

It follows that under s. 4 each policy is protected to the extent of £1,000 : and as the moneys secured by the policies did not in either case exceed that sum, the whole of the moneys payable in respect of the two policies are within the protection conferred by s. 3. Accordingly there will be a declaration that no part of the moneys payable under either policy is applicable in payment of debts owing by the deceased and that such moneys are to be paid (subject to payment of the costs of the administration) to the persons entitled to the estate of the deceased upon his death intestate.

The costs of all parties as between solicitor and client are to be paid out of the estate.

DISTRICT ADMINISTRATOR, LAUTOKA v. BAKHTAWALI.

[Civil Jurisdiction (Corrie, C.J.) October 23, 1937.]

Land purchased by deceased registered in name of woman with whom he had lived as man and wife—whether any presumption arises that purchase intended to be for woman's benefit—resulting trust—Land (Transfer and Registration) Ordinance 1933¹—s. 14—title of registered proprietor indefeasible except for fraud or misrepresentation—s. 182—equitable interests preserved—whether Statute of Frauds applies to trusts.

Abdul Samad lived with a woman Bakhtawali for many years ; there was no marriage. He purchased certain leasehold property and had Bakhtawali registered as proprietor. On the death of Abdul Samad his estate was administered by the District Administrator, who brought an action against Bakhtawali claiming a declaration that she held the property in trust.

HELD.—(1) No presumption against a resulting trust arises from the fact of cohabitation as man and wife.

(2) The Statute of Frauds does not preclude oral evidence of a trust,

(3) The jurisdiction of the Court as to resulting trusts is preserved by s. 182 of the Land (Transfer and Registration) Ordinance 1933¹.

Cases referred to :—

Soar v. Foster [1858] 70 E.R. 64 ; 27 Dig. 163.

Rochevoucauld v. Boustead [1897] 66 L.J.Ch. 74 ; 75 L.T. 502 ; 13 T.L.R. 118 ; 43 Dig. 558.

ACTION BY ADMINISTRATOR OF A DECEASED ESTATE FOR A DECLARATION that certain leasehold interests were held by the registered proprietor as trustee. The facts are set out in the judgment.

P. Rice for the plaintiff.

A. D. Patel for the defendant.

CORRIE, C.J.—The plaintiff, the District Administrator of the district of Lautoka, as Administrator of the estate of Abdul Samad the son of Elahi Baksh deceased, is claiming against the defendant, Bakhtawali daughter of Hushiyar Singh, in respect of three native leases

¹ *Cap.* 120.

registered in the name of the defendant. The plaintiff claims a declaration that the defendant holds the leasehold interests comprised in these leases as trustee for the plaintiff; and asks that the defendant be ordered to transfer the leases to the plaintiff and to deliver to him the title deeds.

The deceased Abdul Samad and the defendant lived for many years as man and wife but no marriage ceremony of any kind was ever celebrated between them.

The plaintiff claims that the purchase money for the leases in question was paid by the deceased. This is denied by the defendant who alleges that she paid for the leases out of her own moneys.

Having heard the evidence upon this issue of fact, I hold that the purchase money for the three leasehold interests was paid by the deceased and not by the defendant.

Upon this finding of fact the plaintiff maintains that in the absence of any presumption to the contrary, the general rule that there is a resulting trust in favour of the person by whom the purchase money was paid is applicable; and that as the defendant was not the lawful wife of the deceased, there is no presumption in her favour that the purchase was intended to be for her benefit: and he argues that this case is governed by the rule in *Soar v. Foster* (70 E.R., page 64). The facts in that case were that in the year 1840, William Harris went through a form of marriage with Rachael, his deceased wife's sister, and afterwards purchased a sum of Consols in the joint names of himself and "Rachael Harris, his wife".

Page Wood L.C. in the course of his judgment said: "The first question therefore is whether a purchase in the name of the purchaser and a woman whom in form he has gone through the ceremony of marrying but who, as he must be taken to have known, could never become his lawful wife, raises such a presumption that the purchase was intended by him as a provision for her in the event of her surviving as to throw the onus of proof upon those who assert a contrary intention".

After reviewing the cases in which a similar presumption had been held to arise the learned judge continued: "The law has confined the rule as to a presumption of this description to certain clear and definite propositions which are easily understood and I should be opening a very wide field if I were to hold that the mere circumstance of the ceremony of marriage having been gone through between persons who must have known that they were incapable of contracting a valid marriage raises such a presumption as to the intention with which a purchase of this description was made as to throw the onus of proof upon those who rely upon the ordinary rule in such cases, namely, that there is a resulting trust for the purchaser". It was held that the Consols belonged to and formed part of the estate of the purchaser, William Harris.

In the present case the defendant cannot even rely upon the fact of a ceremony of marriage having been performed. Moreover, evidence has been given to show that the object of the deceased in having the leases in dispute registered in the defendant's name was that he might himself be in a position to obtain another lease from the Colonial Sugar Refining

Co. Ltd. which would not have granted a lease to him if these three leases had been standing in his name.

There is thus nothing upon which a presumption in favour of the defendant may be founded.

The defendant has also raised the defence that the requirements of the Statute of Frauds have not been complied with. But the Statute does not apply to a resulting trust. In *Rochefoucauld v. Boustead* (66 L.J. Ch. D. page 74, at page 78) Lindley L.J. delivering the judgment of the House of Lords, said : " It is further established by a series of cases the propriety of which cannot now be questioned that the Statute of Frauds does not prevent the proof of a fraud ; and that it is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land himself. Consequently notwithstanding the Statute it is competent for a person claiming land conveyed to another to prove by parol evidence that it was so conveyed upon trust for the claimant and that the grantee knowing the facts is denying the trust and relying upon the form of conveyance and the Statute in order to keep the land himself ". There is nothing which would take the present case out of the rule thus laid down, and accordingly this defence fails.

Finally the defendant argues that whatever may be the rule of English Law, the plaintiff's claim is defeated by the plain words of s. 14 of the Land (Transfer and Registration) Ordinance 1933. That section reads as follows :—

" The instrument of title of a proprietor issued by the Registrar
 " upon a genuine dealing shall be taken by all courts of law as
 " conclusive evidence that the person named therein as proprietor of
 " the land is the absolute and indefeasible owner thereof and the
 " title of such proprietor shall not be subject to challenge except
 " on the ground of fraud or misrepresentation to which he is proved
 " to have been a party or on the ground of adverse possession in
 " another for the prescriptive period. A duplicate or certified copy
 " of any registered instrument signed by the Registrar and sealed
 " with his seal of office shall be received in evidence in the same
 " manner as an original ".

On behalf of the defendant it is argued that the meaning of this section is that the title of a registered proprietor of land is not subject to a resulting trust or indeed to any equitable interest in favour of any other person.

This argument cannot be maintained in view of the judgment already cited in *Rochefoucauld v. Boustead* and of s. 182 of the Ordinance which provides :—

" Subject to the provisions of this Ordinance the jurisdiction of
 " the Court both in law and in equity shall be preserved on the
 " ground of actual fraud or over contracts for the sale or other
 " disposition of land or over equitable interests generally ".

There will be a declaration that the defendant holds the three native leases in claim in trust for the plaintiff and an order directing the defendant :—

- (a) To execute in favour of the plaintiff a registerable transfer of the leases ; and
- (b) to deliver the leases to the plaintiff or his solicitors.

The defendant will pay the costs of these proceedings.