

**(1940) 08 MAD CK 0042**  
**In the Madras High Court**

Mrs. Ida L. Chambers and Others

APPELLANT

Vs

Kelland Huxford Chamber's

RESPONDENT

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**Date of Decision :** 20-08-1940

**Acts Referred:**

**Citation :** AIR 1941 Mad 154 : (1941) ILR (Mad) 232 : (1940) 52 LW 724 :  
(1940) 2 MLJ 963

**Hon'ble Judges :** Alfred Henry Lionel Leach, C.J.; Horwill, J

**Bench :** Full Bench

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**Judgement**

Alfred Henry Lionel Leach, C.J.—The appeal arises out of an originating summons issued on the Original Side of this Court at the instance

of the respondent. There are two questions involved. The first question is whether there was a valid gift of movable property. The second question

is whether a trust was created, if there was no gift. The respondent is the sole executor and trustee of the will and codicil of Ethel Mary Chambers,

deceased, who was the first wife of George Alexander Chambers, deceased, who was the sole proprietor of a business known as The Chrome-

Leather Company. It will be convenient to refer to Ethel Mary Chambers as the testatrix and to George Alexander Chambers as the testator. The

testatrix died on the 23rd March, 1924 and the testator on the 16th November, 1937. The first appellant is his third wife and she and the second

and the third appellants are the executors and trustees of his will and codicil. The fourth appellant is the son of the testator by his second wife, who

predeceased him. The Chrome Leather Company had a leather business which was carried on some 12 miles from Madras, and the testator

invested a large amount of capital in it. The balance sheet as at the 31st March, 1920 (which for the purposes of this case has been accepted as

being correct) showed that the capital stood at Rs. 16,75,892-11-10. Nearly the whole of this amount, however, represented the value of

buildings, land, plant, machinery and stock-in-trade. The cash in hand was in fact only Rs. 538-15-2. In the years 1917 and 1919 the testator

caused certain entries to be made in the books of the Chrome Leather Company crediting the testatrix, their son (the respondent) and their two

daughters, Phyllis Dora Chambers (now Mrs. P. Michell) and Shaila Florence Chambers with certain sums which were debited to his capital

account. Separate accounts in the names of the testatrix, the respondent, and the two daughters were opened in the books and in these accounts

the credits were entered.

2. On the 25th July, 1919, the testator wrote to the Chrome Leather Company instructing the firm to make such additions to the amounts

standing to the credit of his wife and his children in the books as might be required to place the capital at their credit in the firm at the following

figures: The testatrix Rs. 2,00,000, the respondent Rs. 40,000, and the daughters Rs. 40,000 each. The letter proceeded:

Please note also that as and from 1st April last these sums at their respective credits are to bear interest at 6 per cent, payable half-yearly and.

when the Chrome Leather Company is converted (either with or without the business of Chambers and Company) into a limited liability company

preference shares at 6 per cent, with interest payable half-yearly are to be issued for the sums at their credit as stated above or such larger or

lesser sums as may then be at their credit should they so desire. You have hitherto paid interest at 8 per cent, on the Rs. 45,000 which Mrs.

Chambers has had with the firm, also on Rs. 15,000 which Mrs. Michell had. These payments may be deducted from the interest due on the 1st

October, 1919, on the increased capital bearing interest at 6 per cent.

3. The business of Chambers and Company also belonged to the testator. In this letter the testator instructed his firm to write to the testatrix, his

son and his daughters informing them of the amounts standing to their credit in the firm's books. These letters were written and in each it was said:

This sum is entirely in the nature of a personal gift from Mr. Chambers to yourself and will bear interest at the rate of 6 per cent per annum payable

half-yearly commencing from the 1st of April last, viz., 1919.

We wish you to understand that so long as the Chrome Leather Company remains a private company you will not be entitled to withdraw more than 10 per cent, of the capital. In the event of this company being converted into a limited liability company, either with or without the business of Chambers and Company, you will be issued 6 per cent, preference shares to the value of the amount standing at your credit at that date. These preference shares will be subject to the same restrictions, namely, you will not be permitted to place these shares on the market to a greater extent than 10 per cent, annually.

4. The testator made similar allocations to other relations but it is not necessary to refer to them. His object in crediting the members of his family with these amounts appears from a letter which he wrote at a later date. The object was to ensure that his relations benefited as the result of his life's work and to prevent the Government of India "grabbing" death duties on the whole of his estate.

5. On the 27th September, 1919, the testator instructed the Chrome Leather Company to place a further sum of Rs. 1,00,000, to the credit of the testatrix. This sum was re-transferred to the testator's capital account on the 3rd March, 1924, as the result of a letter which the testatrix wrote to the Company, no doubt written at the behest of the testator. The testatrix was then in the south of France. She sailed with the testator for India shortly afterwards but died at Colombo. Before she died the testatrix was paid in the aggregate the sum of Rs. 83,606-3-6 as interest on the sums standing to her credit in the books of the Chrome Leather Company.

6. By her will the testatrix bequeathed to her trustees the Rs. 2,00,000 standing to her credit after the re-transfer of Rs. 1,00,000, upon trust for the benefit of her son, her two daughters and their issue. For some months after her death interest on the Rs. 2,00,000 was credited to her account in the books of the firm, but as the result of depression in trade then prevailing the National Bank of India objected to any payment of interest until the overdraft which it had granted had been fully discharged. As the result, no further interest was credited in the accounts in respect of this sum.

On or about the 3rd July, 1930, the testator caused to be opened in the books of his firm with effect from the 1st October, 1930, separate accounts showing the beneficiaries under the will of the testatrix as creditors and

the firm as the debtor in respect of the amounts to which they were entitled according to the will of the testatrix.

7. In the year 1930 the testator contemplated carrying out a scheme which he had had in mind for many years of transforming the firm into a limited

liability Company. When interest had ceased to be paid on the amounts standing to the credit of his relatives in the firm's books the auditors

included in their statement a certificate that no interest had been allowed on these amounts and the testator was anxious that the certificate should

be one without any qualification as it would affect the chances of a successful flotation of his business. The amounts were shown in the balance

sheet as "deposits" until the balance sheet for the period ending 31st March, 1923. Thereafter they were referred to as "unsecured loans". With

the object of obtaining a clean certificate the testator sent to the respondent and the beneficiaries under the will of the testatrix draft letters to be

signed and returned by them stating that interest on the amounts at their credit had not been paid for some time and waiving any claim for interest

until circumstances enabled the company to make further payments. This led to correspondence with the respondent who had not merely his

position as a beneficiary under the will of the testatrix to consider, but his position as a trustee under it. The whole of the correspondence which

passed between the testator and the members of his family has not been included in the record, but in a letter dated 18th January, 1932, which the

testator wrote to his daughter Phyllis, he said that he had been advised that as he had not received consideration for the transfers of his capital

there was no legal claim against him. In the course of this letter he stated:

I do not wish to withdraw from any undertakings I have made or promises I have given but I am certainly determined not to permit if I can prevent

it any doubt to exist as to the position of my affairs when my time comes.

8. The same attitude was taken up by the testator in a letter dated 12th November, 1932, addressed to Messrs. Fraser and Ross, the firm's

auditors. The certificate which they had then given did not meet with his approval as the qualifications had not been removed. In his letter to the

auditors he said:

Certain transfers from my capital in our books were made of my own free-will and I have no intention of cancelling same, but I have never

received any "loans", and there was never any consideration either given or accepted and as regards payment of interest I am under no obligation to any one.

9. Some days later the Rs. 2,00,000 was re-transferred to the capital account of the testator. This was, of course, done in assertion of his contention that he was under no legal obligation in respect of the allocations of capital to his relations and to avoid the auditors qualifying their certificate. When the respondent came to know of this he protested as a trustee under the will of the testatrix. The testator having died the respondent instituted the present proceedings in order that the legal position might be determined.

10. The present appeal is only concerned with the Rs. 2,00,000 which was credited to the testatrix in the books of the Chrome Leather Company.

The first question which the Court is called upon to decide is whether there was a valid and completed gift of Rs. 2,00,000 by the testator to the testatrix. If this is answered in the negative, the Court is required to say whether there was a valid declaration of trust in respect of this sum. The case was heard by Gentle, J., who held that there was no gift but that a trust had been created. I agree with the learned Judge that there was no completed gift, but I am unable to concur in his conclusion that the testator created a trust of the Rs. 2,00,000.

11. Before proceeding to state my reasons in detail, I wish to refer to certain of the authorities which have been quoted in" argument. In *Milroy v.*

*Lord* (1862) 4 De. G.F. & J. 264 : 45 E.R. 1185, *Turner, L.J.*, pointed out that in order to render a voluntary settlement valid and effectual, the

settlor must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to

transfer the property and render the settlement binding upon him. Lord Justice Turner proceeded:

He may of course do this by actually transferring the property to the persons for whom he intends to provide, and the provision will then be

effectual, and it will be equally effectual if he transfers the property to a trustee for the purposes of the settlement, or declares that he himself holds

-it in trust for those purposes; and if the property be personal, he must, may, as I apprehend, be declared either in writing or by parol; but in order

to render the settlement binding, one or other of these modes must, as I understand the law of this Court, be resorted to, for there is no equity in this Court to perfect an imperfect gift. The cases I think go further to this extent that if the settlement is intended to be effectuated by one of the modes to which I have referred, the Court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the Court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust.

12. These observations were not in complete accord with what had been said in certain earlier cases, but they have since been accepted as correctly stating the law. In that case one Thomas Medley executed a voluntary deed purporting to assign certain of his shares in a bank to one Samuel Lord to be held by him upon certain trusts for the benefit of the plaintiffs. The shares were transferable only by entry in the books of the bank; but no such transfer was ever made. Lord held a general power of attorney authorising him to transfer Medley's shares and after the execution of the settlement, Medley gave him a further power of attorney which authorised him to receive the dividends on the shares. Lord received the dividends for three years, but Medley died without the formalities required for the transfer of the shares having been completed. It was held that as it was not the intention of the settlor to constitute himself a trustee of the shares, but to vest the trust in Lord there was no valid trust of the shares created in the settlor. It was further held that no valid trust of the shares was created in Lord, for although he held a power of attorney under which he might have vested the shares in himself, he did not do so, and was not bound to do so without directions from the settlor, since he held the power only as agent for the settlor.

13. In *Richards v. Delbridge* (1874) 18 Eq. 11, Jessel, M.R., said:

The one thing necessary to give validity to a declaration of trust - the indispensable thing - I take to be, that the donor or grantor, or whatever he may be called, should have absolutely parted with that interest which had been his up to the time of the declaration, should have effectually changed his right, in that respect and put the property out of his power, at least in the way of interest.

14. A decision similar to that in *Milroy v. Lord* (1862) 4 De G.F. & J. 264 : 45 E.R. 1185 was given in *Heartley v. Nicholson* (1874) 19 Eq. 233.

A person who was the owner of a colliery gave a share in it to his daughter and at a meeting of the shareholders this was sanctioned. Subsequently

the dividend on the share purported to have been transferred was paid by the father to the daughter but the formalities required for the transfer of

the share so as to give the daughter a legal title to it were not carried through. There was no doubt about the father's intention, but it was not

carried into effect before he died. In these circumstances it was held that expressions in letters, the signature of a minute in the books of the

company and the gift of the dividend did not amount to a declaration by the testator, nor to proof of an intention and determination on his part, that

he would hold the share for the plaintiff. There was the intention to make a gift, but he had failed to carry out that intention.

15. There is no difference here between Indian and English law. A gift of movable property, unless it is effected by a registered deed, can only be

completed by the delivery of the property to the donee. For the creation of a trust of movable property the requirements of Section 6 of the Indian

Trusts Act, 1882, must be fulfilled. Before there can be a valid trust the author must indicate with reasonable certainty by words or acts (i) an

intention on his part to create thereby a trust, (ii) the purpose of the trust, (iii) the beneficiary, (iv) the trust property and must transfer the trust

property to the trustee, unless the trust is declared by will or the author of the trust is himself to be the trustee. *Milroy v. Lord*<sup>1</sup> was followed by the

Bombay High Court in *Manchershaw S. Narielwalla Vs. Ardeshir S. Narielwalla*, , *Richards v. Delbridge* (1874) 18 Eq. 11 and *Heartley v.*

*Nicholson* (1874) 19 Eq. 233 were there referred to with approval. Sargent, C.J., applied *Richards v. Delbridge* (1874) 18 Eq. 11 and *Heartley*

*v. Nicholson* (1874) Eq. 233, in *Ashabai v. Haji Tyab Haji Rahimtulla* I.L.R. (1882) Bom.115, where it was held that the fact that the father

opened an account in his books in the name of his son to which money was credited did not raise a presumption that the father intended to create a

trust in favour of his son of the sums appearing in the account; The Court's attention has also been drawn to *Bai Mahakore v. Bai Mangla* I.L.R.

(1911) Bom. 403, where *Chandavarkar and Heaton, JJ.*, differed as to whether there was a trust or a gift, but I do not consider it necessary to

pause to examine this case as the facts are in no way analogous to the facts in the present case.

16. What is manifest in this case is that the testator was not in a position to make gifts in cash of the amounts standing to the credit of his various

relatives. He had large assets, but they were represented by land, buildings and stock-in-trade, and what he purported to give was a share in these

properties. So far as the land and buildings were concerned the gifts could only be completed by an appropriately worded and duly registered

deed. He could vest a part of the stock-in-trade by registered deed or by actual delivery to the donee, but there was no registered deed and there

was no delivery. Of course when moneys were paid by way of interest on the alleged gifts those moneys become completed gifts. See *Adams v.*

*Lopdell* 25 Irish Rep. 311. That there was no completed gift of principal was the attitude which the testator himself took up when his right to

withhold interest was questioned. That he had the intention of making gifts is beyond question, but the entries in the books did not complete the

gifts and what the law requires for completion was never carried out.

17. On the question of the effect of the book entries the decision of the Privy Council in *Hariram Serowgee v. Madan Gopal Bagla* (1928) 57

M.L.J. 581 has been quoted. In that case one Brijcomari carried on business on her own account and maintained account books. In 1896 she

opened an account in the name of her granddaughter. This account was continued down to the granddaughter's death in 1904. In 1901 this

account was credited with a sum of Rs. 2,00,000 and in 1903 with a further sum of Rs. 31,000. It was alleged that these were gifts to the

granddaughter by the grandmother. There was no evidence that the granddaughter ever knew what was done by the grandmother and the account

was never operated upon. Whatever was done with regard to the account was done under the direction of the grandmother. The Judicial

Committee held that the accounts were themselves mere book entries and did not confer or determine rights. Whatever else they showed they did

not show completed gifts to the granddaughter. In the present case the testator's family knew, all about the allocations in the books of his firm and

received certain payments of interest and to that extent the cases differ, but it does not follow that the book entries in the present case confer or

determine rights. I have indicated that in my opinion they do not.

18. In holding that a trust had been created the learned Judge says that the testator has used language which, taken in connection with his acts and

conduct, shows a clear intention on his part to divest himself of the beneficial interest in the sum of Rs. 2,00,000 and to exercise dominion and

control over it exclusively in the character of a trustee. The learned Judge has read the letter of the Chrome Leather Company of the 6th August,

1919, to the testatrix as a declaration of trust and it is evident that it is on this letter that he has largely based his decision. I am unable to read the

letter in the same way. In fact, in my opinion the letter can only be read as evidencing an intention to create a gift. Having said "This sum is entirely

in the nature of a personal gift" the testator adds restrictions with regard to realisation of the gift. I cannot see anything in the letter which savours of

a declaration of trust and in my opinion there is nothing in the testator's subsequent acts or conduct which can be regarded as showing an intention

to create a trust or to constitute himself a trustee. Some of his subsequent acts point positively in the opposite direction. If the transaction

represented anything it represented a gift not the creation of a trust, but I have said sufficient to indicate that in my opinion the transaction cannot be

regarded as a gift because neither the testatrix nor her beneficiaries ever received the property and there was no registered instrument.

19. For these reasons I hold that there was no valid gift of the Rs. 2,00,000 to the testatrix and no trust created in respect of this sum. In my

opinion the appeal should be allowed with costs here and below and a certificate for two counsel granted.

Horwill, J.

20. I agree.