Income and capital—transfer of beneficial interest in capital.

On 4.3.88 the claimant received a payment from his former employer of £12,849.31 on being made redundant. When claiming income support on 1.6.88 he stated that he had transferred £6,000 to his son who was studying abroad, this sum being held in a high interest bank account, in the claimant's name. After using various smaller amounts the claimant's total capital at the date of the claim amounted to £7,136.73 The appeal tribunal upheld the adjudication officer's decision that income support was not payable because the claimant was to be treated as still possessing the capital allegedly transferred to his son. The claimant appealed to the Commissioner on the ground that the sum standing in the high interest account was held on trust by him for his son beneficially and therefore did not form part of the claimant's capital.

Held that.

1. although earmarked for his son's education, there was nothing to suggest that the claimant had renounced ownership and control of the sum of £6,000,

2. no one should be treated as having voluntarily given up a proprietary interest in property in the absence of the clearest indication that that was his intention,

3. in the present case, there was no declaration of trust nor a gift. The claimant retained his proprietary interest in the money and it was always open to him to dispose of it as he wished.

The appeal was dismissed.

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 5 September 1988 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 5 September 1988. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant, who was not present, was represented by Mr G Harbottle from the Free Representation Unit, whilst the adjudication officer appeared by Mr N Butt of the Solicitor's Office of the Departments of Health and Social Security.

3. On 1 June 1988 a BI claim form was received from the claimant at the local office. The claimant declared that he had savings of £1,800. On 3 June 1988 enquiries were made by telephone of the claimant's ex-employer by an officer of the Department, and it was established that on 4 March 1988 the claimant had received the sum of £12,849.31, made up of redundancy pay of £8,769.23, a payment in lieu of notice of £4,384.61, and four days pay amounting to £340.63 less a deduction of £645.16. On form 1164, dated 7 June 1988, the claimant stated that he had transferred £6,000 to his son, Mustapha who was studying in Montpellier, France to be a doctor. He also explained how smaller amounts of his capital had been used. On 9 June 1988 the adjudication officer decided that the claimant had divested himself of capital in order to obtain income support, and that accordingly he should be regarded as still possessed of it. The notional capital exceeded the statutory maximum, and as a result the claimant was not entitled to income support.

4. On 29 June 1988 the claimant appealed against that decision. The claimant provided documentary evidence of the extent of his capital. This showed that he had at Lloyds Bank in an account in the name of himself and his wife a balance of £1,679.83 as at 1 June 1988, and in a further account in his own name—a High Interest Rate Account—£5,412.58 as at 1 June 1988 and £5,124.69 as at 10 June 1988. The claimant also had an account at the Halifax Building Society, which showed as at 18 April 1988 a balance of £44.32. In the light of this information, the adjudication officer on 21 July 1988 reviewed his original decision, and revised it by declaring that income

support was not payable because the claimant still possessed capital which exceeded the prescribed level. It would appear that the parties and the tribunal treated the appeal as being against this revised decision. In the event, the tribunal upheld the adjudication officer, giving the following reasons for their decision:-

> "It is not in dispute that the appellant on the date of claim had a total of £7,146.09 [the true figure would appear to be £7,136.73, but nothing turns on it] deposited in 2 separated bank accounts and the Halifax Building Society. The money does not fall to be disregarded as it does not fall within any of the provisions of Schedule 10.
>
> Whilst sympathising with the appellant's desire to continue to finance his son's education in France, nevertheless this money in his account is therefore possessed by him, and is available to him. There is no declaration of trust and the money is not held on express trust for his son who has his own bank account in France....
>
> As the appellant's capital resources calculated in accordance with Reg 46 of the General Regs exceed the prescribed amount of £6,000, Income support is not payable. Section 22(6) of the Act."

5. Manifestly, the crucial issue in this case was whether or not the sum standing in the High Interest Rate Account belonged beneficially to the claimant or was held on trust by him for his son. Mr Harbottle contended that, although the money stood in the name of the claimant, nevertheless he held it on trust for his son beneficially. Therefore it did not constitute any part of the claimant's resources. It is not in dispute that there was no formal Deed of Trust, or, for that matter, any other document unequivocally indicating that the money was held on trust. However, in Mr Harbottle's submission, such a formal or written declaration was not necessary; it was enough if the claimant evinced by his words or deeds that he had renounced all beneficial interest in the money and was holding it on behalf of his son. Mr Harbottle drew to my attention certain authorities. He first cited *Heartley v. Nicholson* (1875) LR 19 Eq 233, where at page 242 Bacon V-C. said as follows:-

> "It remains, therefore, only to be considered whether or not the testator did in his lifetime constitute himself such trustee. It is not necessary that the declaration of a trust should be in terms explicit. But what I take the law to require is, that the donor should have evinced by acts which admit of no other interpretation, that he himself had ceased to be, and that some other person had become, the beneficial owner of the subject of the gift or transfer, and that such legal right to it, if any, as he retained is held by him in trust for the donee."

Mr Harbottle suggested that perhaps this expression of the law was rather too strict, in that other authorities suggested that the criterion "acts which admit of no other interpretation" put the matter somewhat too high. Thus in *Paul v. Constance* [1977] 1 All ER 195 Scarman L. J. (as he then was) was less restrictive when he observed at page 198h:-

> " ... 'counsel for the defendant ... was able to extract from [the cases he cited] this principle: that there must be a clear declaration of trust, and that means there must be clear evidence from what is said or done of an intention to create a trust or, as counsel for the defendant put it, 'an intention to dispose of a property or a fund so that somebody else to the exclusion of the disponent acquires the beneficial interest in it'."

It is clear that Scarman L. J. accepted this approach. Mr Harbottle also referred me to *IRC v. McMullen* [1980] 1 All ER 884 and *Gee v. Liddell* [1866] 35 Beav, 621 but these took the matter no further as far as explaining what constitutes a declaration of trust.

6. Mr. Harbottle cited various matters of fact, on the basis of which he contended the tribunal should have found that the money in question was held on trust for the claimant. He submitted as follows:-

"(a) The appellant had been transferring £309 monthly to his son since 1985.

(b) The Lloyd's High Interest Account was separate from the appellant's other (domestic) accounts, and was specifically established for the benefit of his son.

(c) The appellant, being fearful of not obtaining future employment, was anxious that his son's medical studies should not be interrupted.

(d) The appellant did not establish an account in his son's name or pay the money into his son's existing account because he wished to ensure that his son did not misuse it.

(e) The appellant stated on a number of occasions that the money was solely for the benefit of his son.

(f) The appellant did not use the money for the benefit of anyone but his son."

However, the difficulty that confronted Mr. Harbottle was that there was nothing in any of the above facts to show that the claimant unequivocally renounced beneficial interest in the sum in the High Interest Rate Account. Clearly, he earmarked it for his son's education, but there was nothing to suggest that he had renounced ownership and control of it. It was still in his own name, and he had executed no document and had made no oral statement indicating that the beneficial interest had passed, and that it was no longer open to him to apply the money for some other purpose than that of his son's education. Manifestly, the tribunal were not satisfied that there had been a declaration of trust, and I think they were entitled to take that view.

7. I consider that I should be very slow to conclude that a person had in effect given away his property, either by direct transfer or by declaration of trust, in the absence of a clear indication to that effect. This is particularly the case with non-sophisticated people. I think the average father who had earmarked funds for his son's education, and had stated that they were to be so used, would be somewhat startled if he were told that the effect of this was that he had renounced all entitlement to the property in question. No one should be treated as having voluntarily given up a proprietary interest in property in the absence of the clearest indication that that was his intention. In the present case, I do not see how it could be said, on the evidence, that the claimant had ever indicated such an intention, and I think the tribunal reached the only conclusion they could, namely that there was no declaration of trust, either explicit or implicit.

8. Mr. Butt, in submitting that no trust had been established, put the matter this way. He said that it was clear on the evidence that the claimant was minded to make a gift to his son, but that, on the advice of the bank, he had thought it best to leave the money in his own name in a separate account, so as to ensure full control thereof and prevent its possible dissipation by his son for purposes other than the purely educational. Mr. Butt contended that the effect of this transaction was that the original intended gift was left as an imperfect gift, and a proprietary interest was retained by the claimant. Moreover, a declaration of trust could not be inferred. In this connection it is perhaps helpful to refer to *Richards v. Delbridge* (1874) LR 18 Eq.11, of which Scarman L. J. in *Paul v. Constance* said at page 198 d and e:-

> "... the facts were that a Mr. Richards, who employed a member of his family in his business, was minded to give the business to the young man. He evidenced his intention to make this gift by endorsing on the lease of the business premises a short memorandum to the effect that:
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> > 'This deed [i.e. the deed of leasehold] and all thereto belonging I give to *Edward*....[the boy] from this time forth with all the stock in trade.'
>
> Jessel MR, who decided the case, said that there was in that case the intention to make a gift, but the gift failed because it was imperfect; and he refused from the circumstances of the imperfect gift to draw the inference of the existence of a declaration of trust or the intention to create one."

I think this principle applies equally to the present case.

9. Accordingly, I am satisfied that there was no declaration of trust nor, for that matter, a gift. The claimant retained his proprietary interest in the money, and it was always open to him to dispose of it as he wished. I see nothing wrong with the tribunal's conclusion.

10. Of course, had the claimant passed the beneficial interest in the sum in the High Interest Rate Account to the son, the question would then have arisen as to whether or not he had divested himself of property for the purposes of obtaining income support. Mr. Butt suggested that this would have been the case, but Mr. Harbottle contended that this aspect of the case had never been properly enquired into by the tribunal, and that no inference could be fairly made. In the event, I do not have to determine this matter, for I am satisfied, for the reasons given above, that the claimant at all times retained his beneficial interest in the relevant sum.

11. It follows that the claimant had resources in excess of the statutory maximum and was not entitled to income support.

12. I have no hesitation in dismissing this appeal.

Commissioner's File No: CIS 57/1989

(Signed) D. G. Rice
Commissioner