's changed nature of possession, so as to complete the pledge, are not applicable, for the reason that, being a transaction for value, the Court does not act on the same principle as in the case of a gift, by refusing to interfere to compel the actual delivery of possession. If a donor has already parted with the possession to the donee or to

another person who is directed to hold and consents to hold henceforth for the donee, that is sufficient. But so long as the donor still retains possession, a verbal statement that he holds for the donee does not constitute delivery requisite to perfect a gift.

But though there was no gift, there was a trust. The bonds were in safe custody, and not immediately obtainable. The receipt was the *indicium* or muniment of title. It was not a mere symbol, but what Lord *Hardwicke* L.C. in *Ward v. Turner*[11] called "evidence of the thing, or part of the title to it," or "the way of coming at the possession" of the bonds. If actually delivered, that would have been enough to perfect the gift. But still, not having been delivered, it does not follow that the intended benefit must fail. I entirely agree with the contention that words which indicate the intended process of gift will not be converted into the process of trust. *Milroy v. Lord*[12] and *Moore v. Moore*[13] are quite distinct as to that. But that does not conclude the matter. Besides words of intended gift, there may also be words of intended trust. That is plainly stated by *Bacon* V.C. in *Heartley v. Nicholson*[14]. He says: "Without incurring the danger alluded to" (that is, in *Milroy v. Lord*), "it is not impossible that an intending donor may by acts or words, in addition to and independent of the imperfect gift, have constituted himself a trustee." In the present instance, if the donor had in conclusion said "I hold the safe custody receipt in trust for you," then no doubt the key, so to speak, to the bonds would have belonged to the wife, the right to obtain them from the Bank as between husband and wife would have been hers. Now, in *Richards v. Delbridge*[15] *Jessel* M.R. says that if the owner of a bond, of course with the intention of passing his interest to another, says "I undertake to hold the bond for you," that would undoubtedly amount to a declaration of trust. Consequently, in the present instance, the words "I will keep the safe custody receipt in my safe," with the necessary implication, "for you," must, in view of their collocation be regarded as a declaration of trust, carrying with the receipt that of which it was the title instrument, namely, the bonds.

I therefore think that as to the wife's bonds, this appeal fails.

2. *The Son's Bonds*.—The bonds now held by the son are the result of his conversion in 1927 of bonds purchased by the appellant in 1919 in the following circumstances:—In July 1919, while at Vancouver, he was going to give his son a present of £1,000 in bonds, and they would be for him *when he became twenty-one*. He obtained a bank draft on the Bank of Australasia, Melbourne, expressed to be in favour of his son, and, without so far as appears, his son knowing what it was or its intended purpose, told his son to sign his name on the back under the words written by the appellant himself, "Pay to the order of John Cooke & Co." His son, then a youth of thirteen, obeyed. Except for the physical act of writing his name, the boy was apparently an automaton. Then the appellant sent the draft to Cooke& Co., Melbourne, stating it was "in favour of my son duly indorsed to your order," and saying "You might purchase through your brokers for him £1,000 (face value) of the first issue of 5% Commonwealth war loan bonds, and hold same until we return. You can pay the balance into my account." Cooke& Co., though they saw the draft was nominally in the son's favour, also saw that the indorsement, except the signature, was in the handwriting of their employee, the appellant, and saw that he directed "the balance" to be paid into his own account. The words "for him" seem to have carried the meaning, not "on behalf of him as principal," nor "in trust for him," but as an intended provision by the father for his son. Their letter in reply does not mention the son, but states that the bonds were purchased and held "on your account," and that a balance of £29 was placed to the credit of the appellant's account. To buy bonds for a son may mean, according to attendant circumstances, various things. To buy a perambulator

for a baby does not mean a trust or gift to the baby. To buy a house for one's family stands in the same position. There was nothing like a gift of money. Neither in the pleadings nor during the trial was there any suggestion that the money itself was either the subject of a gift or a trust. As to the pleadings, that is evident on inspection. As to the argument at the trial, learned counsel frankly admitted the absence of such a suggestion. Unless, therefore, the law itself inexorably stamped the transaction down to the point of the son's signature with the quality of a gift or a trust, it would be contrary to all sound practice, founded on natural justice, to shut out at this stage all possible facts, never asked for, which, if proved, ought to be taken into consideration. It would be pedantry to cite the many cases of the highest authority establishing this position beyond question. Not only was there an absence of allegation that the original bonds were purchased with the son's money, but the son's pleadings positively asserted that they were purchased with "moneys provided by the plaintiff," that is, the appellant. I therefore think it not open to the respondent son to contend at this stage that the appellant made a gift or declared a trust of the money in Vancouver. But if it were open it is clear to me that upon the evidence before us there was nothing like a gift or trust of the money. To adopt the words of Lord *Cranworth* L.C. in a somewhat similar case (*Jones v. Lock*[16]), "the father really had an intention of settling something on the child, and ... his" obtaining the signature of the child "was symbolical of what he meant to do; but it was not his meaning to enable the child, by his next friend, to bring an action of trover for the" draft "or file a bill for the" £1,000, "but he merely meant to" indicate "that now he could make provision for the boy." His Lordship added words which I adapt: "It all turns upon the facts, which do not lead me to the conclusion that the" appellant "meant to deprive himself of all property in the" draft "or to declare himself a trustee of the money for the child."

The request to Cooke by the appellant to purchase the bonds through their broker was the appellant's request as principal and as owner of the money. Obviously, there was not, in the circumstances up to the purchase, anything amounting to a gift. The essentials of that legal event are altogether wanting. The bonds when purchased by Cooke & Co. were held by them, as they stated, on the *appellant's account*. Their possession was his possession. Then did the appellant by what occurred in 1919 constitute himself trustee of the bonds themselves? That he did so is claimed in the respondent's pleadings. The respondent's case as to the bonds, I may conveniently say is fourfold, namely: (1) That the appellant acted as the agent of his son; (2) that he then constituted himself trustee of the bonds for his son; (3) that the son obtained a good title to the bonds, adverse to the appellant, through the Master-in-Equity in 1927; (4) that the appellant on 3rd April 1929 agreed to waive any cause of action in respect of the bonds. The first I have dealt with. The second I have now to consider, namely, a trust. To begin with, there is no express declaration of a trust. As to an implied trust, it is clear law that "it is obviously essential to the creation of a trust that there should be the intention of creating a trust, and therefore, if upon a consideration of all the circumstances the Court is of opinion that the settlor did not mean to create a trust, the Court will not impute a trust where none in fact was contemplated" (*Lewin* on *Trusts,* 13th ed., at p. 72). The case of *Commissioner of Stamp Duties (Q.) v. Jolliffe*[17] covers this case, as I venture to think, with a considerable margin to spare. Now, when the circumstances are taken into consideration as to intention, we find that (1) the declared intention was to let the son have the bonds when he became twenty-one, that is, in about eight years' time; (2) the son was told nothing except to sign his name, as he had done for his father in other matters; (3) the bonds were stated to be held on the appellant's account, and he so regarded them; (4) on appellant's return he obtained the

bonds, and on 9th March 1920 lodged them for safe custody with the Commonwealth Bank on his own account and directed the interest to be paid into his own Savings Bank account, which was done; (5) the son's understanding was in accord, because in exhibit M, 7th September 1927, a few months after he obtained the bonds and interest on the Master-in-Equity's order, he used the expression "my getting through law on your money." Both parties being alive and giving evidence, the case comes directly within the words of *Lindley* L.J. in *Ex parte Cooper; In re Foster*[18], cited in *Lewin* on *Trusts*, 13th ed., at p. 188, that "there is no occasion to resort to any presumption; the question is one of fact." And the evidence is all one way. It is, I think, impossible to hold that the original bonds up to 1927 were other than those of the appellant, legally and equitably. No doubt he had earmarked them as a prospective advancement to his son, and very probably had, as in the case of his wife, prepared, as he thought, the ground for saving probate duties in case he died before the son arrived at twenty-one. But as to his son, his only intention was *in futuro*, and so there was neither present gift nor trust. This entirely accords with the view taken by *Irvine* C.J. up to this point. His Honor says: "At that stage no effectual gift was made to the son, nor was there, in my opinion, any enforceable declaration of trust in his favour." "But," says his Honor, "it was contended that what was subsequently done was sufficient to create such a gift perfected by delivery." The learned Chief Justice then proceeds to state the facts relative to the third ground of the son's claim to the bonds, as above mentioned. He holds that though the terms of the *Lunacy Act* are not followed, yet that what was done was equally good. That is to say, the Master-in-Equity's own order given in May 1927 to the Commonwealth Bank, without any authority from the appellant, to hand to the son the bonds held on account of the appellant followed by the appellant's written approval in the following August while he was still a patient, was legally equivalent to an alienation by the appellant in May, then consented to by the Master under sec. 195. That section is as follows: "195. Until a patient has obtained his discharge under this Act he shall be deemed incapable of dealing with or transferring or alienating or charging his property or any part thereof without the order of a Judge of the Court or without the written consent of the Master, except as to moneys or property which have been handed over to the patient by the Master in the exercise of the discretion vested in him by the last preceding section." I do not think it is a correct construction of the section that it enables a Judge or the Master to alienate the property of a lunatic, provided the lunatic at any time after, and while still under disability, expresses his thanks to the Judge or the Master for what he has done. Such a construction entirely overlooks the real pith of the section. Primarily, a lunatic patient is incapable of exercising the necessary mental capacity for dealing with property. But there are degrees of insanity, and there are possible intervals of lucidity. Provision is made, therefore, if at a given time it is thought by Judge or Master that the patient is in a position that he can and ought to dispose of his property for a given purpose, the Judge may, by order, and the Master, by consent, enable the patient to exercise his will. "Nothing is more unfortunate than a disturbance of the plain language of the Legislature by the attempt to use equivalent terms," said Lord *Denman* C.J. in *Everard v. Poppleton*[19]; and that dictum applies with great force to sec. 195 of the *Lunacy Act.* Apart from all other considerations, it is a totally different thing to separate the times of the lunatic's action and the official consent. The consent is a recognition of capacity at a certain time. Here there is no such recognition of capacity in August 1927. The alienation relied on must be at that date, and it is forbidden by sec. 195, because unsupported by any order or consent referable to it. The conclusion arrived at by the learned Chief Justice cannot be supported. His Honor did not feel it necessary to consider the question of waiver, the fourth ground of the son's claim. But, having regard to what I have said, that is, in my opinion, necessary. It is very desirable to see

just what is claimed in that regard. Par. 17 of the defence alleges an *agreement* partly oral and partly written, made on or about 3rd April 1929, whereby it was *agreed* for certain valuable consideration (stated) that appellant "should waive any cause of action he might have against the" son in respect of the bonds. That rests purely on agreement not to enforce any cause of action the appellant might have in respect of the bonds. That includes trover, detinue and trust. Now, it is evident on examination that the idea of any valuable consideration on the part of the son is too ridiculous to entertain for a moment. That a son should consent not to break his mother's heart by leaving her contrary to her entreaties cannot be called valuable consideration. As if to emphasize the fact that the waiver was directed to the law of contract only, and not to the law of property, the son's counterclaim omits all reference to par. 17 and rests solely on par. 16, which itself embodies only par. 15, alleging a trust in the original purchase of 1919, and the delivery in 1921 under the Master-in-Equity's direction. That pleading is in strict accord with the relevant evidence, which all leads to a promise not to enforce rights of action. The promise being reduced to writing, the duty of the Court is restricted to a mere interpretation of the actual words used, and does not extend to the substitution of some supposed equivalent. The words themselves consist of two undertakings and two promises, all as to future conduct.

Ultimately, then, the matter, apart from trover or detinue in respect of the appellant's original bonds, stands thus:—The son in 1929 had the legal estate in the 1927 conversion bonds issued to him on his application. His father, the appellant, claimed them as equitable owner, since they were the product of his own original bonds. Without any valuable consideration he agreed that he would not enforce any cause of action he had against the son, which included trover or detinue for the original bonds, and alternatively the equitable ownership of the new bonds. The question then is: Where there is no present release of an equitable right to property, but merely the promised waiver of a cause of action in respect of that right, what is the law? It is stated very clearly in *Lewin* on *Trusts* (13th ed., at pp. 978, 979) in these words:—"As to waiver, said Sir W. Grant, it is difficult to say precisely what is meant by that term. With reference to the legal effect, a waiver is nothing unless it amounts to a release. It is by a release, or something equivalent, only that an equitable demand can be given away. A mere waiver signifies nothing more than an expression of intention not to insist upon the right, which in equity will not without consideration bar the right, any more than at law an accord without satisfaction would be a plea. If there be a consideration, however slight, I do not know that the Court would not consider it sufficient foundation for a release, or what is equivalent to a release. It would seem, therefore, that waiver is some positive act which, if supported by valuable consideration, though slight, will be taken in equity to constitute a release; but if it be merely an expression of intention not to insist on the right, and there is an absence of consideration, it is no waiver in the sense of a release."

In the result, the appellant, in my opinion, is entitled to the son's bonds, and to that extent this appeal should succeed.

Gavan Duffy J.

I concur in the judgment of *Starke* J.

Rich J.

This appeal is concerned with two transactions alleged to amount to gifts (*Bowman v. Secular Society Ltd.*[20])—one between the appellant and his wife and the other between him and his son. The material facts are stated in the judgments of the other members of the Court, and I forbear to repeat them. I have no doubt that when the Commonwealth Bank noted up its register "transfer completed and receipt issued 22.5.1919" the last step was taken in an operation which left the Bank responsible to the wife and to the wife alone. She thus became the only person who had a title to obtain the bonds from the Bank. The question is whether then or thereafter she took not only the legal but also the beneficial interest in the right to the bonds. As the husband caused the right to the bonds to be transferred to her the presumption of advancement arose. Unless the husband rebuts this "strong presumption of law" by satisfactory evidence that his true intention at the time of the transfer was not to confer the full beneficial interest upon her, the presumption prevails (*Stock v. McAvoy*[21]). His conduct considered as overt acts appears consistent only with the view that he intended his wife to take beneficially, and the conversation which the learned Chief Justice found to have taken place between the appellant and his wife about March 1920 strongly supports the view that he entertained this intention from the beginning. Against this is to be set the vague and indefinite statements which according to the evidence of Jeffrey, the officer of the bank, the appellant made immediately before transferring the bonds. These, in my opinion, give no firm ground for holding that the presumption was rebutted. When they are weighed against the whole course of the appellant's subsequent conduct no inference can be drawn in favour of a resulting trust. "The acts and declarations of the father subsequent to the purchase may be used in evidence against him by the son" (*Dyer v. Dyer*[22]). I therefore hold that this transaction amounted to a gift at its inception.

In the case of the son the difficulty does not lie in ascertaining the father's intention to confer the beneficial interest upon the son. From beginning to end, from the time the father obtained the draft from the bank in Vancouver until he signed the document declaring that he waived any cause of action he might have against his son, the appellant treated the son as the object of his bounty, and, save for the short interval after the son wrote proposing that he should declare himself a trustee of the bonds for his father and before this written waiver, the father consistently and unequivocally treated the son as the true owner of the bonds. The difficulty lies in fixing upon any precise step by which the intention to give the bonds was effectuated. I think, however, that when John Cooke& Co. received instructions to apply the proceeds of the draft drawn in favour of the son and indorsed by him to them in purchasing bonds, they were constituted agents of the son. When they carried these instructions out and bought bonds in the open market they did so for and on his behalf, and in point of law the property in the bonds vested in him. When the father took possession of the bonds the property in them did not change nor did he intend, in my opinion, to assume ownership in them. It was natural when he lodged them with the bank to take the receipt in his own name rather than in the name of a minor. Whether the father was technically guilty of trover when he so dealt with his son's property is utterly immaterial, but by what he did he transmuted the bonds as a security consisting of a thing in possession into a pure chose in action. When the son attained full age the Master-in-Equity appears to me to have done no more than cause the title to this chose in action to be placed in the name of the true beneficial owner. But, even if he were not the true beneficial owner as I think he was, this dealing could not amount to a conversion because the subject matter was not a chose in possession but a chose in action. The son's subsequent proposals to constitute himself a trustee do not appear to have been effectuated. At any rate I am not prepared, in the face of the Chief Justice's doubts as to what the missing letters

actually contained, to hold that the son did constitute himself a trustee for his father. For these reasons I think the gift to the son was perfected.

The appeal should be dismissed with costs.

Starke J.

The law is that anybody of full age and sound mind may voluntarily denude himself of his own property (*Henry v. Armstrong*[23]). If the gift be incomplete or imperfect, equity gives no assistance to a volunteer against the donor to complete or perfect it: the donor must have done everything which according to the nature of the property was necessary to transfer it or to render the settlement binding upon him (*Blakely v. Brady*[24]; *Milroy v. Lord*[25]; *In re Griffin*[26]). The question in this appeal is whether the appellant made complete and perfect gifts of certain Commonwealth bonds, or of the right to obtain those bonds, to his wife and son. The learned Chief Justice of the Supreme Court of Victoria found that question in favour of both the wife and the son, and in my opinion he was right.

Some time in 1918 the appellant purchased, as he says, Commonwealth bonds of the value of £2,000. He did not buy them in the market but took them up directly from the Commonwealth. He never had physical possession of the bonds, but the Commonwealth Bank of Australia issued to him in July 1918, two receipts, one for £1,500 and the other for £500, as follows: "Held on account of W. F. Crichton ... Commonwealth War Loan Treasury Bond 6th issue 5% due 1927 ... for safe custody, interest to be dealt with in terms of instructions." And in the Bank's record of Commonwealth Government Treasury Bonds held for safe custody appears this entry: No. of official receipt A6031 A6407 Name of holder Crichton, William Francis [and address] Date received 11.7.1918 16.7.1918 Number of bonds 6th issue 5% £500 6th issue 5% £1,500 Instruction *re* interest Commonwealth Bank, Melbourne Amount half yearly interest £12 10s. 0d. £37 10s. 0d.

Counsel agreed, as I understood them, and as the evidence suggests, that the actual bonds were never issued. Some arrangement existed between the Treasury and the Commonwealth Bank whereby bonds deposited or proposed to be deposited with the Bank for safe custody were converted into inscribed stock in the name of the Bank, and bonds, if deposited, were cancelled. The accumulation of millions of bonds was, as the Bank officer said, almost impossible, and also it would involve, I should think, a good many risks. A customer holding a deposit receipt could obtain bonds if he so desired, for the Bank was authorized to issue bearer bonds if they were asked for. And on such issue the Bank, I take it, converted a similar amount of the inscribed stock in its name.

About May 1919 the appellant interviewed the officer in charge of bonds for safe custody at the Commonwealth Bank. He (the appellant) was about to proceed abroad with his family and desired to make provision for his wife and son. He produced the safe custody receipts for £2,000 and suggested a transfer into the name of his wife of the bonds, or of the right to the bonds, but said he would like the account marked in trust for him, and that the bonds were his property. The Bank officer could not, under his regulations, recognize any trust, and said that once a transfer was made into the wife's name the Bank could recognize her only. The appellant left the Bank, but he called again a few days later, and on this occasion he signed the following directions in the Bank's record of bonds held for safe custody: "Please transfer

two thousand pounds to the name of Penelope Crichton." The transfer was completed on 22nd May 1919. The entry of the appellant's name in the Bank's record as the holder of the bonds, or of the right to the bonds, was struck out and the wife's name substituted. The safe custody receipts in the appellant's name were cancelled, and a safe custody receipt was issued in the name of Penelope Crichton, his wife, for £2,000, and it was handed to the appellant. It is not clear on the evidence whether the wife, at this date, signed an authority to the Bank to hold the bonds for safe custody on her account, but it is clear that the Bank officer required such an authority and that the appellant promised to obtain it. The appellant opened an account on 22nd May 1919 in the name of his wife, with a deposit of 1s., in the Commonwealth Bank (Savings Bank Branch), obtained a specimen of her signature for the Bank, and instructed it to pay all interest accruing upon the £2,000 into that account. He kept the bank book in his possession, but he told his wife that he had opened the account in her name. So far as the evidence goes, however, the transfer of the bonds, or of the right to the bonds, into her name was not communicated to her. The appellant, his wife and family soon after left for Vancouver, and returned again early in 1920. The appellant then discovered that his instructions to the Bank to pay interest on the £2,000 into his wife's account had not been observed. He thereupon obtained his wife's signature to the following document addressed to the Bank:—"I desire you to hold Treasury bonds in the Commonwealth war loan of £2,000 which have been taken up by me for safe custody on my account at your Melbourne Bank. I shall be glad if you will pay interest half-yearly to the Commonwealth Bank." At the same time he said to his wife:—"Penny, I am giving you £2,000 of bonds for all the work you have done for me. You should have signed this before you went away. I made arrangements for the interest to be paid to your account in the Commonwealth Bank. I will keep the safe custody receipt in my safe." The wife thanked him, and said it was very nice. She thereafter dealt with the bonds, or the right to the bonds, as the owner thereof, and the interest was always paid to her account.

Such being the facts, uncontroverted or found by the learned Chief Justice, the gift to the wife was, in my opinion, perfect and complete.

The acts in the Bank—when the appellant directed a transfer of the bonds or of the right to the bonds into his wife's name, after the Bank's officer had explicitly informed him that the Bank could not recognize any trust in his favour if the transfer were carried out—and the conversation with his wife in 1920, amply support the Chief Justice's finding of an intention on the part of the appellant to give the bonds or the right thereto to his wife. And it must be remembered that no bonds were in existence, and physical delivery was consequently impossible. They had either not been issued or had been cancelled, and the Commonwealth had inscribed stock in the name of the Bank representing the amount of bonds actually or notionally lodged with it for safe custody. All the appellant had was a right to call upon the Bank to deliver bonds—as it could by reconversion of stock to bonds—to the amount of £2,000 as and when required. This right was transferred to his wife as already detailed. The receipt taken in the name of his wife can hardly be described as a document of title, but, such as it was, the appellant stated that he would keep it in his safe; and, in the context, I agree with the Chief Justice that this could only mean that he would keep it in the safe for his wife. Everything was done, in my opinion, which, according to the nature of the property, was necessary to be done in order to transfer the property or rights of the appellant and render the settlement binding upon him. Accordingly the gift or transfer to the wife of the bonds or the right to the bonds was perfect and complete, and the title of the wife is thus established.

Another claim of the appellant is in respect of bonds, or of the right to bonds, of the value of £1,000, held by his son. During the visit to Vancouver in 1919 the appellant purchased a demand draft on the Bank of Australasia, Melbourne, in favour of his son, and had it indorsed by the son to John Cooke & Co. of Melbourne. On 30th June 1919 the appellant wrote to Cooke & Co., forwarding them the draft and instructing them as follows:—"You might purchase through your banker for him one thousand pounds (face value) of the first issue of 5% Commonwealth war loan bonds and hold the same until we return. You can pay the balance into my account." He informed his wife that he was "going to give" his son a present of £1,000 in bonds: "They will be for him when he becomes the age of one and twenty." Cooke & Co. purchased bonds in the open market of the face value of £1,000 for £971, and advised the appellant as follows:—

The position now is that we hold on your account:

800 war bonds 1927 costing £778 10 0 200 war bonds 1923 costing 192 10 0 Balance at credit of your account 29 0 0 £1,000 0 0

The bonds were retained by Cooke & Co. until the appellant returned from Vancouver. I do not stay to consider whether this transaction created a trust in favour of the son (cf. *Vandenberg v. Palmer*[27]) but proceed to narrate the subsequent history of the matter. The appellant, on the return from Vancouver, obtained the bonds from Cooke & Co., took them to the Commonwealth Bank and lodged them there for safe custody. The Bank, in accordance with its practice, cancelled the bonds, but issued two safe custody receipts in the name of the appellant, one for £800 and another for £200. Soon afterwards, the appellant became a patient in a mental hospital, and the general care, protection and management of his estate were undertaken by the Master-in-Lunacy, pursuant to the *Lunacy Act*. The Master apparently obtained the safe custody receipts from Cooke& Co., who explained that the receipts were really held by them upon trust for the son and were not part of the appellant's property. In 1927 the Master was satisfied of this position, surrendered the receipts to the Bank, and directed the Bank to deliver the bonds to the son John Burns Crichton. Later, and whilst still a patient, the appellant approved of this action. In this way the son obtained physical possession of the bonds or of the right to the issue of the bonds. Again I do not stay to inquire whether these acts of the Master, coupled with the appellant's subsequent approval, operated to complete and perfect the gift or trust in favour of the son. (See *Lunacy Act 1928*, secs. 131, 182, 195, 207.) In 1927 the appellant accused the son of "sponging" upon him and obtaining his education out of the appellant's money. The son resented the imputation, and said he would let him have the bonds back; in September 1927 he wrote to the appellant as follows:—"I propose therefore to replace this year's interest and all future interests to accumulate, you to have the capital and interest when you get better. If you wish me not to hold it in trust I am willing to transfer it to the Master to hold on your behalf." But the son never handed the bonds to the appellant, nor did he transfer the right to obtain the bonds to either the appellant or the Master: the restoration rested in intention, and was never perfected or completed. The appellant was discharged from the mental hospital in February 1929, and at that time was of sufficient capacity to understand what he was doing. About April of 1929 the son found, as he says, that "it would be intolerable to stay in the house" with his father "and study as a law student," and he proposed to go to Western Australia. The mother was very

upset, and intervened. Ultimately the son agreed to remain at home if the appellant confirmed him in possession of the bonds or of the right to the bonds. The son then drafted the following document, dated 3rd April 1929, which the appellant signed: "I William Francis Crichton hereby undertake to waive any cause of action that I may have against my son John Burns Crichton, and I further undertake to destroy all letters written by the said John Burns Crichton in which he stated that he is holding £800 and £200 bonds in trust for me. ..." Now the bonds had been purchased on the appellant's instructions for the son: they had either been handed over to the son by the Master, or the Master had transferred to the son the right to obtain them from the Bank. Moreover, the Bank had entered in its record of bonds held for safe custody that the son was the holder of the bonds, and had issued the usual receipt to and in the name of the son. All this the appellant confirmed and accepted in 1929, and it is difficult to see what else could, in the circumstances of the case, have been done to transfer and assure the bonds, or the right to the bonds, to the son. In my opinion, the act of the appellant in 1929 completed and perfected the gift or advancement to his son—if none of his other acts or of the Master's acts so operated.

The interest obtained or accrued from the property so given to the wife and son must follow, as was admitted, the gifts themselves.

Consequently, the appeal should be dismissed.

Dixon J.

The first matter for determination upon this appeal is whether the appellant made over to his wife, who is a respondent, the beneficial interest in Commonwealth war loan Treasury bonds to the face value of £2,000 which he was entitled to receive from the Commonwealth Bank of Australia. In 1918 he subscribed for bonds to this amount and obtained from the Bank an acknowledgment that it held on his account bonds for £2,000 for safe custody. No specific bonds were actually appropriated to his account and held for him; but, in accordance with the practice of the Bank and of the Treasury, the Bank was registered as the holder of an amount of inscribed stock which it could convert into bonds when they were required for delivery. The Bank kept a record in the form of a register of the bonds it "held" in this manner for safe custody and in this register the appellant's name was entered. On 22nd May 1919 he instructed the Bank to transfer the bonds into his wife's name. An entry was made in the register "Please transfer £2,000 bonds to the name of Penelope Crichton," and this entry he signed. His own Christian name in the original description of the bondholder was cancelled and that of "Penelope" substituted, and in exchange for his own safe custody receipt the Bank gave him a receipt acknowledging that it "held on account of Mrs. Penelope Crichton ... Commonwealth war loan Treasury bonds for £2,000 for safe custody interest to be dealt with in terms of instructions." The Bank also obtained a printed instruction signed by the appellant's wife "to hold Treasury bonds in the Commonwealth war loan for £2,000 which have been taken up by me for safe custody on my account at your Melbourne Branch" and to pay the interest half-yearly to the credit of her Savings Bank account which had been opened in her name on 21st May 1919, but whether this was handed to the Bank on 22nd May 1919 or sent later pursuant to a request made on that day is uncertain. The Bank, however, noted up its register "Transfer completed and receipt issued 22.5.1919." The appellant retained possession of the receipt issued in his wife's name and did not hand it to her; but the oral evidence, which describes the transaction and narrates the discussions between the Bank's officer and the appellant, makes it clear that he did not take his wife's name as a mere alias.

He intended to invest her with the title to the bonds and the Bank intended to become responsible for them to her as an independent person. But the same evidence suggests that he did not mean them to advance his wife, and that, although he considered the transaction would provide for her in case of his death, his immediate purpose was to evade income tax. If this be so, it would follow that his wife, by reason of this transaction, became the repository of a legal right *ex contractu* to receive from the Bank bonds amounting to £2,000 and that the appellant, subject to any question of illegality of purpose, was the object of a resulting trust in respect of this valuable right. Shortly afterwards the appellant, with his wife and son (who is the other respondent upon this appeal), left Melbourne for Vancouver whence they returned in February 1920. The appellant upon his return found that the Bank had not in fact paid into his wife's Savings Bank account the two half-yearly sums which, in the meantime, had accrued for interest in respect of the bonds. The evidence does not make it clear how this omission came about, but it seems likely that the Bank had mislaid the instructions which the appellant's wife had signed requesting it to hold the bonds on her account for safe custody and to pay the interest to her Savings Bank account. At any rate he obtained his wife's signature to another document to the same effect and handed it to the Bank, requesting it to credit her with the two sums of interest already accrued. According to the evidence of the appellant's wife, which the learned Chief Justice of Victoria, whose judgment is under appeal, accepted as in substance correct, when the appellant asked her to sign this document he showed it to her and said "Penny, I am giving you £2,000 of bonds for all the work you have done for me. You should have signed this before we went away. I made arrangements for the interest to be paid to your account in the Commonwealth Bank. I will keep the safe custody receipt in my safe." She "thanked him very kindly and said it was nice of him."

His Honor, having considered the appellant's subsequent conduct including a letter written in January 1928 in which he says he made provision for his wife and son, adopted the view that, by this conversation, the appellant expressed his intention of then giving the bonds to his wife and of holding the safe custody receipt on her behalf. This finding was attacked upon the ground that the proper conclusion from the evidence was that no conversation in which the appellant so expressed himself took place; but an examination of the documents put in and of the transcript of the testimony given before the learned Chief Justice shows that the evidence amply warrants his conclusion. It follows that the question whether the appellant or his wife had the beneficial interest in the right to the bonds must be determined upon a basis of fact which, shortly stated, is that the appellant formed and communicated to his wife an intention of then and there giving to her the beneficial interest in a chose in action which at law was vested in her subject in equity to a resulting trust to him, and of holding the written evidence of her legal right as bailee for her. The question is whether the person who has such an equitable right can voluntarily release or impart it to the repository of the legal title by mere oral expression, or communication, of his present intention to do so. The provisions of sec. 9 of the *Statute of Frauds*, which stood as sec. 73 of the *Victorian Trusts Act 1915*, required only that grants and assignments of any trust or confidence should be in writing. These words do not naturally describe or include a transaction by which the equitable or beneficial interest is released or made over to the legal owner, and no judicial decision has so extended them. Sec. 53 (1) (c) of the *Victorian Property Law Act 1928*, which replaces these provisions and uses language which perhaps has a more general operation, does not apply to this case. The absence of a writing, as distinguished from a deed, is therefore unimportant. But a deed is not generally necessary to assure equitable interests. An equitable assignment although,

gratuitous, may be made without a deed (*Lambe v. Orton*[28]). Mr. *Cyprian Williams*, in his contribution to the article upon Deeds and other Instruments in *Halsbury's Law of England*, says (vol. *x*., p. 376, par. 677, note (*i*)): "If a voluntary gift of any equitable interest can well be made without deed, it appears to follow that a voluntary release of an equitable interest can also be made without deed"; and he proceeds to show that *Re Hancock; Hancock v. Berrey*[29], is no authority to the contrary because it relates to a legal chose in action. In *Forrest v. Forrest*[30] the facts seem to have raised the question for decision, but, according to the *Law Times*, *Stuart* V.C. passed it by with the observation[31]: "No part of the argument has been addressed to the question as to what can be considered, on the part of a cestui que trust, as a sufficient release in favour of his trustee of the beneficial interest in property legally vested in that trustee." The view expressed by Mr. *Cyprian Williams* is in conformity with the doctrines of equity. When an intended donee is already constituted as the legal proprietor of the subject matter of the intended gift and the intending donor has only an equitable interest to give, he can do no more than form a definite intention of presently bestowing upon or releasing to the donee the equitable interest and explicitly communicate that intention to him. There are no formal requirements unless equity follows the law which makes a deed necessary in the case of a voluntary release of a legal right and requires that the expression of this intention should be under seal. But the Courts of equity, in their exclusive jurisdiction, never did follow the law in making the efficacy of an assurance of an equitable interest depend upon the formalities of a deed. It follows that the appellant effectually imparted to his wife the full beneficial interest in the right to receive from the Bank bonds amounting to £2,000. His intention to give her the intermediate interest for the year 1919 was equally effectual, because it was paid into her Savings Bank account upon which she alone could draw. This means that, so far as she is concerned, the appeal should fail.

The facts upon which the appeal turns in relation to the appellant's son are different, but, in the end, the same equitable doctrines govern the matter. When the appellant and his wife took their son to Vancouver in the year 1919, the boy was thirteen years of age. While in Vancouver the appellant resolved to invest about £1,000 in acquiring Australian war bonds in his son's name. He procured from the Bank of Toronto a draft for £1,000 drawn by that Bank upon the Bank of Australasia, Melbourne, in favour of his son as payee. He wrote upon it a special indorsement in favour of the company by which he was employed, and obtained his son's signature to the indorsement. He then sent it by post to the company, enclosed with the following letter:—"Dear Sirs,—I herewith enclose demand draft on the Bank of Australasia, Melbourne, for £1,000 (one thousand pounds sterling) in favour of my son, duly indorsed to your order. You might purchase through your brokers for him £1,000 (face value) of the first issue of 5% Commonwealth war loan bonds, and hold same till we return. You can pay the balance into my account. Your kind attention will oblige. Yours faithfully, W. F. Crichton."

The question whether the appellant advanced his son when he obtained a bank draft in his favour as payee was not considered at the trial, and possibly all the circumstances which would be important upon that question were not proved. Moreover, no evidence was given of the law in force in British Columbia, the *lex loci actus*. It may be well to observe, however, that if the prima facie view were to be acted upon that the same rules of law prevail as in Victoria, and if the circumstances do give rise to a presumption of advancement, the evidence as it stands would not satisfactorily rebut it. The company to whom the draft was sent bought upon the market bonds of a face value of £1,000. It took delivery of the bonds which are, of course, a bearer security, and upon the appellant's return it handed them to him. He deposited them for safe custody with the Commonwealth Bank of Australia and took receipts in his own

name by which the Bank acknowledged that it held bonds amounting to £1,000 on his account. Some three weeks afterwards the appellant showed some mental disorder and became a "lunatic patient" within the meaning of the *Lunacy Act 1915* as amended (now *Lunacy Act 1928*). Sec. 182 of this enactment authorizes the Master-in-Equity to exercise powers and perform duties with respect to the estates of patients, including a power to settle, adjust or compromise any demand made by or against the estate. Soon after the appellant became a lunatic patient there were produced to the Master a number of documents found in the appellant's drawer in the office safe of the company which employed him. Among these were the safe custody receipts for the bonds amounting to £1,000 bought by the company upon the instructions he had sent from Vancouver; and at the same time his letter of instructions to the company was produced. The Master made a memorandum of the documents left with him, and in it he noted "Receipts for £1,000 Commonwealth war bonds with letter to" the company "showing same to be a gift to patient's son." The then Master, who was called as a witness, said in effect, that although he probably knew that the safe custody receipt was in the appellant's name and had been locked away in a private drawer, he considered the appellant's letter to the company a sufficient recognition of the son's claim to principal and interest and sufficient authority to him to recognize it. Seven years later, shortly after the appellant's son had come of age, this Master's successor in office requested the Commonwealth Bank to hand to the son the bonds held by it on account of the patient for safe custody and forwarded the safe custody receipts. Thereupon the Bank issued to the son a receipt acknowledging that it held bonds amounting to £1,000 on his account for safe custody. Two months or so afterwards the appellant, who, though still a lunatic patient, had a sound enough understanding upon business matters, wrote to the Master, "I thank you very much indeed for handing my son when he became 21 the bond for £1,000 which I requested my Company to purchase for him when we were in Canada in 1919."

The learned Chief Justice did not consider whether what the Master had done was an exercise of his power to settle or adjust a demand made against the estate, but he thought the extensive powers conferred upon the Master by sec. 183 coupled with the capacity reserved to the patient to deal with his property with the written consent of the Master enabled the Master with the approval of the patient signified by this letter to transfer to the son the right to the bonds. In view of what afterwards occurred, it is unnecessary to consider the correctness of this conclusion. Three weeks after the date of this letter to the Master from the appellant, his son wrote to the appellant to the effect that because his father was disposed to treat him as beholden for his University education to his father's money, he proposed to replace that year's interest and allow future interest to accumulate so that his father would have capital and interest when he got better, adding: "If you wish me not to hold it in trust, I am willing to transfer it to the Master-in-Equity to hold on your behalf." The appellant replied in two letters, neither of which was produced at the trial, and his son answered expressing his assent to a proposal contained in the first of them. Although the son, in his evidence, accepted his father's version of this missing letter, the learned Chief Justice was not satisfied that the appellant was able to recall the actual words used. In these circumstances it must remain uncertain whether the son definitely constituted himself a trustee for his father. But it is clear that in the view of both of them the proprietary right to the bonds resided in the son, and, further, that in this correspondence they treated him as in undisputed beneficial enjoyment of that right.

They were not mistaken in thinking that he was invested with the title to obtain the bonds. For, whether or not the Master had any lawful authority to cause a transfer to be made to the son, the Bank had in fact acknowledged to the son that it "held" the bonds upon his account, and he with the proceeds of these bonds had subscribed and paid for bonds of another issue, which the Bank acknowledged it "held" in safe custody for him. Of course no specific bonds had been appropriated to his account, and the Bank relied upon its holding of inscribed stock to answer his safe custody receipt in the event of him requiring delivery. But it is clear that he, and he alone, had the legal title in the thing in action which thus arose. It may be, however, that, in spite of his own and his father's opinion to the contrary, he held this thing in action subject to a resulting trust in favour of his father. For it may be that when in 1919 the company bought the original bonds, it assumed to act for the father and not for the son, so that, when he became a lunatic patient, his intended gift remained imperfect, and that what was done by the Master could not in point of law, even with the patient's subsequent approval, operate to divest the patient of his beneficial interest. But, even so, the appellant took a final step after he became *sui juris* which left his son beneficial owner of the right to the bonds. He was discharged in February 1929. Some difficulties arose soon afterwards between the father and the son, as a result of which the latter drew up a document for his father to sign by which the appellant undertook to waive any cause of action that he might have against his son, and further undertook to destroy all letters written by his son in which he stated that he was holding the bonds in trust for the appellant. At the instance of his wife the appellant signed this document. Its language, if construed apart from the circumstances to which it was intended to apply, might appear to express a future intention or promise to refrain from setting up or enforcing an equitable claim rather than its present renunciation or release. But, when the situation of the parties is considered, the meaning and object of the document appear to be plain enough. Although it is loosely expressed, it sufficiently discloses an intention to confirm the son's title to the bonds as beneficial owner and to abandon to him any equitable interest in them. It is true that it expresses an intention to waive or relinquish in favour of the legal owner a possible equity rather than to give him an admittedly outstanding beneficial interest. But this distinction cannot be material. What is material is the difference between a mere statement on the one hand of future intention not to insist upon an equitable right, which probably is ineffectual unless it is accompanied by the other elements requisite to the formation of contract, and on the other hand an immediate renunciation or release to the intent that the legal owner shall thereupon be or become the full beneficial owner. In the latter case the principles already discussed apply to make unnecessary both a consideration and a seal. The son contended that in fact he did give a consideration; but, be this as it may, it is enough that the father definitely expressed an immediate intention of giving up to him as legal owner any outstanding claim to the equitable interest which he might be able to sustain. For these reasons his appeal in relation to his son fails also.

The appeal should be dismissed with costs. The costs to be paid by the appellant including those of the Bank.

Appeal dismissed with costs.

Solicitors for the appellant, Mullett & Langford.

Solicitor for the respondents, P. Crichton and J. B. Crichton, P. J. Ridgeway.

Solicitors for the Commonwealth Bank of Australia, Weigall & Crowther.

[1] (1871) L.R. 6 C.P. 206.

[2] (1917) 1 Ch. 1, at p. 7.

[3] (1924) 2 Ch. 47, at p. 51.

[4] (1915) 1 Ch. 195, at p. 202.

[5] (1924) 2 Ch., at pp. 51, 52.

[6] (1874) L.R. 18 Eq. 315, at p. 318.

[7] (1874) L.R. 18 Eq. 11, at p. 15.

[8] (1875) L.R. 19 Eq. 233, at p. 244.

[9] (1884) 11 Rettie (Ct. of Sess.) 887, at p. 890.

[10] (1889) 17 Rettie (Ct. of Sess.) 25, at p. 28.

[11] (1752) 2 Ves. 431, at p. 443; [1752] EngR 102; 28 E.R. 275.

[12] [1862] EngR 951; (1862) 4 DeG. F.& J. 264; 45 E.R. 1185.

[13] (1874) L.R. 18 Eq., at pp. 482-483.

[14] (1875) L.R. 19 Eq., at p. 242.

[15] (1874) L.R. 18 Eq., at p. 14.

[16] (1865) 1 Ch. App. 25, at p. 29.

[17] [1920] HCA 45; (1920) 28 C.L.R. 178.

[18] (1882) W.N. 96, at pp. 96, 97.

[19] (1843) 5 Q.B. 181, at p. 184; [1843] EngR 1012; 114 E.R. 1217.

[20] (1917) A.C. 406, at p. 436.

[21] (1872) L.R. 15 Eq. 55, at p. 59.

[22] (1788) II. Wh.& Tud., 9th ed., p. 775; 3 Ridg. P.C. 195, 197.

[23] (1881) 18 Ch. D. 668.

[24] (1839) 2 Dr.& Wal. 311, at p. 326.

[25] [1862] EngR 951; (1862) 4 DeG. F.& J. 264; 45 E.R. 1185.

[26] (1899) 1 Ch. 408.

[27] [1858] EngR 493; (1858) 4 K.& J. 204; 70 E.R. 85.

[28] (1860) 1 Dr.& Sm. 125; 62 E.R. 325.

[29] (1888) 59 L.T. 197; 57 L.J. Ch. 793.

[30] (1865) 11 L.T. (N.S.) 763; 34 L.J. Ch. 428; 146 R.R. 685.

[31] (1865) 11 L.T. (N.S.), at p 765.