Through no fault of his own, he missed the second section of Ramsay's Act by nine days and Act No. 160 by about three months in the long period of actual service. I add reference to the mistake in the certificate. On the whole I give no costs.

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Judgment for the defendants.

Solicitors for the plaintiff, *Loughrey & Douglas.*

Solicitor for the defendants, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

THE PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA LIMITED . . . . . } APPELLANTS;

DEFENDANTS,

AND

WRIGHT . . . . . RESPONDENT.

PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *May* 15, 16; *June* 13.

Barton A.C.J., Isaacs, Gavan Duffy and Rich JJ.

Trust—Declaration of trust—Acknowledgment of existing trust—Assignment of property to defeat creditors—Recovery back of property—No proof that creditors were defeated—Stamp duty—Trustee—Costs—Personal liability—Appeal to High Court—Trusts Act 1915 (*Vict.*) (*No.* 2741), *sec.* 71—*Stamps Act* 1915 (*Vict.*) (*No.* 2728), *secs.* 29, 30; *Sched.* 3, *cl. IX.* (2).

The fact that the purpose with which a man has put property into his wife's name as a trustee for him is to defraud his creditors does not prevent him from afterwards recovering that property from her, or her representatives after her death, provided that the illegal purpose has in no respect been carried into effect.

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A wife, who was the registered proprietor of certain land upon which there was a house, signed a document in these terms: "I hold in trust" the property, specifying it, "for my husband . . . its all his."

Held, that the document was not a declaration of a new trust, but an acknowledgment of an already existing trust of the existence of which it was evidence.

Held, also, that the document was not an "instrument declaring that the property vested in the person executing the same shall be held in trust for the person or persons mentioned therein" within clause VIII. (2) of the Schedule to the *Stamps Act* 1892 (clause IX. (2) of the Third Schedule to the *Stamps Act* 1915), and therefore did not require to be stamped.

The administrators of the estate of a deceased wife resisted an action in the Supreme Court by the husband by which he claimed that property in her name was his, and, being defeated, they appealed to the High Court, which upheld the decision of the Supreme Court.

Held, that the administrators should personally pay the costs of the appeal, as it was not in the circumstances reasonable.

Decision of the Supreme Court of Victoria (*à Beckett* J.) affirmed on a different ground.

APPEAL from the Supreme Court of Victoria.

An action was brought in the Supreme Court by Charles Christopher Wright against the Perpetual Executors and Trustees Association of Australia Ltd., both as administrators with the will annexed of Mabel May Wright, the deceased wife of the plaintiff, and personally. By the statement of claim the plaintiff alleged that about 1906 he purchased a piece of land at 51 Lord Street, Richmond, and paid for it out of his own moneys and savings, and erected thereon and paid for out of his own moneys a house and premises, "but at the request of" his wife, "and for convenience, and not as a gift, but for the purpose of securing a home for himself and his family in the event of his failing in the business in which he was engaged, it was verbally agreed that the title to the said land should be put in the name of his said wife, and acting on the said agreement the plaintiff out of his own moneys and earnings improved the said property by making substantial additions thereto . . . and the title to the said land was accordingly put in his said wife's name. . . . In addition and for the like purpose and at the like request an account in the Savings Bank was opened in the name of" his wife "and the plaintiff's moneys and savings

were paid into that account for convenience and not as a gift to her and were in fact held by her in trust for the plaintiff."

Mrs. Wright died on 15th June 1915, and by the will, in respect of which the defendants were administrators, and which was dated 28th February 1914, she directed that "all money in bank and in my bank books" should be divided equally between the three children of the marriage and she gave the house and land above referred to to her husband for life and after his death to be sold and equally divided among the three children.

The defendants refused to recognize the plaintiff's claim to the land or moneys, and the plaintiff claimed a declaration that he is beneficially and absolutely entitled to the land and moneys, and an order that the defendants should transfer the land and pay the moneys to him.

At the trial the plaintiff gave evidence in support of the allegations in the statement of claim, and he produced and put in evidence a document dated 13th June 1915 and purporting to be signed by Mrs. Wright, which was as follows: "I hold in trust this property 51 Lord Street and money in bank books for my husband Charlie C. Wright its all his." He also produced and put in evidence a will bearing the same date and purporting to be signed by Mrs. Wright, but not witnessed, by which she gave, devised and bequeathed to her husband the "property 51 Lord Street Richmond and money in bank books." The plaintiff said that he found both these documents after his wife's death in a box to which she had access during her lifetime, and which by the will of 28th February 1914 she had bequeathed to one of her sisters.

Other facts are stated in the judgments hereunder.

The action was heard by *à Beckett* J., who made an order declaring that "by virtue of the declaration of trust dated 13th June 1915" the plaintiff was entitled to the land in question and ordering the defendants to transfer it to the plaintiff, and declaring that the moneys in question were moneys to which the plaintiff was entitled as against Mrs. Wright and ordering the defendants to pay them over to him.

From that decision the defendants now appealed to the High Court.

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H. I. Cohen and *Owen Dixon*, for the appellants. This Court should independently determine the question of the genuineness of the document of 13th June 1915 and of the signature to it. A decision on that question does not depend on the credibility of witnesses. See *Taylor on Evidence*, 10th ed., par. 1870. If that document is genuine it is a declaration of trust which by sec. 71 of the *Trusts Act* 1915 must be in writing. That document was never communicated to anyone by Mrs. Wright; therefore, it is ineffectual to create a trust. See *In re Cozens*; *Green* v. *Brisley* (1). It was only intended to be an escrow. If it was intended to have any effect it was as a testamentary document, and no effect can be given to it as it is not properly executed. [Counsel referred to *Towers* v. *Hogan* (2).] The effect of that document and the unwitnessed will is to show that Mrs. Wright did not intend to divest herself of the property at any rate until after her death. Being a declaration of trust, it was inadmissible in evidence under secs. 67 and 68 of the *Stamps Act* 1890, not being stamped in accordance with clause VIII. (2) of the Schedule to the *Stamps Act* 1892. The plaintiff cannot set up the arrangement under which he says that the property was put into his wife's name, because of the illegal purpose to defeat his creditors. He is obliged to rely on the illegal transaction in order to substantiate his claim. That was not so in *Payne* v. *McDonald* (3) or *Taylor* v. *Bowers* (4) or *Symes* v. *Hughes* (5). The property having been given by the plaintiff to his wife, the presumption is that it was an advancement to her, and the evidence does not rebut that presumption. As to the moneys in the Savings Bank, they belonged to Mrs. Wright by virtue of secs. 5, 10 and 13 of the *Married Women's Property Act* 1890, and in order to entitle the plaintiff to recover them it was necessary for him to show that the original moneys were paid into the account without his consent (*Jack* v. *Smail* (6)). [Counsel also referred to *Childers* v. *Childers* (7).]

Hayes (with him *Cuthbert*), for the respondent. The document of

(1) (1913) 2 Ch., 478, at p. 486.
(2) 23 L.R. Ir., 53.
(3) 6 C.L.R., 208.
(4) 1 Q.B.D., 291.
(5) L.R. 9 Eq., 475.
(6) 2 C.L.R., 684, at pp. 699, 712.
(7) 3 K. & J., 310.

13th June 1915 is not a declaration of trust but an acknowledgment of a trust which was already in existence, and is evidence of the existence of that trust. The respondent is entitled to recover the property and money back. The illegal purpose was never carried out, for there were no creditors to be defeated, and the respondent is not relying on the illegal agreement (*Payne* v. *McDonald* (1)).

Owen Dixon, in reply.

Cur. adv. vult.

The following judgments were read :—

June 13.

BARTON A.C.J. The plaintiff (now respondent) seeks a declaration that he is beneficially and absolutely entitled to a house and premises in Lord Street, Richmond, and to certain moneys in the Savings Bank. He also seeks an order directing the defendant company (now appellant) to transfer to him the house and premises and to pay him the moneys. The appellant company is administrator *cum testamento annexo* of the estate of the respondent's deceased wife, in whose name both the land with the house thereon and the Savings Bank moneys stood at the time of her death in June 1915. Their defence rests on Mrs. Wright's will, dated 28th February 1914, by which she purported to give her three children all the money in the Bank and, subject to a life estate to her husband, the respondent, all the Lord Street property, or rather its proceeds after sale. The respondent alleges in his claim that the house and land were not a gift to his wife, but that the title was placed in her name, with her consent, for the purpose of securing a home for himself and his family, free from danger at the hands of possible creditors in the event of his failing in his business, and that the Savings Bank account was opened in the wife's name, and the respondent's money and savings paid into it, for convenience and not as a gift to her. In short, he claims that his wife was a trustee for him in respect of both species of property. There is no evidence that the respondent had any creditors at the time of the arrangement with his wife, or afterwards during her life. He sets up a

(1) 6 C.L.R., 208.

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writing bearing the alleged signature of his wife and dated two or three days before her death, by which she purported to declare herself a trustee for the respondent of the Lord Street property and the moneys in the Savings Bank. On the same day, by a document which consisted partly of a printed will form, signed by her but not witnessed as a will, she purported to devise the one and bequeath the other to him.

The appellants say that the wife was the registered proprietor and absolute owner of the house and land, that the purchase and purchase moneys were a gift or advancement to the wife, and that the Savings Bank credit consisted only of her moneys and savings, to which she was absolutely entitled. Further, the appellants contend that if all the allegations in the respondent's claim were true, he could not be heard to say that the property and moneys were put in the name of the wife in fraud or intended fraud of his creditors. The appellants totally dispute the respondent's claim.

The case was tried by *à Beckett* J., and, in the result, that learned Judge declared that by virtue of the declaration of trust set up by the respondent he is entitled to the land. He therefore ordered the appellants to execute a transfer of the land to the respondent. He further declared that the money standing to the wife's credit in the State Savings Bank at Richmond and the Commonwealth Savings Bank at Surrey Hills are moneys to which the respondent is entitled as against the wife, and he ordered the appellants to do everything necessary to enable the respondent to obtain the moneys and the interest thereon. The appellants were to pay the costs of the action.

It is not my purpose to enter into a detailed analysis of the evidence. The facts have been dealt with by the learned trial Judge in a manner which impresses me as to its fulness and caution. It has been urged that his Honor's analysis was not complete. I am of opinion that it was quite adequate. There was a quantity of documentary evidence, but the case rested in the main upon the credibility of the respondent, whose evidence was controverted in some particulars, but not, in his Honor's view, successfully. Where oral evidence has been fully subjected to the ordinary tests of its credibility before a Judge who has had opportunities of observing the conduct

and demeanour of the witnesses as well as of hearing their words, it is a most unusual thing for a Court of appeal which has neither heard nor seen the witnesses to disturb the findings of fact to which the Judge's better opportunities have assisted him, for it remembers that it is without much of the material which as a whole led the Court below to its decision. It has nothing but the print before it. It has heard no witness, nor has it scrutinized the conduct of any. He has had the persons before him and has seen their demeanour. For instance, it is not only occasional, but very common, that the notes of a Judge or of a shorthand-writer must fail to convey to an appeal Court all that the process itself has conveyed to the Court below. True, it sometimes happens that oral evidence which has convinced a Judge has been seen on appeal to be overborne by documentary evidence. In such a case the Court of appeal does not hesitate to review the decision. But in proportion to the extent to which a case rests upon the credibility of oral evidence is the reluctance of the appellate Court to interfere with the findings. For myself, I confess that I am not in a position to say how I should have decided on the facts in this case had I seen and heard the witnesses. His Honor has evidently devoted close attention to his task and has fully used his great experience and powers of observation. The Court has not here such assistance from the documents as would impel, or even incline it, to differ from his Honor's conclusion.

So far, then, as the facts are concerned I cannot see my way to a conclusion differing from that of the Court below. See the oft-cited *Coghlan* v. *Cumberland* (1); also *Dearman* v. *Dearman* (2), among other cases decided by this Court on the question.

It is said that we ought to come to a conclusion adverse to the respondent upon a comparison of the handwriting in the various documents signed or purporting to be signed by his deceased wife. Some of these are admittedly genuine, and it is said that there are differences between them and the disputed ones which practically convict the respondent of forgery, especially in relation to the alleged declaration of trust. But *àBeckett* J. concurred in the opinion of a gentleman described by his Honor as " one of the most

(1) (1898) 1 Ch., 704. (2) 7 C.L.R., 549.

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experienced and well-trusted of the experts called in our Courts," who gave evidence at the hearing, and had no doubt that the documents were genuine. The appellants on their part called no expert evidence. They therefore relied upon the observation and opinion of the Judge. The same documents were before us, and I cannot say that if I had to give an opinion on them as a juryman I should differ from that at which his Honor arrived.

Taking, then, all the conclusions of fact together, I do not feel warranted in disturbing any of them. Indeed, I see no reason whatever for taking such a course.

The first matter of law to be considered is in relation to the document put forward as a declaration of trust, which I must take to have been written and signed by Mrs. Wright. His Honor, in dealing with this writing, has, I think with all deference, overlooked a view which seems to me to be the correct one. I do not think the document is a declaration of a future trust: in other words, I think that it does not declare that the property comprised in it, having theretofore been the writer's own, was thenceforth to be held by her in trust for her husband. In my view it is written evidence of a trust then and theretofore subsisting. That construction, rather than the one adopted, seems to me to be indicated by the terms employed, especially by the use of the words with which the writing concludes, namely, "it's all his." That expression points to an ownership in the husband before and at the time of the writing, and not to a new disposition of the property. (Probably it was the consciousness of his existing ownership, beneficial but not, up to that time, legal, that impelled her to sign on the same date that fresh testamentary document which remained unwitnessed as a will, but by which she seems to have intended that his ownership should be made absolute; and the two documents taken together seem to point alike to the acknowledgment of that ownership and to an endeavour to perfect it.)

Holding the view that the document is written evidence of a previously existing trust, I must examine the nature and effect of the statements of the respondent as to what passed between himself and his wife at and about the time of the purchase of the Lord Street property, for which and for the building upon it he appears to have

paid. He says in evidence that it was put in his wife's name at her request, and for convenience, and not as a gift, but for the purpose of securing a home for himself and his family in the event of his failing in business. And in his statutory declaration, also quoted by his Honor, he says: "It was agreed that the land should be put into the name of my wife as a trustee for me, and so that if I got into difficulties in business the land would be secure." These two statements are relied on by the appellant company as showing that there was an agreement to carry out an illegal transaction in respect of which the Court will not assist the respondent, and that he cannot be heard to set up such a transaction. In effect, that is the view taken by his Honor.

Now, the respondent is by no means attempting to set up this understanding as any foundation for his claim to relief, nor has anything been done under it or attempted to be done under it. The respondent says:—"I bought this property and paid for it. It was put in my wife's name and she was a trustee for me all along." Had there been creditors to hoodwink or, at any rate, had there been any attempt at such an act, the case would probably have been different. But, so far as we know, there were no creditors to hoodwink, and the whole thing rested on what might happen but never did happen. That such a state of things, carried no further, is not a bar to the respondent's claim to what is beneficially his own is to me apparent, and I need only mention three cases, namely, *Symes* v. *Hughes* (1), *Taylor* v. *Bowers* (2) and *Payne* v. *McDonald* (3). In the first-named of these cases (4) the matter was put very clearly by Lord *Romilly* M.R. in the following terms:—"Where the purpose for which the assignment was given is not carried into execution, and nothing is done under it, the mere intention to effect an illegal object when the assignment was executed does not deprive the assignor of his right to recover the property from the assignee who has given no consideration for it. It is clear in the present case that no harm has been done to any creditor. . . ." This view has been followed in subsequent cases, and in his judgment in *Payne* v. *McDonald* (5) the learned Chief Justice of this Court said:

(1) L.R. 9 Eq., 475.
(2) 1 Q.B.D., 291.
(3) 6 C.L.R., 208.
(4) L.R. 9 Eq., at p. 479.
(5) 6 C.L.R., at p. 211.

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"I doubt, indeed, very much whether the doctrine *ex turpi causâ non oritur actio* applies at all to a case where the only illegality or impropriety alleged is an intent, not effectuated, to defeat creditors." The learned Chief Justice had just previously said: "I apprehend the principle is that the Court will not assist a party to carry out an illegal transaction—that, if, in the course of the plaintiff's story, the relevant facts show an illegal transaction, the Court will not assist him." I should mention that in that case there were actually creditors at the time of the creation of the trust. To use the words of *James* L.J. in *Taylor* v. *Bowers* (1), "if it was merely a question for the first time to be determined upon principle, without authority, I should have no doubt in saying that the plaintiff was not obliged to rely upon the fraud for the purpose of recovering back the goods." Here, the fact that the wife was all along the husband's trustee is evidenced by her declaration of that fact, which *àBeckett* J. has pronounced to be a genuine document.

As regards the deposits in the Savings Banks, it has been urged that they became the wife's separate property by virtue of secs. 5, 10 and 13 of the *Married Women's Property Act* 1890. I think it is enough to say that these sections do not apply to money received in trust.

A further point was raised under the Stamps Acts.

If the document which Mr. *Cohen* says should have been stamped were within the category to which he points, namely the Schedule to the *Stamps Act* of 1892, par. VIII. (2), it may be that the 68th section of the Act of 1890 would be fatal to its admissibility as evidence and to its availability in law or equity. But it is not within that category, which relates to declarations of trust in the ordinary sense, and not to mere written statements concerning a trust previously existing.

The appeal must be dismissed with costs against the appellants personally.

ISAACS, GAVAN DUFFY AND RICH JJ. The respondent's primary position of fact appears to be sufficiently established. His own

(1) 1 Q.B.D., at p. 298.

evidence, in effect, is that the purchase of the land and the building of the house and the creation of the wife's banking account were by means of his money, though in her name, and took place under an arrangement with her by which the property was to be "in her name" in case he failed in business and was unable to pay his creditors, but by which on the whole, according to the circumstances, the property was understood to still remain in reality the respondent's property.

No doubt the claim he makes is of the class in which the Court very carefully scrutinizes the evidence of the claimant (see *Plunkett* v. *Bull* (1)). He is required to establish a reasonably clear case, and ought to bring forward such evidence as is fairly available. He does adduce the corroborative evidence of two witnesses; and there is no evidence which is suggested as available but not produced. If, however, the document produced by the respondent as his wife's writing be genuine, there is not merely corroboration but actual admission of his allegation of fact. On the other hand, if that document be not genuine, not only does he lose the benefit of an admission, but in the circumstances in which it appeared there would be an irresistible inference that he had concocted the document and the evidence he gave in support of it. It is therefore necessary to consider whether it is genuine or spurious. Undoubtedly the appellants have a right to ask this Court of appeal to form its own opinion on this subject. But it can only do so upon the evidence before it. The demeanour of the respondent when he testified to the finding of the paper, to the fact that he had nothing to do with its creation, that it was in his wife's handwriting, and the way in which he gave that testimony, are not and cannot be before us. And although the learned primary Judge to a large extent rested on his ocular comparison of the document with other writings, he necessarily did not eliminate the important elements referred to, which are absent from our observation.

The points of difference relied on by the appellants between the admittedly genuine—or, perhaps, it should be said, the undenied—handwriting of the deceased and the exhibit in question, and the

(1) 19 C.L.R., 544, at pp. 548, 549.

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suggested characteristics of resemblance between the writing in that document and certain handwriting of the respondent, are not so manifestly clear as to entitle us to override the only expert opinion in the case, which was in respondent's favour, and to disregard any possible effect of the respondent's personal demeanour upon the learned Judge, who saw and heard him. Upon the evidence before us, it would, in our opinion, be quite unsafe in the circumstances appearing for us to oppose any personal view which we might form, founded on mere comparison of the document with others written by deceased, which it certainly very closely resembles, to that of a skilled witness and the distinct affirmative testimony of the respondent. As *à Beckett* J. says, there is ground for vehement suspicion, but that is not enough. The matter depends largely on the opinion formed of the respondent's veracity, and apparently he has been accepted as veracious by the primary tribunal. That seems to conclude the matter of fact, because the document does not amount to a new and independent constitution of a trust, but is an acknowledgment of a pre-existing trust, and affords as to the land the necessary written proof of such trust.

Regarding this document as evidence only, and not as the constitution of a trust, it is unnecessary to consider the question raised by the appellants as to whether communication of the existence of the document to some person by the wife was necessary to the effective creation of the trust.

It remains to be determined whether, as the learned primary Judge thought, the arrangement to defeat creditors set up by the respondent as that upon which the property was nominally vested in his wife was such as to preclude him from relying on it as a ground of restoration. The true answer is that it depends on the circumstances whether restoration can be required or not. The test appears to be, not whether the plaintiff in such a case relies on the illegal agreement, because in one sense he always does so, but whether the illegal purpose from which the plaintiff insists on retiring still rests in intention only. If either he is seeking to carry out the illegal purpose, or has already carried it out in whole or in part, then he fails.

Cases have been cited by both sides, including *Payne* v. *McDonald* (1). That case is a decision of this Court, and is obviously right. The Privy Council in the same year, 1908, dealt with the point in the case of *Petherpermal Chetty* v. *Muniandi Servai* (2). That was a case in which one question was whether the plaintiff, despite his participation in the fraudulent attempt to defeat a creditor by putting property in the defendant's name, was entitled to recover possession of the lands purported to be conveyed. As the report is not always conveniently accessible, and as with paramount authority it concerns a wide class of cases, a somewhat extended quotation from the judgment of Lord *Atkinson*, speaking for the Judicial Committee, may be useful. His Lordship says :—" The plaintiff, in suing to recover possession of his property, is not carrying out the illegal transaction, but is seeking to put everyone, as far as possible, in the same position as they were in before that transaction was determined upon. It is the defendant who is relying upon the fraud and is seeking to make title to the lands through and by means of it ; and, despite his anxiety to effect great moral ends, he cannot be permitted to do this. And, further, the purpose of the fraud having not only not been effected, but absolutely defeated, there is nothing to prevent the plaintiff from repudiating the entire transaction, revoking all authority of his confederate to carry out the fraudulent scheme, and recovering possession of his property. The decision of the Court of Appeal in *Taylor* v. *Bowers* (3) and the authorities upon which that decision is based clearly establish this. *Symes* v. *Hughes* (4) and *In re Great Berlin Steamboat Co.* (5) are to the same effect. And the authority of these decisions, as applied to a case like the present, is not, in their Lordships' opinion, shaken by the observations of *Fry* L.J. in *Kearley* v. *Thomson* (6). Mr. *Upjohn* contended that where there is a fraudulent arrangement to defeat creditors, such as was entered into in this case, if anything be done or any step be taken to carry out the arrangement, such as, on the trial of an indictment for conspiracy, would amount to a good overt act of the conspiracy, any property transferred by the debtor to his co-conspirator cannot be recovered back. This,

(1) 6 C.L.R., 208.
(2) L.R. 35 Ind. App., 98, at p. 103.
(3) L.R. 1 Q.B.D., 291.
(4) L.R. 9 Eq., 475, at p. 479.
(5) L.R. 26 Ch. D., 616.
(6) L.R. 24 Q.B.D., 742.

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however, is obviously not the law. In conspiracy the concert or agreement of the two minds is the offence, the overt act is but the outward and visible evidence of it. Very often the overt act is but one of the many steps necessary to the accomplishment of the illegal purpose, and may, in itself, be comparatively insignificant and harmless; but to enable a fraudulent confederate to retain property transferred to him in order to effect a fraud the contemplated fraud must, according to the authorities, be effected. Then, and then alone, does the fraudulent grantor, or giver, lose the right to claim the aid of the law to recover the property he has parted with."

In this case no creditors have been defrauded, the illegal purpose has never been in any respect carried into effect, and therefore the respondent was entitled to succeed, and is now entitled to a dismissal of this appeal.

A point was raised that sec. 71 of the *Trusts Act* 1915, reproducing a provision of the *Statute of Frauds*, required the trust as relied on in this case to be proved by writing signed by the deceased, that is, so far as the land is concerned. Then it was said that the document put in for the purpose was not stamped under the *Stamps Act* 1915, Third Schedule, clause IX. (2). The words of that part of the schedule are "any instrument declaring that the property vested in the person executing the same shall be held in trust" &c. If the document in question answered that description, the point would present considerable difficulty (*Fengl* v. *Fengl* (1)). But having regard to the reasoning in *Davidson* v. *Chirnside* (2), it does not fall within that description, and therefore no stamp is required.

The appellant, a trustee, should in this case bear the costs of appeal personally. It was not reasonable in view of the pecuniary circumstances of the children's property to consume it in this appellate litigation, and that property ought not to be used for that purpose.

Appeal dismissed with costs against the appellants personally.

Solicitors for the appellants, *Abbott, Beckett & Stillman.*

Solicitor for the respondent, *P. J. Ridgeway.*

B. L.

(1) (1914) P., 274.

(2) 7 C.L.R., 324.