BETWEEN:

THE ROYAL TRUST COMPANY, Executor of the Will of AMY KATHERINE McDONALD, deceased } APPELLANT;

1959
Mar. 31,
Apr. 1
Oct. 14

AND

THE MINISTER OF NATIONAL REVENUE ..... } RESPONDENT.

Revenue—Succession duty—Gift inter vivos—Husband and wife—Presumption of advancement—Dominion Succession Duty Act, R.S.C. 1952, c. 89.

A testatrix who died on September 20, 1956 by her will dated August 14, 1947, gave the whole of her property to a trustee upon trust to convert the whole into money and pay the residue to her husband if he survived her. As required by the *Succession Duty Act,* R.S.C. 1952, c. 89, the executor filed form SD1 setting out all the assets of the deceased. In assessing the estate the Minister proceeded on the assumption that the assets declared were the wife's property and the husband her sole beneficiary. The executor appealed from the assessment on the ground that the assets were the absolute property of the husband which the deceased had held in trust for him. The husband died before the hearing of the appeal and the evidence in support thereof was mainly that of persons with whom the husband and wife had business and financial dealings in their lifetime in relation to investments. It was admitted at the trial that all the assets in question were registered in the name of the wife as sole owner at the time of her death and that there was nothing therein to indicate that they were held in trust for the husband or that he had any interest therein. It was further admitted that the wife had never executed any declaration of trust or other document which might indicate she held the assets in trust or on behalf of her husband or anyone else.

1959

THE ROYAL TRUST CO. v. MINISTER OF NATIONAL REVENUE

A statutory declaration of the husband dated in May, 1947 filed in connection with claims for unpaid income tax was tendered in evidence by the appellant. It purported to set out his assets but added that the inventory "includes all the assets of my wife as well as myself" and "that no person holds any assets in trust for me".

Held: That on the evidence adduced the Court could reasonably assume that all the assets held by the deceased at the time of her death had been either purchased by funds supplied by the husband, were replacements for assets so acquired, or represented income or profits from the assets so acquired, and there was a presumption in law that such assets were either gifts by the husband or profit, gains or accretions from such gifts.

2. That the husband's statutory declaration being subsequent to the date when the securities mentioned were placed in the wife's name, was admissible as evidence only against the declarant's interest and established that as of May, 1947 the wife had assets and did not hold them in trust for her husband.

3. That since the appellant had wholly failed to rebut the presumption that in placing assets in the name of his wife, the husband intended that they were gifts made to her by way of advancement, the appeal should be dismissed and the assessment affirmed. *Shephard v. Cartwright* [1954] 3 All E.R. 649, followed.

APPEAL under the *Dominion Succession Duty Act.*

The appeal was heard before the Honourable Mr. Justice Cameron at Calgary.

Ernest S. Watkins for appellant.

Michael W. Bancroft and *T. E. Jackson* for respondent.

CAMERON J. now (October 14, 1959) delivered the following judgment:

This is an appeal by the Royal Trust Company, Executor of the estate of Amy Katherine McDonald, late of the city of Calgary, from an assessment made under the *Dominion Succession Duty Act*, R.S.C. 1952, c. 89, and dated April 30, 1957. Mrs. McDonald died testate on September 20, 1956, and by her last Will and Testament, dated August 14, 1947, appointed the Royal Trust Company as her "Trustee", and probate of the said Will was duly granted to the appellant by the District Court of the District of Southern Alberta on January 11, 1957.

As required by the Act, the appellant prepared, and on January 4, 1957 filed in the Calgary office of the Dept. of National Revenue, the form SD1 (Exhibit "A"), which included a statement of the assets of the deceased. That return showed assets having a gross value of $135,554.75.

In assessing the appellant, the respondent increased the value of the assets by $5,675.75, allowed as debts the full amount claimed ($1,075), and levied a tax of $30,553.89 and interest.

By her Will, Mrs. McDonald gave the whole of her property to the said Trustee upon trust, to convert the whole into money and, after payment of debts, estate, legacy and succession duties, "to hold my said estate UPON FURTHER TRUST to pay the same to my husband, Arthur Benedict McDonald". The Will contained further provisions for the disposal of her whole net estate to or for the benefit of her two children and their families, but as these provisions were applicable only "in the event of my husband's predeceasing me", they need not be referred to in detail. As I have said, the husband survived the deceased, but died testate on December 12, 1957, probate of his last Will and Testament being granted to the appellant on July 8, 1958 (Exhibit 3). The assessment made upon the appellant in regard to Mrs. McDonald's estate was based on the assumption that all the assets shown in the return (Exhibit "A") were her property and that the husband was the sole beneficiary.

From the assessment so made, the appellant filed a Notice of Appeal dated May 8, 1957. The appeal was on the ground that all the assets listed in the succession duty return were the absolute property of her husband and that the deceased had held the same in trust for him. By his decision dated November 14, 1957, the respondent affirmed the assessment on the ground that the property held by the deceased was in fact property owned by her. Following a Notice of Dissatisfaction by the appellant, pleadings were delivered.

The burden is on the appellant to establish the existence of facts or law showing an error in relation to the taxation imposed. (See *Johnston v. M. N. R.*[1]; and *Re Webster*[2].) The single question for determination is whether under the applicable law and on the facts disclosed in evidence, the assets shown in Exhibit "A" were held by the deceased in

[1] [1948] S.C.R. 486; [1948] C.T.C. 195.
[2] [1949] O.W.N. 581.

1959

THE ROYAL TRUST CO. v. MINISTER OF NATIONAL REVENUE

Cameron J.

trust for her husband—as alleged by the appellant—or whether they were in fact the property of the deceased as claimed by the respondent.

The evidence is conclusive—in fact, it is now admitted—that all the assets shown in Exhibit "A" were in the name of Mrs. McDonald as sole owner at the time of her death. They consisted of stocks, bonds, debentures, bank accounts, traveller's cheques, cash in the hands of certain solicitors, an insurance policy, motor car, personal effects, mortgages, agreements of sale, and a residence property. While these assets or documents of title were not produced, it is freely admitted that there was nothing therein to indicate that Mrs. McDonald was not the sole and absolute owner thereof or that they contained any suggestion that they were held in trust for the husband or that he had any interest whatever therein. It is further admitted that Mrs. McDonald never executed any declaration of trust in regard thereto, or any other document which might indicate that she held the assets in trust for or on behalf of her husband, or anyone else. I was not asked to give special consideration to individual assets, either on the law or facts, the contention of the appellant being that *all* of the assets were in fact the property of the husband.

The deceased was fifty-seven years of age at the date of her death and her husband sixty-one years old. They were married in 1929, the deceased at that time being a waitress. I think that on the evidence I may reasonably assume that at her marriage, she had few, if any, possessions and that following her marriage she ceased to be employed and thereafter received no earned income from outside pursuits, and received nothing by way of legacies or bequests. Without reviewing the evidence as a whole, I think I can assume, on a reasonable interpretation thereof, that all the assets held by the deceased at the time of her death had been either (a) purchased with funds supplied by her husband and the title taken in her name; or (b) were replacements or substitutions for assets acquired as in (a); or (c) represented income, profits or gains from assets acquired by the deceased as in either (a) or (b).

In these circumstances, and from the evidence later to be referred to, it is clear that there is a presumption in law that all the assets in Exhibit "A" were either gifts to Mrs. McDonald by her husband or represented profits, gains or accretions from such gifts. The principle is stated in Halsbury's *Laws of England,* 2nd Ed., Vol. 16, at p. 663:

1057. Where a husband purchases property or makes an investment in his wife's name, a gift to her is presumed in the absence of evidence of an intention to the contrary, and there is a similar presumption where the property is purchased or the investment made by the husband in their joint names, the wife in the latter case being entitled in the event of her surviving the husband. Where the purchase or investment is made by the husband in the joint names of husband and wife and third persons with regard to whom no presumption of gift arises, the third persons will presumably be trustees for the husband and wife and the survivor.

A gift is also presumed where money is deposited at a bank in the name of the wife, or shares or stock are transferred into her name, or where any such deposit or transfer is made in or into the joint names of both husband and wife, even if the wife is ignorant of such deposit or transfer, or where a mortgage or other security for money lent by the husband is taken in their joint names.

In Lush on *Husband and Wife,* 4th Ed., p. 145, that principle is stated to be a rebuttable presumption.

It will be seen that in every case there is only a presumption of a gift and this presumption may be rebutted by contrary evidence, the sole question being with what intention the transaction took place. And all the surrounding circumstances of the case should be taken into consideration to determine whether a gift or a resulting trust was intended.

The principle so stated was applied in *Shephard v. Cartwright*[1], a decision of the House of Lords in a case which had to do with gifts by a father to his children. In my view, the principle, generally speaking, is the same whether applied to gifts by a husband to his wife or by a father to his children (see White and Tudor's *Leading Cases in Equity,* 9th Ed., Vol. 2, p. 765). In that case Viscount Simonds, in a judgment which was concurred in by all the judges, stated at p. 651 ff.

I think it well then to pause in this year 1929 and to ask what was the result in law of equity of the registration, in the names of his children, of shares for which he supplied the cash, and I pause in order to examine the law, because it appears to me that the only two facts which are at this stage relied on to rebut the presumption of advancement, viz.: that the children were ignorant and that certificates were not given to them, are of negligible value. My Lords, I do not distinguish between the purchase of shares and the acquisition of shares on allotment, and I think that the

[1] [1954] 3 All E.R. 649.

1959

THE ROYAL TRUST CO. v. MINISTER OF NATIONAL REVENUE

Cameron J.

law is clear that, on the one hand, where a man purchases shares and they are registered in the name of a stranger, there is a resulting trust in favour of the purchaser; on the other hand, if they are registered in the name of a child or one to whom the purchaser then stood in loco parentis, there is no such resulting trust but a presumption of advancement. Equally, it is clear that the presumption may be rebutted, but should not, as Lord Eldon said, give way to slight circumstances.

It must then be asked by what evidence can the presumption be rebutted, and it would, I think, be very unfortunate if any doubt were cast (as I think it has been by certain passages in the judgments under review) on the well settled law on this subject. It is, I think, correctly stated in substantially the same terms in every text-book that I have consulted and supported by authority extending over a long period of time. I will take, as an example, a passage from Snell's Principles of Equity (22nd Edn.), p. 122, which is as follows:

> "The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration; subsequent acts and declarations are only admissible as evidence against the party who did or made them, and not in his favour."

I do not think it necessary to review the numerous cases of high authority on which this statement is founded. It is possible to find in some earlier judgments reference to "subsequent" events without the qualifications contained in the text-book statement: it may even be possible to wonder in some cases how, in the narration of facts, certain events were admitted to consideration. But the burden of authority in favour of the broad proposition as stated in the passage I have cited is overwhelming and should not be disturbed.

In White and Tudor, *op. cit.*, at p. 772, it is further stated:

> Purchase in the name of a child etc. is, as we have seen, merely a *circumstance of evidence* of an intention to make a gift to the child, (etc.), and *prima facie*, therefore, it displaces the equitable presumption of a resulting trust. But such evidence may be strengthened or opposed by other evidence, for the object of the Court is to discover, upon a review of all the circumstances, the true explanation of the transaction.

I turn now to an examination of the evidence adduced on behalf of the appellant. The evidence is clear on one point, namely, that Mr. McDonald at all relevant times was a bookmaker and gambler in Calgary, owning in whole or in part and operating a number of gambling clubs and, at some time, a taxicab business. There is no evidence, however, to support the allegation in the Statement of Claim that following his marriage he was drinking and gambling to excess and that, in order to reduce the temptation to dissipate his whole estate, it was agreed between his wife and himself that "all his assets should be legally registered

in her name". The burden on the appellant to establish that there was a resulting trust in favour of the husband is made more difficult by the fact that both husband and wife died before the hearing of the appeal. The evidence introduced was mainly that of persons with whom the husband and wife had business and financial dealings in their lifetime in relation to the investments.

Mr. A. L. Barron, a barrister and solicitor practicing in Calgary, stated that he acted professionally for both Mr. and Mrs. McDonald from about 1935 to 1947. In 1935 he acted for Mr. McDonald in the purchase of a taxicab business, the purchase money of about $4,000 being supplied in cash by Mr. McDonald. There is no evidence that this business was ever in the name of Mrs. McDonald; it seems to have been operated in connection with the gambling clubs. Mr. Barron suggests that Mrs. McDonald was her husband's financial manager and looked after his financial affairs, but a close examination of his evidence does not lead to such a conclusion. He saw both of them frequently. He says that Mrs. McDonald consulted him about investments and mortgages, that she brought the money, presumably in cash or cheques, and that in the case of some stock purchases he bought them in his own name and turned them over to her, endorsed in blank as street certificates. The mortgages—and there were a large number of them—were always put in her name. While he could not at this late date recall any specific discussions with them, he says he felt that the money supplied was that of the husband and that *probably* he got instructions from the husband. If he did get such instructions, they must have been that all such investments should be in the wife's name, for that was done. Mr. Barron said that in regard to a loan of $13,000 to one Bryant, he had discussions with them both, but later added that he could not recall any conversation with her regarding any of the investments. He received money to be put out on mortgages for both of them, but could not say to which party he remitted the mortgage collections. He said, also, that he had no recollection whatever regarding any of the investments in stocks and could not state who gave him the instructions regarding such investments.

1959

THE ROYAL TRUST CO. v. MINISTER OF NATIONAL REVENUE

Cameron J.

In cross-examination, he admitted that in every instance the mortgages were taken in the name of Mrs. McDonald, that as a rule she brought him the money for investment in stocks and bonds and that all the investments were given to her. Again, he said that she always brought in the money for all investments and that all deeds, mortgages and investments were handed to her.

Mr. Barron produced no documentary evidence of any sort except Exhibit 4 which I shall refer to later. His recollections were vague and uncertain to a considerable extent, but it is quite clear that he was never asked to prepare any document between husband and wife which would indicate that Mrs. McDonald held the assets in trust for her husband. Neither does his evidence go so far as to suggest that either husband or wife ever stated to him directly or indirectly that the assets were not Mrs. McDonald's sole property, or that Mr. McDonald retained any beneficial interest whatever in any of them. His evidence is wholly insufficient to set aside the presumption that the properties and investments with which he was concerned were the sole property of Mrs. McDonald, or were outright gifts from her husband.

I must now refer to the statutory declaration of Mr. McDonald tendered in evidence by Mr. Barron. It was dated in May 1947, the last year in which he represented husband and wife. Counsel for the respondent took the objection that it was inadmissible in that it was not a statement or declaration made in the course of duty. Mr. Barron stated that he was acting at the time for Mr. McDonald in connection with claims for unpaid income tax. I gather that it was necessary to show his net worth at that date and, accordingly, Mr. Barron prepared, and Mr. McDonald signed and declared the statement before him. Attached thereto is a list of mortgages bearing dates from early 1943 to late 1946, on which there was a balance owing of $33,680. Mr. Barron stated that all of these mortgages were in the name of Mrs. McDonald, but there is no evidence as to whether the other assets mentioned in the declaration were in the name of Mr. or Mrs. McDonald,

other than that of Mr. Barron who stated that when he made purchases of stocks or bonds, they were invariably in the name of Mrs. McDonald.

The Statutory Declaration reads as follows:

That my assets as of the 31st day of December, A.D. 1946, consisted of the following:

House Property, 2407—5th Ave. N.E.		$ 4,200.00
Automobile, Buick, bought in 1939		2,025.00
Property 520—1st Avenue W.		4,800.00
Stocks and Bonds:		
10 shares Canadian Utilities .....$	1,000.00	
15 " Northwest "	1,500.00	
140 " Calgary Power Co.	14,840.00	
500 " Chesterville	1,000.00	
Dominion of Canada Bonds	12,000.00	
		30,340.00
Cash on hand, in safety deposit box and in Banks		25,000.00
Mortgages as per list		33,680.00
TOTAL		$100,045.00

THAT I have no other assets of any nature or kind.

THAT the said statement includes all of the assets of my wife as well as myself.

THAT no person holds any money or assets of any nature or kind in trust for me or for my benefit.

THAT I have no liabilities.

THAT, on the 31st day of December, A.D. 1939, I had assets amounting to not less than the sum of $100,000.00.

It will be noticed that while the declarant speaks of "my assets", he adds that the inventory "includes all of the assets of my wife as well as myself", and "That no person holds any money or assets of any nature or kind in trust for me or for my benefit".

It may be assumed, I think, that the husband, in settling his income tax liability at that time, was fully aware that he was liable under the *Income War Tax Act* to pay tax on any income accruing to his wife from gifts made by him to her. That would account for the statement that the inventory included "the assets of my wife as well as myself". The statutory declaration was prepared by Mr. Barron and no doubt Mr. McDonald had the benefit of his legal advice on the matter. It contains a clear admission that at that time Mrs. McDonald had assets of her own

1959

THE ROYAL TRUST CO. v. MINISTER OF NATIONAL REVENUE

Cameron J.

and, as I have said, Mr. Barron tells us that all the mortgages were in her name and it may be inferred from his evidence that some or all of the stocks and bonds were also in her name at the time.

Now it is not suggested that the declaration was made at the time when any of the assets referred to were transferred to Mrs. McDonald and it is particularly clear that all the mortgages at least antedated the statutory declaration. That being so, it follows from the principles stated in Snell's *Principles of Equity,* and referred to by Viscount Simonds in the *Shephard* case (*supra*), that the declaration being subsequent to the date when the securities, etc., were placed in Mrs. McDonald's name, is admissible as evidence against the declarant and not in his favour.

On this ground, I rule that the statutory declaration tendered as Exhibit 4 is admissible in so far as the statements therein are against the interest of the declarant. The statutory declaration, which is the only written statement by the husband, contains clear evidence that as of May 1947, his wife had assets and that she did not hold any of them in trust for him. If it be the case that, having admitted parts of the declaration which are against Mr. McDonald's interest, I should admit the whole of his statement, my finding would be that the mere reference to "my assets" is wholy insufficient to establish that all the assets in the inventory were his property or that such as were in Mrs. McDonald's name were held in trust for him.

Mr. E. R. Tavender, a barrister of Calgary, acted professionally for both Mr. and Mrs. McDonald from 1947 to the dates of their death. I do not find it necessary to set out all his evidence which was given with complete candour throughout. About the period 1951-1953, a large number of mortgages and agreements of sale were brought to him, all being in Mrs. McDonald's name. From that time he looked after all mortgage transactions and on the husband's instructions, all were taken in the wife's name and all remittances were made to her. I gather from his evidence that when he wished to secure mortgage monies, he would call Mr. McDonald who would decide whether the proposed

loan should be taken up, but that invariably Mrs. McDonald brought in the necessary funds and in turn received all collections of principal and interest.

Two of Mr. Tavender's statements are of particular interest. He said: "I never heard any statement from them as to the relationship between them or as to who owned them" (i.e., the securities). And in cross-examination, he said: "I know of nothing which suggested that she was other than the full legal owner of all the assets". It is quite clear, therefore, that nothing was said or done by Mr. McDonald in Mr. Tavender's presence which would indicate in any way that McDonald had at any time been the owner of the funds put out on loan by Mrs. McDonald, or that he had any beneficial interest therein. In referring to the funds so brought in for investment, Mr. Tavender said: "They could have come from anywhere".

As I recall his evidence, Mr. Tavender was concerned only with mortgages, deeds and agreements of sale. None of his evidence casts any light on the manner in which Mrs. McDonald came into possession of the other assets in Exhibit "A" (except the balance to her credit on his books), or, if they were gifts from her husband, the circumstances surrounding such gifts. I might add here that in opening his ledger account, Mr. Tavender first placed it in the name of Mr. McDonald, then in the name of both husband and wife, and later—because he was dealing with funds brought in by her and with securities entirely in her name—in her name alone. I am quite unable to find that any of this evidence provides any indication that Mrs. McDonald held any of the assets in Exhibit "A" in trust for her husband. This is made abundantly clear in a letter from Mr. Tavender to the Director of Taxation regarding Mrs. McDonald's estate, dated February 15, 1957, and written after Mrs. McDonald's death (Exhibit 11). In it he states:

> The writer and Mr. MacEwing of The Royal Trust Company here discussed with your Mr. Perkins a few days ago the question of ownership of the assets shewn in the Succession Duty Return herein.
>
> The writer has acted for both Mr. and Mrs. McDonald for many years and has looked after all Mortgage work and the collection of all moneys owing thereunder. We never paid any attention to the question of ownership of assets since this did not concern us.

1959

THE ROYAL TRUST CO. v. MINISTER OF NATIONAL REVENUE

Cameron J.

Upon receiving instructions to apply for Probate of Mrs. McDonald's Will we prepared and filed all necessary documents in the ordinary way and it was only recently that Mr. McDonald informed us that all his wife's assets were in fact his own. We immediately made such inquiries as we thought necessary and notified you as to our instructions.

The statement of Mr. McDonald referred to above is, of course, wholly inadmissible in this case for the reasons which I have stated earlier.

Mr. W. J. King, a public accountant and a former assessor in the Department of National Revenue at Calgary, gave evidence for the appellant. He was consulted by Mr. McDonald apparently about April 1957 (after Mrs. McDonald had died) as to his 1956 income tax return, and was furnished with a copy of the 1955 return (Exhibit 6). He prepared the 1956 return (Exhibit 5) on instructions received from Mr. McDonald, and also in September 1958, after Mrs. McDonald's death, prepared the return for 1957 (Exhibit 8). I am unable to find anything of significance in this evidence. In so far as the returns are based on any statement by Mr. McDonald to the witness that he personally owned the assets held in Mrs. McDonald's name—they are inadmissible; in fact, however, Mr. King does not suggest that he received any such information. It is significant that in the T-3 Form attached to the return for 1956, the sum of $801.81 is said to be income paid or payable from his late wife's estate and this by an added note is said to be "included in statement". If it be suggested that by his 1955 and 1956 returns, Mr. McDonald showed as his income not only that which he personally received, but that arising from assets in his wife's name, that matter would be of no special significance in view of the liability he was under to pay tax on income from property transferred to his wife (see s. 21(1) of *The Income Tax Act*). In my view, none of the evidence of Mr. King is of assistance to the appellant.

Finally, there is the evidence of Albert W. McDonald, a stepson of the late Mrs. McDonald. He confirmed the fact that his father was a gambler and a bookmaker and that he had had but little education. His stepmother, he said, was somewhat better educated, being the daughter of a schoolteacher. It was she who was a housewife, banker and in charge of investments and all business matters.

1959

THE ROYAL TRUST CO. v. MINISTER OF NATIONAL REVENUE

Cameron J.

While he stated at one point that the father and stepmother discussed all investments together, he later said that there was only one discussion in his presence—the Bryant mortgage—which appears in Exhibit "A". The witness has not lived with his father since 1940.

Again, there is nothing in this evidence which throws any light on the circumstances surrounding any gifts made by the husband to his wife. A suggestion was made that due to the nature of the father's business, he had no time to look after his investments, but such was not the case as is clearly shown by the evidence of both Mr. Barron and Mr. Tavender who were in contact with him on a good many occasions.

There is one other matter which I think is of some importance. Following Mrs. McDonald's death, Mr. Tavender, who was acting as solicitor for the executor (the Royal Trust Company) had several interviews with Mr. McDonald regarding the particulars of the assets of her estate to be included in the succession duty return. Mr. Tavender had full knowledge of her assets which consisted of mortgages and interest in real property; the information as to the stocks and bonds and other assets was given by Mr. McDonald to the Royal Trust Company which in turn supplied it to Mr. Tavender. At that time, Mr. McDonald, it seems, was made fully aware of what assets were being included in the succession duty return, although perhaps not fully aware of the amount of tax which might be levied. He did not then suggest that he had any beneficial interest in any of them. The return was filed on January 4, 1957. It was not until the end of that month that Mr. McDonald told Mr. Tavender that "his wife's assets were in fact his own". There is a suggestion that he had been so shocked by his wife's sudden death that when the succession duty return was prepared, he did not fully realize the amount of tax involved.

It is submitted by the respondent on this matter that as Mr. McDonald agreed that all the assets described in Exhibit "A" should be included in his wife's estate, his later statement that the assets were his own was but an afterthought and made for the purpose of avoiding succession duty tax. In view of the conclusion which I have reached

1959

THE ROYAL TRUST CO. v. MINISTER OF NATIONAL REVENUE

Cameron J.

on the case as a whole, I find it unnecessary to consider what weight should be attached to this matter which, if any, would be of assistance to the respondent only.

Keeping in mind the statement of Viscount Simonds in *Shephard v. Cartwright* (*supra*), that the presumption of advancement "may be rebutted but should not . . . give way to slight circumstances", my finding must be that even if it were found that all the assets in Exhibit "A" had their origin in Mr. McDonald or were the fruits thereof, there is no evidence of the slightest significance regarding the circumstances under which any one of the transfers from the husband to wife took place, or which tends to show that the husband had any intention of retaining any beneficial interest therein. No one really professed to have any knowledge of any individual transfer or the circumstances surrounding it. The whole of the evidence led by the appellant was made in an effort to establish a *course of dealing* from which it might be possible to infer that the wife was a trustee for the husband. That type of evidence was considered and held to be inadmissible by Viscount Simonds in the *Shephard* case (*supra*), where at p. 652 he said:

> Before, however, I ask whether evidence of any subsequent events is in this case admissible either because they formed part of the original transaction or because they were in the nature of admissions, I must shortly examine an argument which has been pressed on this appeal and appears to have carried particular weight with Romer, L.J. It is that an inference about the intention of the deceased at the time of the vesting of the relevant shares in the appellants can be drawn from his manner of dealing with other property which before or after the transaction in question he had transferred to one or other of his children. I cannot regard such evidence as admissible or, if admissible, as of any value. If the argument only means that such other transfers ought to be regarded as "part of the same transaction" then it fails, because it is altogether too artificial so to regard them. If, on the other hand, the argument is intended to introduce a new category of admissible evidence, viz., acts which, though not part of the same transaction, yet indicate a course of dealing, I must reject it on the ground that it cannot be supported by reason or authority. This form of evidence was expressly rejected by Lord Eldon, L.C., in *Murless v. Franklin* (1 Swan. at p. 19), and I am not aware of any attempt having been again made to introduce it.

In my view, after a careful consideration of the evidence, the appellant has wholly failed to rebut the presumption that in placing assets in the name of his wife, Mr. McDonald intended that they were gifts made to her by way of advancement.

1959

THE ROYAL TRUST CO. v. MINISTER OF NATIONAL REVENUE

Cameron J.

I have not overlooked the suggestion on the part of the appellant that no person would voluntarily divest himself of all his assets and run the risk of being left penniless (see *Pahara v. Pahara*[1]). In this case, there is no evidence to establish what part of his assets had been transferred by McDonald to his wife, but there is evidence which indicates that he had always owned an interest in the gambling clubs, taxicab business, and in McDonald Agencies, Ltd.

Reference may be made to *Walsh v. Walsh*[2], and to *Hyman v. Hyman*[3].

Accordingly, and for the reasons which I have stated, the appeal will be dismissed and the assessment affirmed. The respondent is entitled to his costs after taxation.

Judgment accordingly.