

NOTES OF CASES

CLEAN HANDS

In *Re Emery's Investment Trusts*,¹ a husband, with his own money, bought American stock in his wife's name. He intended the wife to hold the stock for herself and him equally, the transaction being a (successful) device to evade American tax. The wife sold the stock without reference to the husband, and when he found out he sought to collect half the proceeds. Wynn Parry J. left the lot with the wife.

Putting the stock in the wife's name gave rise to a presumption of advancement, which the husband sought to rebut by showing an intention to reserve a half beneficial share and by explaining the wife's trusteeship on the basis that it evaded American tax. This tax discrimination arose out of the wife being an American citizen and the husband a non-resident alien. The learned judge, accepting these facts, held that the presumption of advancement was not rebutted. The husband had committed a crime under American law by not disclosing his beneficial interest. That seems to be another way of saying that, though an intention to advance had been negated, equitable remedies are discretionary, and the husband had put himself out of court by having to base his claim on his own fraud.

Authorities on the denial of equitable remedies where there has been tax evasion are scarce. In *Ward v. Lant*,² where a man had executed a bond of £5,000 in favour of his daughter in order to evade taxes, but had never delivered it, Wright L.K. treated the father as being virtually a trustee for himself and set the bond aside. However, in this case, nothing had passed to the daughter. The decision in *Re Emery's Trusts* has strong support from American cases,³ and from the attitude of the House of Lords in *Mason v. Clarke*.⁴

These cases are cases of domestic tax, while Wynn Parry J. had to deal with fraud on foreign revenue. In coming to his conclusion he relied on a quotation from the judgment of Denning L.J. in *Regazzoni v. K. C. Sethia (1944) Ltd.*:⁵ "It is perfectly true that the courts of this country will not enforce the revenue laws...of another country. ...It is quite another matter to say that we will take no notice of them. It seems to me that we should take notice of the laws of a friendly country, even if they are revenue laws...to this extent, that if two people knowingly agree together to break the laws of a friendly country...then they cannot ask this court to give its aid to the enforcement of their agreement." This attitude of the Court of Appeal, affirmed by the House of Lords,⁶ was with regard to a contract whose performance necessarily involved doing in India an act which, by the law of that country, was a criminal offence. In *Re Emery's Trusts*, it was not the trust but the subsequent non-disclosure by the husband of his beneficial interest which constituted the offence against the American revenue laws.

The effect of leaving the entire beneficial interest with the wife is that the American tax was not payable, and that the husband had committed no offence by not disclosing a beneficial interest he did not have. At some expense to himself, his hands have been cleansed.

L. A. SHERIDAN.⁷

1. *The Times* newspaper, 28th February 1959; [1959] 2 W.L.R. 461; [1959] 1 All E.R. 677.
2. (1701) Prec. Ch. 182; 2 Eq. Cas. Ab. 283. And see *Birch v. Blagrove* (1755) Amb. 264 (Lord Hardwicke).
3. See the cases cited by Pomeroy, *Equity Jurisprudence*, 5th ed., s.401d, n.15; the dissenting opinion by Tyler, Start, and Stafford J.J. in *Monahan v. Monahan* (1904) 70 L.R.A. 935; 77 Vt. 133; 59 Atl. 169.
4. [1955] A.C. 778; [1955] 2 W.L.R. 853; [1955] 1 All E.R. 914; 99 Sol. Jo. 274.
5. [1956] 2 Q.B. 490. 515-516; [1956] 3 W.L.R. 79, 86; [1956] 2 All E.R. 487, 490G.
6. [1958] A.C. 301; [1957] 3 W.L.R. 752; [1957] 3 All E.R. 286.
7. LL.B. (Lond.); Ph.D. (Belfast); of Lincoln's Inn, Barrister-at-Law; Professor of Law and Head of the Law Department in the University of Malaya in Singapore.