Appeal Cases

BEFORE

THE HOUSE OF LORDS

(ENGLISH—IRISH—AND SCOTTISH)

AND

THE JUDICIAL COMMITTEE

OF

HER MAJESTY'S MOST HONOURABLE

PRIVY COUNCIL

[HOUSE OF LORDS.]

GREY AND ANOTHER . . . . . APPELLANTS;

AND

INLAND REVENUE COMMISSIONERS . RESPONDENTS.

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1959

July 23, 27; *Nov.* 2.

Revenue—Stamp duty—Gifts inter vivos—Oral settlement—Settlements in favour of grandchildren—Transfer of company shares to trustees as nominees—Oral direction to trustees to hold shares on trusts of settlements—Subsequent declarations of trust by trustees—Whether voluntary dispositions liable to ad valorem duty—Finance (1909–10) *Act*, 1910 (10 *Edw.* 7 & 1 *Geo.* 5, *c.* 8), *s.* 74—*Law of Property Act*, 1925 (15 & 16 *Geo.* 5, *c.* 20), *s.* 53 (1) (*c*).

Assignment—Equitable—"Disposition" of equitable interest required to be in writing—Meaning of "disposition"—Oral declaration by cestui que trust directing trustees to hold his interest on new trusts —Law of Property Act, 1925, *s.* 53 (1) (*c*).

Statute—Construction—Consolidating Act—Amending Acts consolidated —Principles of construction—Law of Property Act, 1925, *s.* 53 (1) (*c*).

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* *Present*: VISCOUNT SIMONDS, LORD RADCLIFFE, LORD COHEN and LORD KEITH OF AVONHOLM.

LORD REID was present at the hearing in the Appellate Committee but not at the consideration of their report.

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By section 53 (1) (*c*) of the Law of Property Act, 1925: "a "disposition of an equitable interest or trust subsisting at the time "of the disposition, must be in writing signed by the person dis- "posing of the same, or by his agent thereunto lawfully authorised "in writing or by will."

In 1949 H. made five settlements, one in favour of each of his five grandchildren, and in 1950 he made a sixth settlement on his then existing and possible after-born grandchildren. The appellants were the trustees of each of these settlements. On February 1, 1955, H. transferred to the appellants, as his nominees, 18,000 ordinary £1 shares in a company. On February 18, 1955, H. orally and irrevocably directed the appellants thenceforth to hold the shares transferred to them on February 1, as to five blocks of 3,000 shares each on the trusts respectively of the five settlements executed in 1949 and as to 3,000 shares on the trusts of the settlement of 1950, to the intent that such direction should result in the entire exclusion of H. from all future right, title and benefit to or in the shares and the income thereof. On March 25, 1955, the appellants executed six declarations of trust which H., although not expressed to be a party thereto, executed. They were all in similar form and each recited that the appellants were the holders of 3,000 shares in the company, H.'s oral direction of February 18, the acceptance of the trust reposed in them by that oral direction and that the giving of the direction and its nature were testified by the execution by H. of the deed. The operative part of each deed declared that the appellants acknowledged and declared that they were holding the shares on the trusts of the settlement to the intent that the shares should form part of the trust fund. The six declarations of trust were assessed to ad valorem stamp duty as voluntary dispositions within section 74 of the Finance (1909–10) Act, 1910:—

Held, that the directions given by H. were dispositions by him of his equitable interest in the shares within the meaning of section 53 (1) (*c*) of the Act of 1925 and, because they were not made in writing, as required by that provision, they were ineffective. The word "disposition" in that provision must be given the wide meaning which it bears in normal usage.

Accordingly the declarations were rightly assessed to ad valorem stamp duty.

The Law of Property Act, 1922, and the Law of Property (Amendment) Act, 1924, profoundly altered a large part of the law of real and personal property, and the Act of 1925, though a consolidating Act, in fact consolidated Acts which were themselves amending Acts. Accordingly, no principle of construction imposed on these Acts an interpretation appropriate to a consolidating Act, and each word must be given the meaning proper to it in the context.

Decision of the Court of Appeal [1958] Ch. 690; [1958] 3 W.L.R. 45; [1958] 2 All E.R. 428 affirmed.

APPEAL from the Court of Appeal (Morris and Ormerod L.JJ., Lord Evershed M.R. dissenting).

This was an appeal from an order of the Court of Appeal dated May 15, 1958, allowing an appeal by the respondents, the Commissioners of Inland Revenue, from an order of the Chancery Division (Queen's Remembrancer) of the High Court of Justice (Upjohn J.) dated December 3, 1957, whereby there was allowed an appeal by the appellants, Arthur William Grey and Leslie Richard Randolph, from assessments of stamp duty by the respondents on six instruments presented to them on behalf of the appellants under section 12 of the Stamp Act, 1891, for the opinion of the respondents as to the stamp duty with which they were chargeable. The question was whether or not the instruments were chargeable with ad valorem duty. Upjohn J. held that they were not so chargeable. The Court of Appeal decided to the contrary.

The facts as stated in the case stated by the Commissioners of Inland Revenue were summarised in the opinion of Viscount Simonds as follows:

(A) The appellants were trustees of six settlements, each of which was made between a Mr. Hunter as settlor of the one part and the appellants as trustees of the other part. Four of these settlements were respectively dated July 22, 1949, and a fifth was dated August 9, 1949, and each settlement directed the appellants to stand possessed of the property comprised therein upon the trusts thereby declared for the benefit of a named grandchild of Mr. Hunter and such other trusts as therein appearing. All the said five settlements were in similar form. The sixth settlement was dated May 1, 1950, and the appellants were thereby directed to stand possessed of the property comprised therein upon the trusts thereby declared for the benefit of the then existing and future grandchildren therein specified of Mr. Hunter.

(B) By an instrument of transfer dated February 1, 1955, Mr. Hunter transferred to the appellants 18,000 ordinary shares of £1 each in Sun Engraving Co. Ltd. (hereinafter called " the com- " pany "), to be held by the appellants as nominees for and to the order of Mr. Hunter.

(C) At a meeting held on February 18, 1955, at the offices of the company at which there were present Mr. Hunter and the appellants and Mr. Graham Wyatt Williams, solicitor, Mr. Hunter orally and irrevocably directed the appellants to divide the said 18,000 shares in the company into six equal parcels of 3,000 shares each and to hold one of such parcels upon the trusts and with and subject to the powers and provisions respectively

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declared and contained in each of the said six settlements to the intent that such directions should result in the entire exclusion of Mr. Hunter from all further right, title and benefit to or in the said shares or any of them and the income thereof.

(D) By six deeds of declaration of trust each dated March 25, 1955, and executed by the appellants and Mr. Hunter, after reciting in each such deed that the appellants were the holders of 3,000 ordinary shares in the company and that on February 18, 1955, Mr. Hunter orally and irrevocably directed the appellants to hold the said shares upon the trusts and subject to the powers and provisions in such one of the said settlements as was therein mentioned and that the appellants had thereupon assented to and accepted the trusts reposed in them by the said direction and that the giving of the said direction on the said February 18, 1955, and in manner aforesaid and the nature thereof were testified by the execution by Mr. Hunter of that deed, it was witnessed and the appellants thereby acknowledged and declared (in each of the said deeds) that they had been since February 18, 1955, and were then holding 3,000 shares therein mentioned and the income thereof upon such trusts and with and subject to such powers and provisions as were in the relevant settlement declared and contained concerning the trust fund as therein defined to the intent that the said shares should since the said February 18, 1955, form an addition to and be one fund with the said trust fund for all purposes.

John Pennycuick Q.C. and *W. T. Elverston* for the appellants. This case does not turn on the technicalities of the stamp duty legislation, but on the construction of section 53 of the Law of Property Act, 1925, a part of the general law, which re-enacted with amendments three sections of the Statute of Frauds (29 Car. 2, c. 3).

The question is this: If X holds property in trust for A as absolute equitable owner and A then directs X to hold the property on the settlement trusts for the benefit of B, C and D, and X accepts the trust, is that direction a " disposition " of a subsisting equitable interest within the meaning of section 53?

Section 9 of the Statute of Frauds, one of the Acts consolidated by the Act of 1925, refers to " all grants and assignments." Section 53 (1) (*c*) of the Act of 1925 introduces the word " disposition " —" a disposition of an equitable interest." " Disposition " must have the same meaning as " grants and assignments " in the earlier Act.

The Act of 1925 was a consolidating Act and was so expressed. The Statute of Frauds was not amended by the abortive Law of Property Act, 1922. So far the judges who have heard this case have held that this transaction would not have been within the scope of the Statute of Frauds.

Section 53, which is a mere consolidation of sections 3, 7 and 9 of the Statute of Frauds, has no application to this form of transaction, and so Hunter's direction of February 18, 1955, was effective to create a trust of the 18,000 shares but was not a grant or assignment.

An equitable owner can assign his equitable interest to another and can declare himself trustee of his equitable interest for another. He can also direct the legal owner to hold the property on trust for another instead of himself, and, if this direction is accepted by the legal owner, the direction creates a trust in favour of that other. The equitable interest can also be transferred by contract of sale under the equitable doctrine of conversion.

Take property held by X in trust for A, so that A is the equitable owner. A gives a direction to X to hold it on certain trusts and X accepts that direction. A is in a position to create and does create an effective trust of the property in the hands of X. That is the present transaction. It is a creation of a trust and not an assignment. The old trusts have ceased to exist and the legal owner holds on new trusts.

The holder of an equitable interest can direct the trustee to transfer it to another and that is a revocable mandate; if he informs the transferee, there is a good transfer and the trustee must then hold the property for him on the same terms as he held for the original holder.

Under the law before January 1, 1926, an assignment was within section 9 of the Statute of Frauds, but the creation of a trust was not: see *M'Fadden* v. *Jenkyns*.[1] This case is not relied on for its decision on the facts, but for the statement by Lord Lyndhurst L.C. There is no authority to the contrary. After that date in order to be effective the creation of a trust is not required to be in writing signed by the disponor or his agent any more than before.

The only authority which comes near the present case is *Cohen and Moore* v. *Inland Revenue Commissioners*.[2]

The words "grants and assignments" in section 9 of the

[1] (1842) 1 Hare 458; 1 Ph. 153, 157.

[2] [1933] 2 K.B. 126.

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Statute of Frauds must indicate a passing of property from one person to another. They are not apt to cover the creation of a trust. The operation here is different from an assignment. If an equitable owner directs the legal owner to hold on trusts which, for some reason, do not exhaust the whole of the beneficial interest in the property, the original equitable owner's interest remains in him to that extent.

In *Timpson's Executors* v. *Yerbury*[3] Romer L.J. enumerated the ways in which an equitable interest in the hands of trustees can be disposed of. Suppose the subject-matter of the trust is a silver cup which X holds for A as beneficial owner. A can say to B: "I hereby assign to you my interest in the cup." That is within section 9. Or A can say: "I hereby declare myself "to be trustee for B of my equitable interest in the cup." That would not be a grant or assignment within section 9. Or again A can say to X: "I direct you to hold the cup in trust for B." If X accepts that trust, the effect is that A creates a new trust in favour of B, and that does not involve a grant or assignment of the equitable interest. Romer L.J. also mentions a contract for valuable consideration to assign an equitable interest.

A direction to hold in trust is distinct from a direction to hand over. If A directs X to hold the cup in trust for B, who is an infant at the time, and on his attaining 21 years to hand it over to him and X accepts the trust, that direction creates a new trust. It is different in legal quality from an assignment of an equitable interest to the infant B. A new equitable interest is created.

Tierney v. *Wood*[4] is a case in point on the whole of this question. It indicates that in such a case as this the owner by declaring trusts has not assigned his beneficial interest in the property, but has created new ones; his own has ceased to exist without any express provision. The distinction between an assignment of an equitable interest and a creation of an equitable interest is vital.

It is not contended that section 53 removed a disability which existed under the Statute of Frauds. What the Court of Appeal held was that section 53 by using the word "disposition" had altered the law. The three paragraphs of section 53 (1) must be considered with the corresponding sections of the Statute of Frauds in order to find their true construction. The Act of 1925, being a consolidating Act, was unlikely to effect substantial

[3] [1936] 1 K.B. 645, 664; [1936] 1 All E.R. 186.

[4] (1854) 19 Beav. 330.

changes in the law: see *In re Turner's Will Trusts*.[5] See also Schedule VII. In Wolstenholme and Cherry's Conveyancing Statutes, 12th ed., vol. I, p. 321, it is said that section 53 reproduces with amendments sections 3, 7, 8 and 9 of the Statute of Frauds; there is no suggestion that the substance of the law was altered. The word " disposition " in section 53 is limited in its meaning to grants and assignments. The modern equivalent of a grant or assignment is a conveyance. It was on the meaning of " disposition " that the Court of Appeal decided against the appellants. What was done here was to create an equitable interest which overrode the old equitable interest.

The reasoning in *In re Chrimes* [6] is hard to follow. If the judge was saying that the owner of a beneficial interest cannot declare a trust in it, he was wrong. But a direction by the owner of a limited interest to trustees of the trust property to hold that limited interest in trust for another would be misconceived because the trustees do not hold the limited interest but the trust property. *Timpson's* case [7] turned on the particular instructions there given. The judgment in *Martin* v. *Inland Revenue Commissioners* [8] is of no significance in relation to the different question here to be considered, namely, whether the direction amounted to a disposition of a subsisting equitable interest within the meaning of this section. The meaning of a word may vary according to the context. The present question arises wholly under the general law.

As to the construction of consolidating statutes, see *Gilbert* v. *Gilbert* [9] and *In re Eichholz*.[10]

Here one must look at the nature of the transaction. Then one must see whether it came within the wording of section 9 of the Statute of Frauds. If it did not, one must see whether it comes within section 53 of the Act of 1925, considered in the light of the Statute of Frauds, particularly with reference to the insertion of the word " disposition." In Schedule VII of the Act of 1925, dealing with repeals, the wording dealing with the Statute of Frauds is striking and in notable contrast with other parts of the same Schedule. Section 53 merely represents a change of draftsmanship. It is correctly stating the law as it previously existed in the light of the Wills Act, 1837, a testamentary disposition being covered as well.

[5] [1937] Ch. 15, 24–26; 52 T.L.R. 713; [1936] 2 All E.R. 1435.
[6] [1917] 1 Ch. 30.
[7] [1936] 1 K.B. 645, 668.
[8] (1930) 15 A.T.C. 631.
[9] [1928] P. 1, 8–9; 43 T.L.R. 589.
[10] [1959] Ch. 708; [1959] 2 W.L.R. 200, 210–211; [1959] 1 All E.R. 166.

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As a preliminary to consolidation, and in order to facilitate it, the Law of Property (Amendment) Act, 1924, wrote the Statute of Frauds in modern language and the new provisions were consolidated.

R. O. Wilberforce Q.C. and *E. B. Stamp* for the respondents. The question is whether Hunter on February 18, 1955, purported to make a disposition of his subsisting equitable interest. On this question it is submitted: (1) If the word " disposition " in section 53 of the Act of 1925 bears the ordinary meaning of that word, the transaction was an attempted disposition. (2) The word " disposition " has its ordinary meaning in section 53 and this is not cut down by the context or the definitions in the Act, nor by reference to the Statute of Frauds. (3) If it is necessary to look at the Statute of Frauds the result is the same and the direction to the trustees operates as a grant or assignment within the meaning of section 9.

It would be strange if what Hunter did in relation to his subsisting equitable interest was not a " disposition." What he was trying to do appears from the second recital in the declaration of trust of March 25, 1955, in the words " to the intent that the " said direction should and it thereby did immediately result in " the entire exclusion of Mr. Hunter from all future right, title and " benefit to or in the said shares . . ." The word " disposition " is apt to include an act by an owner of property the legal effect of which is that he ceases to be the owner of that property.

The matter must be looked at, not from the point of view of the new interest which was to be vested in the trustees, but from that of the interest vested in the settlor up to the time the direction was given. It is a false distinction to differentiate between a document or act which is, and one which operates as, a disposition. In considering whether there has been a disposition, it is not necessary to be able to identify or recognise the subject-matter of the disposition afterwards. A surrender of a life interest has been held to be a disposition: see *Inland Revenue Commissioners* v. *Buchanan*.[11] So also where a power of appointment is exercised so as to cause a certain equitable interest to disappear and be superseded by other equitable interests: see *Stanyforth* v. *Inland Revenue Commissioners* [12] and *Fuller* v. *Inland Revenue Commissioners*.[13]

[11] [1958] Ch. 289, 296; [1957] 3 W.L.R. 68; [1957] 2 All E.R. 400.
[12] [1930] A.C. 339; 46 T.L.R. 288.
[13] [1950] 2 All E.R. 976; 29 A.T.C. 278.

It cannot be said that there was not a disposition here. There was a declaration of trust, but it does not follow that that is to be equated with a declaration of oneself as trustee. Here there is no contrast between a declaration of trust and a disposition. There is a contrast between a declaration of oneself as trustee and a declaration of a trust in the hands of others. The former involves a disposition of the beneficial interest in property, but not a disposition of a subsisting equitable interest.

Taking the definition of " conveyance " in section 205 (1) (ii) of the Act of 1925, if the present transaction does not fall within the words " every other assurance of property " and the word " disposition " has as its normal meaning a sense wider than " assurance," there is no reason for not giving it that wider sense: see *In re Eichholz*.[14]

The Act of 1924 must be considered on its merits without any presumptions. Part II of Schedule III deals with the " provisions " facilitating consolidation of the law of property and conveyan- " cing," but to facilitate consolidation is not the same thing as consolidation itself.

It was thought for a long time that section 9 of the Statute of Frauds only related to equitable interests in land: see Lewin on Trusts, 4th ed. (1861), p. 451, to 12th ed. (1911), p. 890, and the American Restatement of the Law of Trusts, vol. I, section 139. But it applies to all assignments. There are differences in language and subject-matter between that section and section 53 of the Act of 1925; if any difference is substantial the latter must prevail. Paragraph 15 of Schedule III to the Act of 1924 deals with the Statute of Frauds. Section 2 of that statute is thereby substantially changed. So is section 8. The whole form of section 9 is changed and there is a substantial addition. The provision in paragraph 15 eventually embodied in section 55 of the Act of 1925, a saving section, is significant.

In re Eichholz [15] was decided under a different Act and is not binding in the present case. In *Gilbert's* case [16] there was merely stated a principle which is not in dispute. As to the relations between the amending Act and the substantive Act in the legislation of 1925, see *Turner's* case.[17]

It is a fundamental principle that there are only two ways of creating a trust inter vivos, whether the subject-matter is legal or equitable: (1) for the owner of the property to declare himself

[14] [1959] 2 W.L.R. 200, 212.
[15] [1959] 2 W.L.R. 200.
[16] [1928] P. 1.
[17] [1937] Ch. 15, 26-27.

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a trustee, and (2) for him to assign his interest in the property to others to hold as trustees: see *Richards* v. *Delbridge* [18] and *Milroy* v. *Lord*.[19] The appellants do not contend for a tertium quid. The present case falls under the second head. It differs from the ordinary straightforward case of a transfer to trustees because existing trustees are made use of instead of new trustees being brought in. As to the modes of completely constituting a trust, see Snell on Equity, 24th ed., p. 107 et seq., *Rycroft* v. *Christy* [20] and *Lambe* v. *Orton*.[21] There is no special form of words required for an assignment. In general a trustee is bound to accept the directions of his beneficiaries. As to *Tierney* v. *Wood* [22] and *Bentley* v. *Mackay*,[23] the present argument for the Crown was not needed in the former case, while the latter case turned on its own particular facts and not on section 9 of the Statute of Frauds.

A direction to trustees can be an assignment: see *In re Chrimes*,[24] *Timpson's* case [25] and *In re Wale*.[26] Here the direction to the trustees to hold on new trusts was an assignment. The last case is a valuable supplement to the other two. *Martin's* case [27] is not a case of an absolute making over of an equitable interest: see also the report in Sergeant on Stamp Duties, 3rd ed. (1957), p. 350.

Section 62 of the Act of 1925 supports the contention that this is a conveyance or disposition.

E. B. Stamp following. The original transfer of February 1, 1955, was stamped with the duty of 10s. If the beneficial interest had then passed, there would have been a liability to ad valorem duty.

The Statute of Frauds was meant "for prevention of many "fraudulent practices, which are commonly endeavoured to be "upheld by perjury." It must be construed according to the mischief at which it was directed.

What Jessel M.R. said in *Richards* v. *Delbridge* [28] applies as much to equitable ownership as to legal ownership. This is supported by *In re Chrimes*,[29] *Timpson's* case [30] and the closing passage in *Lambe* v. *Orton*.[31]

[18] (1874) L.R. 18 Eq. 11.
[19] (1862) 4 De G.F. & J. 264.
[20] (1840) 3 Beav. 238, 241.
[21] (1860) 1 Dr. & Sm. 125, 127.
[22] 19 Beav. 330, 337–338.
[23] (1851) 15 Beav. 12, 20–21.
[24] [1917] 1 Ch. 30.
[25] [1936] 1 K.B. 645, 663.
[26] [1956] 1 W.L.R. 1346; [1956] 3 All E.R. 280.
[27] 15 A.T.C. 631.
[28] L.R. 18 Eq. 11, 14.
[29] [1917] 1 Ch. 30.
[30] [1936] 1 K.B. 645.
[31] 1 Dr. & Sm. 125.

[VISCOUNT SIMONDS intimated that it would be convenient to hear argument in reply on the consolidation point, which was the crucial matter.]

John Pennycuick Q.C. in reply. The procedure for consolidation was contained in the Acts of 1922, 1924 and 1925. The Act of 1922 enacted several changes in the law. Its coming into operation was delayed until a future date which was ultimately January 1, 1926. The Act of 1924 was enacted in December, 1924, and was to come into force on January 1, 1926. Section 3 provided: "The amendments and provisions for facilitating the "consolidation of the statute law relating to conveyancing and "property contained in Schedule III," and sections 4, 5, 6, 7 and 8 use the same formula. Part I of Schedule III dealt with "amendments," and was so headed, and certain amendments were thereby effected. But Part II dealt with and was headed: "Provisions Facilitating Consolidation of the Law of Property and "Conveyancing." It was paragraph 15 of this Part which dealt with the Statute of Frauds. This Part dealt partly with the principal Act and partly with other Acts. One would not expect changes in the law to be interlaced in that way unless they are clearly indicated. In this Part three distinct forms of words are used. (1) In paragraph 3 there is a repeal of an existing provision. (2) In paragraphs 31 and 32 the formula used is: "The following "provisions shall be substituted. . . ." As to the effect of such a substitution, see *In re Eichholz*.[32] (3) The formula in paragraph 15 is: "Sections 1 to 3 and 7 to 9 of the Statute of Frauds "shall take effect as if inserted in the principal Act and be read "as follows: . . ." Thus these six sections are inserted into the principal Act and read into it. It is true that there are alterations of wording, but if the draftsman had intended to make substantial amendments the apt wording would have been to say that the sections were repealed. It is not contended that these provisions must be construed on the basis that they effected no alteration at all in the law as it stood under the Statute of Frauds, but, having regard to the formula used, they should not be construed as effecting any alteration where there is some other explanation of the change of language. Now, the appellants' construction involves no alteration in the law. "Disposition" should be construed as "grants and assignments" would have

[32] [1959] Ch. 708; [1959] 2 W.L.R. 200, 210-211.

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been construed before the Act of 1922. The old words were archaic and the new expression was put in. The provisions of the Wills Act explain the change of language.

Here one is not simply interpreting a consolidation Act; one is construing provisions to facilitate consolidation. One would not expect such provisions to effect major changes, least of all when prefaced by the particular formula used here.

If the true view is that the transaction in the present case amounted to a transfer by Hunter of his equitable interest to the beneficiaries under the settlement, that was a " grant " or " assignment " under the terms of the old law. But the appellants' case is that it was not a grant or assignment or a disposition.

The definition of " conveyance " in section 205 (1) (ii) of the Law of Property Act, 1925, affords an explanation for the use of the word " disposition " in section 53 (1) (*c*) instead of " grants " and assignments." See also the extended definition of " con- " veyance on sale " in section 54 of the Stamp Act, 1891. By reason of that definition the exercise of a power of appointment would be a disposition, but it would not be a " conveyance " of the appointed interest within the Act of 1925, as defined therein.

Their Lordships took time for consideration.

November 2. VISCOUNT SIMONDS, having stated the facts, continued: These facts give rise to the plain question whether the oral directions given by Mr. Hunter, which are recited in each of the instruments, were effective or were, having regard to section 53 (1) (*c*) of the Law of Property Act, 1925, wholly ineffective. In the former event the instruments would not, and in the latter would, be chargeable with ad valorem duty.

Section 53 (1) of the Act is as follows: " Subject to the " provisions hereinafter contained with respect to the creation of " interest in land by parol, . . . (*c*) a disposition of an equitable " interest or trust subsisting at the time of the disposition, must " be in writing signed by the person disposing of the same, or by " his agent thereunto lawfully authorised in writing or by will."

Briefly, then, were the several oral directions given by Mr. Hunter dispositions by him of the equitable interest in the shares held by the appellants as nominees for him?

If the word " disposition " is given its natural meaning, it cannot, I think, be denied that a direction given by Mr. Hunter, whereby the beneficial interest in the shares theretofore vested

in him became vested in another or others, is a disposition. But it is contended by the appellants that the word " disposition " is to be given a narrower meaning and (so far as relates to inter vivos transactions) be read as if it were synonymous with " grants and assignments " and that, given this meaning, it does not cover such a direction as was given in this case. As I am clearly of the opinion, which I understand to be shared by your Lordships, that there is no justification for giving the word " disposition " a narrower meaning than it ordinarily bears, it will be unnecessary to discuss the interesting problem that would otherwise arise. It was for this reason that your Lordships did not think it necessary to hear learned counsel for the appellants in reply on this part of the case.

My Lords, the argument for narrowing the meaning of " disposition " was that the Law of Property Act, 1925, was a consolidating Act, that among the Acts which it consolidated was the Statute of Frauds (29 Car. 2, c. 3), s. 9, that that section enacted that " all grants and assignments of any trust or con- " fidence shall likewise be in writing, signed by the party granting " or assigning the same, or by such last will or devise, or else " shall likewise be utterly void and of none effect," and that therefore the word " disposition " in section 53 (1) (*c*) of the Act of 1925 is to be given the same meaning as would be given to " grants and assignments " in section 9 of the Statute of Frauds.

My Lords, the principles applicable to the construction of a consolidating Act are not in doubt. The presumption is that such an Act is not intended to alter the law, but this prima facie view must yield to plain words to the contrary: see *Gilbert* v. *Gilbert*,[1] *per* Scrutton L.J. If the Law of Property Act, 1925, was a typical consolidating Act, the question would be whether the alteration from " grants and assignments " to " disposition " changed the law by enlarging the area of void transactions—a question that might not be easy to answer. But the Act of 1925 cannot be thus regarded. It was, it is true, a consolidating Act, but it was, with a number of other Acts, the culmination of a body of legislation by which a large part of the law of real and personal estate was profoundly altered. The story opens with the Law of Property Act, 1922, the title of which begins with the words: " An Act to assimilate and amend the law of Real " and Personal Estate." It in fact effected comprehensive changes in the law. Section 191 (2) enacted that it should come

[1] [1928] P. 1, 8; 43 T.L.R. 589.

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into operation on January 1, 1925. But it did not, and was never intended to, come into operation at all. In 1924 a second Act was passed. It was entitled: "An Act to amend the Law "of Property Act, 1922, and the enactments thereby affected, and "to facilitate the consolidation of the law relating to conveyan- "cing and property," and other matters. This Act, which was the result of a prolonged examination of the Law of Property Act, 1922, by a committee presided over by the late Lord Romer, paved the way for the Act of 1925. It was, as has already appeared, an Act amending an Act which had itself radically changed the law. Section 3 is for our present purpose the only relevant section. It provided that "The amendments and provisions, for "facilitating the consolidation of the statute law relating to con- "veyancing and property, contained in Schedule III to this Act "shall have effect." This Schedule was in two parts, Part I being entitled "Amendments" and Part II "Provisions facilitat- "ing consolidation of the law of property and conveyancing." Paragraph 15 of Part II is, so far as is material, as follows: "Sections 1 to 3 and 7 to 9 of the Statute of Frauds shall take "effect as if inserted in the principal Act and be read as follows": There then follow the provisions which are exactly reproduced in section 53 of the Act of 1925. It was provided by section 12 (3) that the Act should come into operation on January 1, 1926. In the meantime the Law of Property Act, 1925, was drafted embodying the alterations in the law relating to conveyancing and property made by the Acts of 1922 and 1924. It repealed section 3 of and Schedule III to the Act of 1924 and itself came into force on January 1, 1926. I have only dealt in rough outline with the complicated scheme of legislation which transformed the law of real and personal property. But I have said enough to show that the Act of 1925, though in a sense a consolidating Act, in fact consolidated Acts which themselves were amending Acts. While, therefore, as Lord Romer (then Romer L.J.) indicated in *In re Turner's Will Trusts* [2] in the comparable case of the Trustee Act, 1925, it is incredible that the legislature intended in the Act of 1925 to make further and radical changes in the law as enacted in preceding Acts, the question is what changes had been effected in those Acts. And since they purported to be and were amending Acts, there is no principle of construction which should impose upon them an interpretation appropriate to

[2] [1937] Ch. 15, 26; 52 T.L.R. 713; [1936] 2 All E.R. 1435.

a consolidating Act. They must, and therefore so must the Act of 1925, be construed so as to give each word the meaning proper to it in its context. So construed the word " disposition " in section 53 (1) (*c*) has the natural meaning which I attributed to it at the opening of this opinion.

I have not, my Lords, forgotten the contention that, as the relevant provisions substituting what became section 53 of the Act of 1925 for certain sections of the Statute of Frauds are to be found in Part II of Schedule III to the Act of 1924, whereas Part I was headed " Amendments," the provisions in Part II ought not to be read as amending the existing statutory law if any other reasonable interpretation is possible. But I cannot give any weight to this argument, for the most cursory glance reveals that the provisions in Part II, even those in paragraph 15 itself, contain what are undeniably amendments of the law. Accordingly, I cannot allow this argument to prevail and must read section 53 of the Act of 1925 as I read paragraph 15 of Schedule III to the Act of 1924 in the sense which I have already indicated.

I think it right to add that the argument for the Crown which has brought me to this conclusion does not appear to have been put before Upjohn J. or the Court of Appeal.

The appeal must, in my opinion, be dismissed with costs.

My noble and learned friend, LORD REID, who is unable to be here today, has intimated to me that he agrees with this opinion.

LORD RADCLIFFE. My Lords, if there is nothing more in this appeal than the short question whether the oral direction that Mr. Hunter gave to his trustees on February 18, 1955, amounted in any ordinary sense of the words to a " disposition of an " equitable interest or trust subsisting at the time of the " disposition," I do not feel any doubt as to my answer. I think that it did. Whether we describe what happened in technical or in more general terms the full equitable interest in the 18,000 shares concerned, which at that time was his, was (subject to any statutory invalidity) diverted by his direction from his ownership into the beneficial ownership of the various equitable owners, present and future, entitled under his six existing settlements.

But that is not the question which has led to difference of opinion in the courts below. Where opinions have differed is on the point whether his direction was a " disposition " within the

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meaning of section 53 (1) (*c*) of the Law of Property Act, 1925, the argument for giving it a more restricted meaning in that context being that section 53 is to be construed as no more than a consolidation of three sections of the Statute of Frauds, sections 3, 7 and 9. So treated, "disposition," it is said, is merely the equivalent of the former words of section 9, "grants "and assignments," except that testamentary disposition has to be covered as well, and a direction to a trustee by the equitable owner of the property prescribing new trusts upon which it is to be held is a declaration of trust but not a grant or assignment. The argument, concludes, therefore, that neither before January 1, 1926, nor since did such a direction require to be in writing signed by the disponor or his agent in order to be effective.

In my opinion, it is a very nice question whether a parol declaration of trust of this kind was or was not within the mischief of section 9 of the Statute of Frauds. The point has never, I believe, been decided and perhaps it never will be. Certainly it was long established as law that while a declaration of trust respecting land or any interest therein required writing to be effective, a declaration of trust respecting personalty did not. Moreover, there is warrant for saying that a direction to his trustee by the equitable owner of trust property prescribing new trusts of that property was a declaration of trust. But it does not necessarily follow from that that such a direction, if the effect of it was to determine completely or pro tanto the subsisting equitable interest of the maker of the direction, was not also a grant or assignment for the purposes of section 9 and therefore required writing for its validity. Something had to happen to that equitable interest in order to displace it in favour of the new interests created by the direction: and it would be at any rate logical to treat the direction as being an assignment of the subsisting interest to the new beneficiary or beneficiaries or, in other cases, a release or surrender of it to the trustee.

I do not think, however, that that question has to be answered for the purposes of this appeal. It can only be relevant if section 53 (1) of the Law of Property Act, 1925, is treated as a true consolidation of the three sections of the Statute of Frauds concerned and as governed, therefore, by the general principle, with which I am entirely in agreement, that a consolidating Act is not to be read as effecting changes in the existing law unless the words it employs are too clear in their effect to admit of any other construction. If there is anything in the judgments of the

majority of the Court of Appeal which is inconsistent with this principle I must express my disagreement with them. But, in my opinion, it is impossible to regard section 53 of the Law of Property Act, 1925, as a consolidating enactment in this sense. It is here that the premises upon which Upjohn J. and the Master of the Rolls founded their conclusions are, I believe, unsound.

The Law of Property Act, 1925, itself was, no doubt, strictly a consolidating statute. But what it consolidated was not merely the Law of Property Act, 1922, a statute which had itself effected massive changes in the law relating to real property and conveyancing, but also the later Law of Property (Amendment) Act, 1924. The Statute of Frauds sections had not been touched by the Act of 1922; but they were in effect repealed and re-enacted in altered form by the operation of section 3 of the Act of 1924 and the provisions of Schedule III to that Act. The Schedule is divided into two Parts, the contents of Part I being described simply as " Amendments " and the contents of Part II being headed by the description " Provisions facilitating consolida- " tion. . . ." I suppose that the authors of the Act of 1924 understood what was the significance of the division of Schedule III into these two Parts under their different headings. I cannot say that I do. Each Part, when examined, is seen to contain numerous amendments of various previous statutes relating to real property and conveyancing, apart from the Act of 1922 itself, and in this sort of matter I cannot see how one can satisfactorily measure the degrees of substance involved in the various changes. The point is that they were avowedly changes. It is paragraph 15 of Part II of Schedule III which deals with the Statute of Frauds: and though the introductory words do seem to suggest that the sections concerned are only being re-enacted in different words, it is apparent, when they are read through, that this is not so and that alterations of more or less moment are in fact being made. This new wording is what is carried into section 53 of the Act of 1925.

For these reasons I think that there is no direct link between section 53 (1) (*c*) of the Act of 1925 and section 9 of the Statute of Frauds. The link was broken by the changes introduced by the amending Act of 1924, and it was those changes, not the original statute, that section 53 must be taken as consolidating. If so, it is inadmissible to allow the construction of the word " disposi- " tion " in the new Act to be limited or controlled by any meaning

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attributed to the words " grant " or " assignment " in section 9 of the old Act.

I agree that the appeal should be dismissed.

LORD COHEN. My Lords, I also agree.

LORD KEITH OF AVONHOLM. My Lords, I agree.

Appeal dismissed.

Solicitors: *Speechly, Mumford & Soames; Solicitor of Inland Revenue.*

F. C.

J. C.* 1959 Oct. 7.

PONOKA-CALMAR OILS LTD. AND ANOTHER . APPELLANTS;

AND

EARL F. WAKEFIELD CO. AND OTHERS . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

Canada—Alberta—Mines and minerals—Mechanics' lien—"Owner"—Oil well—Drilling contractor's claim to lien—Whether work done for an "owner" as defined—Sale of severed oil—Fund in hands of receiver appointed by court—Rights of lienholder against fund—Mechanics' Lien Act, R.S. of Alberta, 1942, *c.* 236 (*as amended to* 1951, *R.S.* 1955, *c.* 197), *ss.* 2 (*a*) (*c*) (*g*), 6, 36, 37, 43.

By section 43 of the Mechanics' Lien Act, 1942, of Alberta, "owner" as defined in section 2 (*g*) is extended to include "every "person having any estate, interest or right in the oil or gas in "place or in the oil or gas when severed notwithstanding that such "person has not requested the contract work to be done, is only "indirectly benefited thereby and has had no dealing or contractual "relationship with the contractor or person claiming the lien."

The third respondent, who was the registered owner of an estate in fee simple in 80 acres of land in Alberta, on May 31, 1948, granted to lessees a lease of all petroleum and natural gas to be found under the land. On September 10, 1949, the first respondents, contractors, on the instructions of one H. and one M. began to drill an oil well on the land on the authority of a permit issued by the Petroleum and Natural Gas Conservation Board of Alberta to the second respondents, a company in which H. and M. were the only shareholders. Nine days later, on September 19, an agreement

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* *Present*: VISCOUNT SIMONDS, LORD REID, LORD RADCLIFFE, LORD TUCKER and LORD DENNING.