ORIGINAL CIVIL.

1906.
February 26.

Before Mr. Justice Batchelor.

MATHURADAS DAMODARDAS AND ANOTHER *v.* VANDRAWANDAS SUNDERJI AND ANOTHER.*

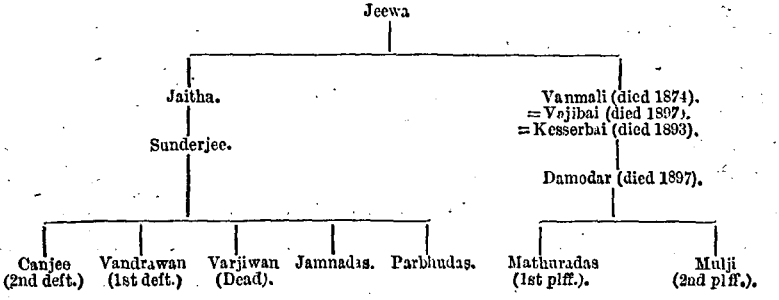
Limitation Act (XV of 1877), section 10—Trust for a specific purpose—Express Trust—Resulting Trust—Indian Trusts Act (II of 1882), sections 81, 83.

Per BATCHELOR, *J*: (*obiter*)—Section 10 of the Limitation Act does not apply where the object of the original trust being uncertain or undiscoverable, a resulting trust arises by operation of sections 81 and 83 of the Indian Trusts Act, 1882.

Whether the resulting trust flow from the invalidity of the declared trust or from the impossibility of ascertaining the declared trust it is equally a substituted trust, that is, a trust which is created by the law *faut de mieux*, that is as the best arrangement which the law regards as possible in difficult circumstances. This general rule is affected to this extent only, that where there is a trust covering the whole estate and the bequests do not exhaust the estate the trustees are express trustees of the residue for the heir of the testator.

THIS suit was instituted by Mathuradas and his brother Mulji asking that the defendants should make full discovery of certain Government Promissory Notes of the nominal value of Rs. 7,000.

The parties to the suit were related to each other as shown in the following genealogical tree :—



Vanmali died in the year 1874 leaving a will, dated the 15th August 1874, and leaving him surviving two widows, Vajibai and Kesserbai, and a son Damodardas (the plaintiffs' father), by Kesserbai. By the will Kesserbai was appointed sole executrix thereof and was also the sole life tenant and after her death

* O. C. J. Suit No, 690 of 1905.

the property of the testator was to belong to Damodardas, who was a lunatic from his birth.

He made the following provision for his senior wife Vajibai :—

"There is my old wife named Vaji. To her are to be paid out of my property every month for her maintenance Rs. 150 and as to (her) residence there is now my dwelling house in Bombay; the second storey of that house is to be given to her for (her) residence during her life and for her performing pilgrimages and other religious and charitable acts Rs. 10,000, namely ten thousand rupees are to be paid to her and she is muktyar to use (the same?) during her life and in the event of her death as to whatever property may be found with her the heir thereto is my wife Kesser or my son Damodar."

On the 23rd September 1892 one Muncherji Bomanji Gagrat was appointed sole committee of the estate of Damodardas. After Vanmali's death, his widow Kesserbai proved his will and took possession of and managed all his property down to her death which happened in January 1893. At her death Gagrat had to adopt proceedings (suit No. 158 of 1893) to recover the possession of property: and on the 19th December 1893 a decree was passed in his favour, as the lunatic's Committee by which it was declared that the lunatic Damodardas acquired an absolute interest in the estate of Vanmalidas on Kesserbai's death and that Gagrat as the Committee of his estate was entitled to the possession, custody and control of all the property of whatever kind left by Vanmalidas.

Damodardas died on the 18th June 1897 leaving the minor plaintiffs as his only heirs.

By an order made by the High Court on the 26th June 1897 Gagrat was appointed guardian of the property of the minors during the continuance of their minority or until the further order of the Court, and he continued to act as such guardian until his death which happened in January 1904.

Vajibai died on the 13th September 1897, on the 10th February 1900 Gagrat obtained a grant of letters of administration of Vajibai's property and credits to himself as the guardian of the property of the minors and for their benefit and limited until they or either of them should attain majority. Vajibai had before her death, in 1894, transferred Government Promissory

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Loan Notes of the nominal value of Rs. 7,000, belonging to her, to the joint names of Kanji Sundarji and Vandravan Sundarji, two of the sons of Sundarji Jaitha.

These Promissory Notes formed the subject matter of this suit. In their plaint the plaintiffs alleged that the said transfer was made by Vajibai to the defendants on trust to hold the said Notes and to recover the interest thereon and to pay the same to the said Vajibai and to hold the said Notes for her and was not made with the intention of conferring the beneficial interest on the defendants and that the defendants accepted the said transfer and held the said Notes on trust to recover the interest thereon as aforesaid.

They further alleged that the said Government Promissory Notes were either property to which Vajibai became entitled under the will of her husband Vanmalidas or were the investments of savings of such property and in either event the plaintiffs as the nearest heirs of the said Vajibai became entitled absolutely to the said Notes on her death.

They further alleged that even if the said Government Promissory Notes did not come under the gift-over in the will of Vanmalidas or even if the gift-over was invalid and if Kesserbai and Damodar, who both predeceased Vajibai, took no interest under the will of Vanmalidas still the plaintiffs as the nearest heirs of Vanmalidas and Kesserbai and Damodar were in any event entitled to the said Promissory Notes.

They prayed that the defendants might be ordered to make full discovery of the Government Promissory Notes transferred to their names by Vajibai and that they might be ordered to transfer to the plaintiffs the said Notes.

Vandravandas Sunderji, defendant No. 1, denied the plaintiffs' claim in his written statement.

Canji Sunderji, defendant No. 2, did not put in a written statement, but appeared in person at the hearing of the suit and said he did not admit the plaintiffs' claim.

Raikes, acting Advocate General, with *Inverarity* and *Lowndes* for the plaintiffs:—

It is not disputed that in 1894 Vajibai stood possessed of the Notes and that she transferred them to the defendants.

By that transfer she did not make a beneficial bequest to the defendants. Therefore unless some definite trust is established the defendants held these Notes for Vajibai. See Trusts Act, sections 80, 81.

See also Lewin on Trusts, 11th Edition, p. 158.

It does not matter where she got the Notes from or how she got them.

It is often the case that women transfer Notes into the names of their male relatives to enable them to recover interest. If she wanted them to collect interest they would be Benamidars. Varjivan died; so there would be a resulting trust. As to limitation, see section 10 of the Limitation Act. *Patrick* v. *Simpson* (1).

The trust is admitted so how can there be limitation?

We rely on the admissions of Canji.

Jinnah (with *Talyarkhan*) for defendants.

BATCHELOR, J.—After summarising the pleadings, I read the issues which are as follows:—

(1) Whether the transfer of the Government notes made to defendants 1 and 2 by Vajibai was on such trust as is alleged in para. 2 of the plaint?

(2) Whether Vajibai became entitled to the said notes under the will of her husband Vanmalidas, or whether the said notes were investments of savings of property bequeathed to her by her husband?

(3) Whether the said notes were not Vajibai's absolute property?

(4) Whether the plaintiffs became entitled to the said notes on Vajibai's death?

(5) Whether the plaintiffs took the said notes by virtue of the gift-over under the will of the said Vanmalidas as alleged in para. 8 of the plaint?

(6) Whether the gift-over was a valid gift?

(7) Can the plaintiffs take under the said gift-over in view of the fact that both Kesserbai and Damodar predeceased Vajibai?

(8) Whether the said notes were not transferred to the names of defendants upon trust for Varjivan Sundarji and Purbhudas Sundarji and for their sole and absolute use and benefit?

(9) Whether plaintiffs' claim is not barred by limitation?

(10) Whether any decree can be made in plaintiffs' favour without letters of administration to Vanmalidas, Kesserbai, Damodar and Vajibai, or any of them and which?

(1) (1889) 24 Q. B. D. 128.

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(11) The general issue.

(12) Whether, if the trust alleged in para. 2 of the plaint is not proved, the defendants 1 and 2 did not hold the said notes on a resulting trust for Vajibai?

Though twelve issues have thus been raised, the only questions argued have been (*a*) the question of fact as to who were the beneficiaries of the trust created by Vaji, and (*b*) the question of law as to the applicability or inapplicability of section 10 of the Limitation Act.

The suit has led to an interesting argument on the ambit of section 10 of the Limitation Act, but before discussing that question it is necessary to solve the not less difficult question of fact as to the objects of the trust. In the first place it is admitted that these notes for Rs. 7,000 were the subject of a trust created by Vaji, but there is direct conflict between the parties as to the terms of the trust. According to the plaintiffs, who are admittedly the heirs of Vaji, the beneficiary of the trust was Vaji herself, and the object or purpose of the trust was that the two trustees might draw the accruing interest on behalf of Vaji and so save her from the necessity of appearing in the business. According to the defendant—by which term I allude throughout to the first defendant, who alone contests the suit—the beneficiaries of the trust were Varjivan and Parbhu, sons of Sundarji, Varjivan being paralysed and Parbhu being of weak intellect.

These are the rival theories; and I take first the plaintiffs' case, for I think that few words are required to show that it must be dismissed for want of proof. It rests mainly upon the so-called admission made by the second defendant, Kanji, in his letter of 24th September 1897 (Exhibit C) to the solicitors for Mr. Gagrat, the then guardian of the infant plaintiffs. There, no doubt, Kanji says that the notes were transferred by Vaji to the joint names of himself and the first defendant "to make us to recover interest thereon for her." But after Kanji had appeared in the witness-box it had to be conceded by the Advocate General that he was unworthy of credit, and for my own part I find him to be a witness whom no Court could believe for a moment: indeed that Kanji asserts a thing would be rather a reason for doubting it. Then, when this letter Exhibit C was written, Kanji was in the service of the plaintiffs'

guardian, and is now in the plaintiffs' service. Moreover, it is now admitted that it was Kanji himself who instigated this litigation by suggesting the solicitors' letter to which Exhibit C is a reply. Thus all that Exhibit C means is that one brother admits this trust in order that he may induce the plaintiffs to subject another brother to harassing litigation. In such circumstances whether the statement be called an admission or not, seems to be of little moment; what does matter is that the statement is entirely worthless. It is said that Kanji has not been questioned as to his relations with the first defendant; but the first defendant had said that he was not on speaking terms with Kanji, and was not cross-examined on the point. And in truth, unless a Court is to shut its eyes to the most obvious and apparent facts, there was no need to question Kanji further. It is impossible to deny that his only object was to bring trouble upon his own brother; that being so, I may safely infer, and I do infer, the existence of some bitter feud. It might be otherwise if by any stretch of imagination one could suppose that Kanji was partly acting from honourable motives, but that supposition is not reasonably possible. It is probable that in fomenting this dispute he was labouring under the belief that he himself would escape immune: now that he perceives that responsibility is likely to be fastened on him, he makes a pitiable effort to resile from his letter, and constantly breaks out into the despairing cry to me. "Saheb, there is my letter! Saheb, there is my letter"! of which the English is "I cannot tell the truth, whatever that may be, because I have already bound myself by my letter to the solicitors." The whole story is a distressing example of the depths to which a Hindu of this class will fall in order to satisfy his revenge upon a family feud; but there is nothing new in it, and Kanji must suffer the common fate of having his sworn statements wholly dismissed from consideration as unworthy of credit.

So far as I can discover, there is no other circumstance which can be used as a support to the plaintiffs' version of the facts. And that version is exposed to many difficulties. It is denied on oath by the defendant (*i. e.* defendant 1), who is at least an immeasurably better witness than Kanji. Then it is

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certain that the interest on these notes was in fact never paid to Vaji, for it is admitted that her books contain no such entry. Again, it is abundantly proved that there could have been no occasion for the trust set up by the plaintiffs, inasmuch as Vaji had agents of her own to whom she had given powers of attorney, and who were in the habit of drawing her interest for her—see Exhibits Nos 11 to 16.

Turning to the defendant's account of the trust, the first point that occurs to me is that it is the only other account before the Court. I do not mean that I must therefore believe it, for it may be that the terms of the trust are at present undiscoverable; nevertheless the defendant is entitled to whatever credit may be obtainable from the fact that the only competing case has been rejected. The burden of proving his theory of the trust rests upon the defendant, but I am of opinion that the weight of the burden ought not to be exaggerated. As long ago as 28th September 1897—see Exhibit D—the defendant by an attorney's letter categorically denied the assertions put forward for the plaintiffs at the suggestion of Kanji, and asserted that the trust was created "for the sole and absolute use and maintenance of Varjivan and Parbhu," that the plaintiffs' attorneys were being misled by Kanji out of private malice, and that the notes in question were and are in the possession "of the said Varjivan and his wife." That is as clear a repudiation of responsibility as could well be made. Yet the plaintiffs wait eight years before they file this suit, and no valid excuse is offered for the delay. The point has not been taken, but it seems to me distinctly arguable that such laches as this would by itself suffice to debar the plaintiffs from relief in a Court of Equity which, as the maxim goes, *vigilantibus subvenit non dormientibus*. But, waiving that, let us see how the defendant's case stands otherwise. First of all, he himself has sworn to it, and I cannot say that he is a bad witness. It is contended that the trust, which he alleges, absolves him from all responsibility, but that, I think, is not so; he would appear to be still liable at the suit of Parbhudas and the heir of Varjivan. Moreover it is in his favour that he acknowledges any trust at all, for without such acknowledgment the plaintiffs could not have got

so far as to establish any trust. Nor do I think that any suspicion should be attached to him because the persons whom he names as having been present at the declaration of trust are mostly dead; the responsibility for this absence of evidence must rather be fastened on the plaintiffs, who have been so dilatory in filing their suit. The person whose evidence would be most valuable on these points is Varjivan Sundarji: unfortunately he is now dead, but he did not die till 1900, or three years after the plaintiffs had received the defendant's emphatic denial of their claim. Mr. Gagrat did not die till 1904, and I am thus constrained to hold the plaintiffs responsible for that meagreness of evidence which is the weakest feature in the defendant's case. It is admitted by the defendant that Dr. Edalji, who is now too ill to attend the Court, was present at the creation of the trust, but, as no application is made by either side to obtain his evidence, I must infer that he would not materially assist either the plaintiffs or the defendant. The defendant is formally corroborated by Manibai, but as she is his sister, I cannot ascribe much importance to the corroboration. Passing to such circumstantial evidence as is available, I find several matters which support the defendant's story. It is not denied that Varjivan was paralysed or that Parbhu was, and is, of weak intellect, so that there is an antecedent probability that they should have been the special objects of Vaji's bounty. This probability is increased by the admitted fact that in 1884 Vaji paid on behalf of Sundarji, the father of Varjivan and Parbhu, the costs which had been incurred in the lunacy proceedings connected with Damodar Vanmali—see Exhibit 17. Again it is fairly proved that, at the time the disputed trust was created, Vaji gave Rs. 2,000 to Bai Mani "just in the same way as the Rs. 7,000 notes were given to Varjivan and Parbhu"; but Mani has spent part of the Rs. 2,000 and has invested the balance, and no claim in respect of this sum has ever been made against her. It is also proved that, of the Rs. 7,000, one note for Rs. 500 was sold before the death of Vaji; but there is no entry in Vaji's books concerning this sum, and no claim has been made. It has been contended that the absence of a written instrument is a circumstance making rather for the plaintiffs than for the defendant, but in my opinion there is very little ground for an

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inference either way. On the present state of the record it seems to me clear that the defendants were not constituted mere fiduciary agents to collect the interest for Vaji, and, that being so, the absence of a writing is as consistent with one kind of trust as with another. The explanation appears simply to be that in August 1894, when the trust was created, the parties had come to a plain understanding as to its objects, and that Vaji had confidence in her relatives, the trustees. Then the Advocate General has urged that if the defendant's case be traced through the early correspondence to the written statement and his present deposition, it discloses a change of ground and a gradual development; but upon examination of these materials, I cannot say that the defendant's present case differs at all substantially from the case which he formulated when first challenged. The words "for the sole and absolute use and maintenance" in the letter C may conceivably have been intended to denote as extensive an estate as the defendant now alleges. So in the written statement, though the whole case of the defendant is not particularly rehearsed, para. 6 sets out that reliance is placed on the early correspondence, and there the details of the defendant's version are to be found. Upon a general consideration of all the evidence, direct and circumstantial, and of such surrounding circumstances as are disclosed in the suit, I have come to the conclusion that I ought to hold that the defendant has succeeded in proving his account of the trust. For I am clear that the only rival version, that asserted for the plaintiffs, must be rejected. This leaves me with the defendant's version alone, and in the circumstances already stated I must find that that version is established. If this finding be correct, it follows that the defendant is not answerable on the present suit of the plaintiffs. The same result ought, I think, to follow in the case of the second defendant, Kanji, despite his so-called admission in his letter Exhibit C. For I do not believe that admission to be true: I believe it to have been a false statement made solely to prejudice the first defendant, and I adopt Kanji's contrary statement in his deposition, namely, that "Vaji said she gave the notes for the benefit of Varjivan and Parbhu." The suggestion that the

plaintiffs would be entitled to one-half of the fund by reason of the death of Varjivan appears to me unsustainable, inasmuch as Varjivan has admittedly left a widow.

The above finding of fact suffices for the disposal of the suit, and any further observations must necessarily be *obiter*. Such observations I make with reluctance, but out of respect for the arguments which have been addressed to me on the only other point which has been argued I think it right briefly to state my present opinion upon the legal point which would arise if my finding on the facts were other than it is. If, that is to say, I had disbelieved the defendant's story as to a trust for Varjivan and Parbhu, then the question would be whether this suit is within the period allowed by the law of limitation. In the case supposed, since the plaintiffs' account of the trust is certainly not made out, the result would be that the object of the trust would be uncertain or undiscoverable from the circumstance that the Court has not before it for its guidance the whole intention of the settlor in reference to the object. There would therefore be admittedly a resulting trust in favour of the settlor, Vaji, or her legal representatives, *cf.* sections 81 and 83 of the Indian Trusts Act. Then arises the question which has been much debated before me, namely, would such a trust suffice to save the suit under section 10 of the Limitation Act? Now this section saves any suit for the purpose of following trust property in the hands of trustees where they have become vested with the property "for any specific purpose." In *Vundravandas* v. *Cursondas*[1], Farran, C. J., and Tyabji, J., have held that the "trust for a specific purpose" of the Indian Act means the same thing as the "express trust" of the English law: this view is binding on me, and has not been questioned in argument. It will suffice to say, therefore, that the words of the Indian Act are certainly not wider than those of the English statute. I must take it that the phrases are synonymous, but I think it important to call attention to the language held by Garth, C. J., in *Kherodemoney Dossee* v. *Doorgamoney Dossee*[2]; there, after expressing a wish that the scope of the section had

(1) (1897) 21 Bom. 646.

(2) (1878) 4 Cal. 455, p. 465

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been considerably extended, the learned Chief Justice goes on to say that the words refer to cases where a trust has been "created expressly for some specific purpose or object, and property has become vested in a trustee upon such trust (either from such person having been originally named as trustee, or having become so subsequently by operation of law)." And as to the limits of the section the Chief Justice continues: "It seems to me that the language of the section is specially framed so as to exclude implied trusts, or such trusts as the law would infer merely from the existence of particular facts or fiduciary relations." At first sight, no doubt, the distinction here drawn would seem to assist the plaintiffs, for it might be said that the defendants became their trustees by operation of law. It is true that on the facts I am supposing, the defendants, who are the present trustees, are also the original trustees expressly appointed; but they are not now trustees upon the original trust. What that original trust was, we know not; but it was not this trust, for this trust originates solely by virtue of a legal implication. Unfortunately we have here no instrument of trust, and the assumption is that the object of the trust is unknown; but none the less the plaintiffs' title rests upon a resulting trust implied by the law, and is *pro tanto* different from and opposed to the terms of the trust. It is here, I think, that this case is distinguishable both from *Kherodemoney's* case and from *Salter* v. *Cavanagh*[1], which appears to be the foundation of the doctrine invoked for the plaintiffs and which proceeded upon the principle that a trust in favour of the next of kin was to be inferred from the particular instrument then before the Court. That case was followed in *Patrick* v. *Simpson*[2], but there again the *ratio decidendi* was that the Court was able to find on the face of the will an express trust in favour of the heir at law. The same principle has been followed in this Court in *Cowasji N. Pochkhanawalla* v. *R. D. Setna*[3], and in the Appeal Court's decision in *Vundravandas* v. *Oursondas*[4]. Reference may also be made, in elucidation of the more general

(1) (1838) 1 Dr. & Wal. 668.
(2) (1889) 24 Q. B. D. 128.
(3) (1895) 20 Bom. 511.
(4) (1897) 21 Bom. 646.

principles, to *Rochefoucauld* v. *Boustead*[1], and *Soar* v. *Ashwell*[2]. This latter case seems to carry the principle as far as it has hitherto been carried, but I do not think that it bears directly upon the point now before me. In that case the solicitor Ashwell was held to be an express trustee because he had received the money in a fiduciary relation and as trustee for his clients, the trustees under the will of Joseph Soar; there was no question of a resulting trust but the relation of trustee and *cestui que trust* was constituted directly by the acts and position of the parties. On the other hand what I have to consider is the limits of the doctrine where the relation between trustee and *cestui que trust* is established *dehors* the terms of the original trust and by virtue only of a certain implication of law. Those limits seem to me to be illustrated by the decision of Mr. Justice Kekewich in *Churcher* v. *Martin*[3], where the learned Judge, after observing upon *Lister* v. *Pickford*[4] that the possession of trustees is undoubtedly the possession of their *cestui que trust*, remarks that the doctrine, though indisputable, is inapplicable to the case before him inasmuch as the possession of trustees cannot enure to the benefit of him whose title was intended to be defeated by the deed which created the trust. "How," he asks, "can the grantor be their *cestui que trust?* Because, it is urged, there is an express trust in his favour, an express trust necessarily resulting from the failure of those declared. It would suffice to reply that such a resulting trust is implied by law, and that, whatever else it may be, it is not an express trust." In the same way here the trust upon which the plaintiffs sue is a resulting trust, which comes into existence precisely because the trusts declared, whatever they may be, cannot take effect. And here there is no such support for the plaintiffs as the Court was able to discover in *Salter* v. *Cavanagh*[5]; not only is there nothing to suggest an inference in favour of an intention to create a trust for the heirs, but the claim of the heirs assumes the defeat of the original trust as a condition precedent. I should conclude, therefore, that while the trustees held on behalf of the heirs by virtue of the implication of law, they were not

(1) [1897] 1 Ch. 196.
(2) [1893] 2 Q. B. 390.
(3) (1889) 42 Ch. D. 312 at p. 318.
(4) (1865) 34 Beav. 576.
(5) (1838) 1 Dr. & Wal. 668.

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holding upon a "trust for a specific purpose" within the meaning of section 10 of the Limitation Act. The plaintiffs' claim is grounded on the failure of the original trusts, and in my opinion it is those original trusts which are the "trust for a specific purpose" contemplated by the section. This opinion receives support from analogous decisions in *Manickavelu Mudali* v. *Arbuthnot & Co.*[1] and *Muhammad Habibullah Khan* v. *Safdar Husain Khan*[2] and though *Churcher* v. *Martin*[3] is the only case of its kind I can find in England, the principle of that ruling has been followed, as I have shown, in the Courts of India, and has also been accepted and adopted in America: see p. 1205 of Vol. XV of the American and English Encyclopœdia of Law (2nd edn.) and the cases there cited.

But the Advocate General has sought to distinguish between trusts which result because the original trust was bad in law and trusts which result merely because the original trust cannot be ascertained: the former, it is admitted, would not be express trusts, but it is contended that the latter should be regarded as express trusts, the law supplying the specific purpose which is not otherwise ascertainable. Clearly this is a visible distinction, but I think it is a distinction without substance inasmuch as it does not appear to me to be countenanced either by the words of the section or by the effect of the cases which I have mentioned. A resulting trust in such a case may or may not be to some extent identical with the trust created by the settlor: of that we know nothing, and the region of speculation must be avoided. The thing is a resulting trust, and, as such, is other than, that is, different from, the trust which the settlor may have declared. Whether the resulting trust flow from the invalidity of the declared trust or from the impossibility of ascertaining the declared trust, it is, I think, equally a substituted trust, that is, a trust which is created by the law *faut de mieux*, that is, as the best arrangement which the law regards as possible in difficult circumstances. That, I take it, is the general rule, and if further illustration be desired, it may be found in *Dickenson* v. *Teasdale*[4] where Lord Westbury C. said: "The words 'express

(1) (1882) 4 Mad. 404.
(2) (1881) 7 All. 25.
(3) (1889) 42 Ch. D. 312.
(4) (1862) 1 D. J. & S. 52 at p. 59.

trust' in the statute are used by way of opposition to trusts arising by implication, trusts resulting or trusts by operation of law." And this general rule appears to me to be affected by *Salter* v. *Cavanagh*[1] and *Patrick* v. *Simpson*[2] to this extent only, that where you have a trust covering the whole estate, and the bequests do not exhaust the estate, the trustees are express trustees of the residue for the heir of the testator—a modification which, I take it, is collected or inferred from the terms of the instrument itself. But I can find no sufficient reason for extending this modification of the rule to the different case where, as here, the Court has before it no instrument at all, nothing but a trust of which the terms are undiscoverable. In the former case there is the instrument itself which suggests the claim of the heir; but in such a case as this there is nothing but a trust which is artificially created by an implication of law irrespective of the unknown intentions of the settlor. I am consequently of opinion that this argument also fails, and that the trust here is outside the scope of section 10.

The result is that the plaintiffs' suit must be dismissed with costs. The Receiver and the injunction are discharged.

Suit dismissed.

Attorneys for plaintiffs: *Messrs. Edgelow, Gulabchand, Wadia & Co.*

Attorneys for defendants: *Messrs. Tyabji, Dayabhai & Co*

B. N. L.

(1) (1838) 1 Dr. & Wal. 668. (2) (1889) 24 Q. B. D. 128.