

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 171 OF 1973

BETWEEN BAILLIE REALTY CORPORATION LTD. PLAINTIFF
AND ETHLYN BAILLIE DEFENDANT

CLAIM: (a) A Declaration of Trust

(b) For the transfer to the Plaintiff Company of certain properties held jointly in the names of defendant Ethlyn Baillie and her former husband Laurel Egbert Baillie and of one property held singly in the name of defendant only.

The details of the above claim (a) and (b) are set out in the Statement of Claim and other pleadings.

Mr. David Muirhead Q.C. and Dr. Adolph Edwards for the Plaintiff Company.

Mr. Clinton Hinds and Mrs. Elizabeth Hinds for the Defendant.

Heard: October 23, 24, 25, 1978, March 26 and 28, 1979 (~~27-30-79~~ no hearing) July 16, 17, 18, 19, 20, 1979, October 29, 30, 31, & November 1, 1979, March 3, 4, 5, 1980 & June 9, 10, 1980.

J U D G M E N T

CHAMBERS J.:

This is yet another lengthy case, lengthy no doubt as it involved examination of the accounts of the company, minutes and annual returns to the Registrar of Companies. However the case finally rested on simple believable facts and equitable principles.

This case was brought by the Plaintiff a limited liability company namely, the Baillie Realty Corporation Ltd. against the defendant Ethlyn Baillie, for a declaration of trust, to wit:-

That certain properties registered in the joint names of the defendant and her former husband Mr. Laurel Egbert Baillie, the Managing Director of the Plaintiff Company, and also in relation to one property registered in the defendant Ethlyn Baillie's name only, as respectively belonging to the Plaintiff Company on a resulting trust, as according

to the Managing Director of the Plaintiff Company Mr. Laurel E. Baillie, the purchase monies for the various purchases were provided by the Plaintiff Company, and the titles placed in the joint names of Mr. Laurel E. Baillie and Ethlyn Baillie in two instances, and in Mrs. Baillie's name only in one instance as a matter of convenience.

At that time both Mr. Laurel Baillie and Mrs. Ethlyn Baillie were man and wife and Mr. Laurel Baillie says that both the Plaintiff Company and the defendant and himself agreed to such arrangement and he gives the reasons therefor.

It should be noted that when such stated arrangement was allegedly agreed to with the company, that agreement was made with the directors of the Plaintiff Company, and the two directors of the Plaintiff Company who agreed to that arrangement were Mr. Laurel E. Baillie and Mrs. Ethlyn Baillie only.

What I do accept as the believable facts, as gathered from the evidence given by Mr. Laurel E. Baillie - the Managing Director of the Plaintiff Company both in his evidence in chief, and his evidence under cross examination, apart from what evidence that was presented by the defendant Ethlyn Baillie are:-

1. The forerunner of the Plaintiff Company was first incorporated on the 4th of March 1960 in the name of Baillie Brothers Ltd., from a partnership previously informally established by Mr. and Mrs. Laurel E. Baillie as they then were, but in the year 1962 the name of the company ^{was} changed to Baillie Realty Corporation Ltd., and which name ~~was~~ finally entered in the Register of Companies on the 19th July 1967. Certificate of Registration in evidence Exhibit 3.

Both Mr. Laurel Baillie and the defendant Ethlyn Baillie signed as subscribers to the Memorandum of Association when the company was incorporated.

The first directors were Mr. Laurel E. Baillie, Mr. Joseph Donald Baillie, and the defendant Mrs. Ethlyn Sybil Baillie. Mrs. Ethlyn Baillie was also secretary of the company.

Mrs. Ethlyn Baillie remained the second largest shareholder in the company from its inception up to the present time though she resigned as a Director and Secretary on the 13th December 1968 by letter Exhibit 4.

When the company was formed, Mr. Laurel E. Baillie had 810 shares, though his evidence on oath inadvertently gave 610 as his shares, Mrs. Ethlyn S. Baillie had 420 shares while Mr. Joseph D. Baillie had 350 shares and his wife Mrs. Joseph Baillie had 100 shares. All these shares were of a value of £1 each.

There were then three other shareholders holding one share each. These one-share, shareholders were Mr. Standford Baillie, Mr. Cebert Baillie and Mrs. Hilary MacCooke.

Mr. Laurel Baillie in his evidence stated that the main business of the company was to list and sell real estate on a commission basis. Purchase and sell real estate and collect rents on a commission basis. He also stated in evidence that Mrs. Ethlyn Baillie the defendant did the office work and interviewed clients that came to the Office, did the secretarial work, kept the books of the company and general administration.

That he Mr. Laurel Baillie did the outdoor work, such as selling properties, repairing and building houses, supervising subdivisions and building roads.

Mr. Laurel Baillie further said under cross examination that the business of the company when it was started, or set up in 1958 until 1960 was only able to support his family from the commission he made less expenses. That he did not think that Mrs. Baillie was getting any pay during that period though she worked the same hours as he did in the business and that from the formation of the company to 1968 when the defendant Mrs. Ethlyn Baillie left the company she made a significant contribution to the company.

Of course Mrs. Ethlyn Baillie remained the holder of the second largest amount of the shares even after her resignation from

the company, subject to the matter that I shall deal with later in regard to a resolution passed by the company on the 12th June 1973 in the absence of Mrs. Ethlyn Baillie, increasing the shares of both Mr. Stanford Baillie and Mr. Cebert Baillie from two shares each of \$1 each to a position where these two last named shareholders held shares far in excess of those held by Mrs. Ethlyn Baillie.

Now let us look at the history of the present Plaintiff Company Baillie Realty Corporation Ltd. as gathered from the evidence. Mr. Laurel Baillie was working at Motta's Garage and left that job about 1958 after giving to his employer an oral or verbal notice, as says he, he was at that stage selling Real Estate for Messrs. Derick Chang and Associates.

At the time of Mr. Laurel Baillie's resignation from Motta's Garage, he and Mrs. Ethlyn Baillie, his then wife, were living at 19 Ellis Avenue, and Mr. Baillie says that he had the idea of establishing the Baillie Realty Corporation.

Mr. Laurel Baillie further stated that his and the defendant's intention was to establish a partnership and operate that partnership from premises at No. 1 South Camp Road, and which they did in partnership prior to the establishment of the Baillie Brothers Company in 1960. The assets of the husband and wife Baillie Realty Partnership, according to Mr. Laurel Baillie the Managing Director of the Plaintiff Company were divided in an agreed proportion and which represented their assets in the new Baillie Brothers Company.

Mr. Laurel Baillie getting 810 shares, Mrs. Ethlyn Baillie the defendant getting 420 shares and Mr. J.D. Baillie coming in with 350 shares.

One should note that Mr. Laurel Baillie stated that on the formation of the Real Estate partnership in 1958 between the defendant his former wife Ethlyn Baillie and himself, that defendant never made any financial contributions to the partnership, yet by 1960 when the assets of ~~that~~ partnership were used to form the Baillie Brothers

Company, Mrs. Baillie was able to be allotted 420 shares of £1 each, and he Mr. Laurel Baillie 810 similar shares. A clear indication of their relationship in the business.

Of course Mrs. Ethlyn Baillie the defendant said the partnership started in 1958 when Mr. Laurel Baillie asked her to resign her job at K.S. Kahela and join him in the venture and which she did and that in order to start the business she gave Mr. Baillie her then husband £20 which she drew from a "partner" at the time she got her draw of £20. Mrs. Ethlyn Baillie said she gave him the £20 as a deposit on furniture and office equipment to set up the office. If Mrs. Baillie is believed on this point and which I do, surely, and contrary to what Mr. Laurel Baillie has said, the defendant Mrs. Baillie would have made a financial contribution to the partnership.

Mrs. Baillie then said that they operated this business at 1 South Camp Road for approximately one year more or less and then they had to leave 1 South Camp Road after being given notice by their landlord, a Mr. Campbell. That after that they went to live at No. 6 Dunrobin Avenue from which place she and Mr. Baillie continued to operate the Real Estate business. That she became pregnant in 1959 and so she stayed home and ran the house and the business while Mr. Baillie did the field work.

That in early 1960 Mr. Laurel Baillie's brother came into Kingston to live with them at 6 Dunrobin Avenue, and the two brothers discussed Real Estate business and after this discussion the Baillie Brothers Ltd. business was formed, and the Baillie Realty Corporation was dissolved. Mrs. Baillie also stated that the newly formed Baillie Brothers Ltd. Company carried on a fairly successful business at 82 East St. Kingston for approximately 2 years and that during that period she Mrs. Ethlyn Baillie was secretary to that company and also kept the books. She also told us that the four main persons in that business were Mr. Laurel Baillie and herself and Mr. J.D. Baillie and his wife Gloria Baillie and that Baillie Brothers Ltd was taken over

by Baillie Realty Corporation Ltd., and Mr. Laurel Baillie severed connection with the Baillie Brothers Ltd. Company and formed their own Company known as Baillie Realty Corporation Ltd. and carried on business at No. 84 Church Street, Kingston, while Mr. J. D. Baillie and his wife Gloria carried on business at 82 East Street, in a company known as J.D. Baillie Realty Co.

That the new company Baillie Realty Corporation Ltd. at that stage in 1962 when it was formed had two main shareholders Mr. Laurel E. Baillie and herself, and as the memorandum for this new company required 7 shareholders they brought in other shareholders. That she the defendant, was the secretary, as well as a Director of this company, while her then husband Mr. Laurel E. Baillie was the Managing Director.

Now continuing to look on the evidence, one finds that the Share Register showing the allocation of shares since 1960, Exhibit 37 was produced. This book was prepared by auditors, from notes prepared by a previous auditor, Mr. C. B. Lewis and which notes were not available, and neither was Mr. Lewis called to give evidence.

Mr. Laurel Baillie the Managing Director of the Plaintiff Company stated when giving evidence on the 28th March 1979 that the share capital of the Plaintiff Company was 10,000 shares of £1 each or now 20,000 shares of \$1 each, of which he on that date, 28th March 1979, owned 19,156 shares and to quote from his evidence on that date the 28th March 1979. "At this moment I own 19,000 plus shares out of the 20,000.

It should be noted that the defendant Mrs. Ethlyn Baillie's shares remained static at 840 shares from the time the assets of the Baillie - husband and wife's partnership were transferred to the Baillie Brothers Company in 1960 until the present time when the new company the plaintiff in this action is now known as the Baillie Realty Corporation Ltd. while Mr. Laurel Baillie's share in the Plaintiff Company rose from 1620 shares to either 19,156 shares as

stated by Mr. Laurel Baillie, on the 28th March 1979 or to 12,000 shares, the corrected figure given by him on the 16th July 1979 as being the correct amount of shares held by him, as says he, the figure of 19,156 as stated by him Mr. Laurel Baillie on the 28th March 1979 in his evidence was a mistake.

That the correct figure of 12,000 shares is, as shown in a resolution of the company dated 12th June 1973. In any event, whichever figure is finally accepted as the correct amount of shares now held by Mr. Laurel Baillie, his share holding would have increased from 1620 shares of £1 each in 1960 by an amount of either 17,536 shares of £1 each or 10,380 shares of £1 each, whichever figure as given by Mr. Laurel Baillie is accepted as correct, while the defendant Mrs. Ethlyn Baillie's shares remained at a mere 840 shares of £1 each in a situation where the total shares in the Plaintiff Company rose from 3,400 to 20,000.

Mr. Laurel Baillie further stated, when giving evidence on the 28th March 1979, that apart from himself and the defendant holding 19,156 and 840 shares respectively each, there were now (on 28th March 1979) only two other shareholders in the company, namely Cebert and Stanley Baillie each owning two (2) one dollar shares each, and that the other shareholders ceased holding shares in the company from 1960.

Now these other shareholders in the company who it is said by Mr. Laurel Baillie on the 28th of March 1979 ceased holding shares in the company from 1960, were Joseph Baillie and his wife Gloria Baillie who owned respectively, 350 and 100 shares of £1 each. The pound sterling had not at that time been converted to the dollar.

It would also seem from the evidence given by Mr. Laurel Baillie, the Managing Director of the Plaintiff Company, Baillie Realty Corporation Ltd., that these two last mentioned shareholders Mr. and Mrs. Joseph Baillie who ceased holding shares in the company had joined the company in that very year 1960 with 350 and 100 shares of £1 each respectively.

Of course the defendant Mrs. Ethlyn Baillie's evidence is to the effect that Mr. J. D. Baillie, a brother of her then husband came

into Kingston from the country and came to live with herself and her then husband at 6 Dunrobin Avenue in 1959 and that after a discussion about Real Estate business between the two brothers the Baillie Brothers Ltd. business was formed in 1960 and carried on business at 82 East Street, and the Baillie Realty Corporation was dissolved.

That when the Baillie Brothers Ltd. Company was formed in 1960 and operated at 82 East Street it consisted of Mr. Laurel Baillie, Mr. J.D. Baillie and herself and that she the defendant was secretary to that company and was responsible for keeping the books, as well as seeing clients, doing sales and dealing with correspondence with both local and overseas clients. That both herself and Mrs. Gloria Baillie were signatories to the articles and Memorandum of Association of the company known as Baillie Brothers Ltd. and that between 1960 when the Baillie Brothers Ltd. company was formed and 1962, that company was fairly successful but that in that same year 1962 the Baillie Brothers Ltd. company was taken over by Baillie Realty Corporation Ltd. This would seem to be just a change of name as Mrs. Ethlyn Baillie went on to say in evidence that the main people in the business were Mr. L.E. Baillie, herself, Mr. J.D. Baillie the brother of L.E. Baillie and Mrs. Gloria Baillie the wife of Mr. J. D. Baillie.

Mrs. Baillie the defendant further said that after awhile the two Baillie brothers did not get along, so both she and her then husband severed connection with Mr. J. D. Baillie and his wife and operated the Baillie Realty Corporation at 84 Church Street leaving Mr. J.D. Baillie and his wife Gloria at 82 East Street where they formed their own company known as J. D. Baillie Realty Co.

One should note that the severance from the Baillie Realty Corporation Ltd. of Mr. J.D. Baillie and Mrs. Gloria Baillie according to Mrs. Ethlyn Baillie the defendant, took place in 1962 after the two brothers are alleged not to get along with each other while Mr. Laurel E. Baillie says that Mr. J.D. Baillie and Gloria Baillie ceased holding shares in the Baillie Realty Corporation Ltd.. from

1960. So what ever is the correct date in this regard it would seem that from either 1960 or 1962 Mr. Laurel E. Baillie and Mrs. Ethlyn Baillie were the two main shareholders and Directors of the Baillie Realty Corporation until December 1968 when Mrs. Ethlyn Baillie, though still the second largest shareholder in the company resigned both as secretary and as a director. Mrs. Ethlyn Baillie the defendant also said in chief that having regard to Exhibit 34 neither Mr. J.D. Baillie or Mrs. Gloria Baillie retained any financial interest in the new company Baillie Realty Corporation Ltd.

Now going back to the shareholdings, if one takes the figure of 19,156 shares as at first stated by Mr. Laurel Baillie on 28th March 1979 as being his correct share holding in the Plaintiff Company and add the shares said by him to be held by the other three shareholders mentioned by him, one would get 20,000 shares, which Mr. Laurel Baillie says is the total of the shares in the company at the present time:- The figures, that is if the first figures given by Mr. L.E. Baillie are accepted as correct are:-

Mr. Laurel E. Baillie	19,156 shares
Mrs. Ethlyn Baillie	840 shares
Mr. Ceibert Baillie	2 shares
Mr. Standford Baillie	<u>2 shares</u>
Total	20,000 shares

Which total of 20,000 shares of \$1 each is the exact total of the shares that Mr. Laurel Baillie says is in the Plaintiff Company at the present time.

Similarly if one takes the figure of 12,000 shares as being the correct amount of shares now held by Mr. Laurel Baillie, as stated by him on 16th July 1979, as corrected, and add the amount of shares stated by him in his evidence on 16th July 1979 to be held by the other shareholders, and as he further stated appears in the resolution made at a meeting at the auditor's office on 12th June 1973, one would still get the correct figure of 20,000 shares.

The shares held, as stated in the resolution of the 12th June 1973 are:-

Mr. Laurel Baillie	12,000 shares - An increase from 1620 shares held by him in 1960, or an increase from 2713 held by him in 1968.
Mr. Stanford Baillie	2,160 shares - An increase from 2 shares
Mr. Cebert Baillie	5,000 shares - An increase from 2 shares
Mrs. Ethlyn Baillie	840 shares No increase from 1960 to the present time.
Total	20,000 shares

Of course in regard to these two sets of figures which include the two shareholders Stanford Baillie and Cebert Baillie as given by Mr. Laurel Baillie, in which it is stated by him that these two shareholders' shares were respectively increased as a result of the Resolution passed on 12th June 1973 from 2 shares each to 2160 and 5,000 shares respectively, while Mrs. Ethlyn Baillie in her evidence in chief says that in 1962 after the split, Cebert Baillie was not in Jamaica, having left for Germany in either 1962 or 1963 and had no financial interest in the company and that she did not know if Stanford Baillie had any financial interest in the company, and that if he had, she would have known. Mrs. Baillie was Director and Secretary of the company up to December 1968 and further said in chief that in 1962 when her then husband Mr. L.E. Baillie set up the Baillie Realty Corporation at 84 Church Street, "only the both of us had financial interest in the company". Mrs. Ethlyn Baillie also said "My current account was kept in my name in Plaintiff Company's Books. Mr. Baillie also had a similar account. The company belonged to us, so whatever profit is made goes in the company's bank account and as we are the only two people in the company we draw from the profits which belong to us. It is one cheque book and both of us use it".

To follow up this evidence of Mrs. Ethlyn Baillie, that only the two of them had financial interest in the company and considering that evidence along with what Mr. Laurel E. Baillie

first said supra in relation to the amount of shares of the 20,000 shares that he first said he held, namely 19,156 one might consider whether these figures given at first by Mr. Laurel Baillie agrees with Mrs. Ethlyn Baillie's evidence that only the both of them held shares in the company.

Now going back to the alleged division of the shareholdings, if one was to take away Mrs. Ethlyn Baillie's shareholding from the 20,000 fully paid up shares, one would get the figure of 19,160 shares, which is just four (4) shares more than what Mr. Laurel Baillie said on the 28th of March 1979 were his shareholding in the Plaintiff Company, when at that time he said that Cebert Baillie and Standford Baillie owned between them four (4) shares - just nominal amounts to what was said to be held by the then husband and wife Mr. and Mrs. Laurel E. Baillie. On this evidence if accepted the company was virtually owned, at least financially, by two persons, the then husband and wife. Mrs. Ethlyn Baillie the defendant said ".... and as we are the only two people in the company we draw from the profits which belong to us".

Is this then the true position on 28th March 1979? or is it that approximately 4 years and 9 months earlier, that is, on the 12th June 1973 Cebert Baillie's shares were increased by \$4,998 from \$2 and Standford Baillie shares by \$2,158 from \$2 - by a re-allocation of shares which were re-allocated at a meeting at the auditor's office at 2 Ripon Road on 12th June 1973 and at that in the absence of the then second largest shareholder in the Plaintiff's Company Mrs. Ethlyn Baillie and at that without any notification to her of the holding of such an important meeting or indeed any notification to any other shareholder, even though there was a re-allocation to two shareholders namely Cebert and Standford Baillie of shares which increased their respective shareholdings from \$2 each to \$5,000 and \$2,160 each respectively.

Before stating what I accept as the truth in regard to

whether Mr. Laurel Baillie owns 19,156 shares out of 20,000 or only 12,000 of that 20,000 shares, I must now ask and wonder what has happened to the shares of all the other shareholders who ceased holding shares in the Plaintiff Company. Well that explanation came from the evidence of Mr. Laurel Baillie the Managing Director of the Plaintiff Company himself, when he said that the shares of Mr. and Mrs. Joseph D. Baillie amounting to 700 and 100 one pound (£1) shares each were in 1966 transferred to him without any formality, and that the other minor shares of Mrs. Hilary Cooke was in 1969 transferred to him, again without formality. Of course the defendant Mrs. Ethlyn Baillie a Director and former Secretary of the Plaintiff Company up to December 1968 said that she knew of Hilary Mc. D. Cooke and to quote.

" I am not sure if she was secretary to Mr. C. B. Lewis - she could be, but she had no shares in the Plaintiff Company".

If, as says Mr. Laurel Baillie, Mrs. Cooke's minor shares were transferred to him in 1969 and the defendant Ethlyn Baillie says that Mrs. Cooke had no shares in the company up to December 1968, one wonders when those shares were acquired after December 1968 so as to be transferred to Mr. Laurel E. Baillie in 1969, if the defendant's evidence is believed.

Mr. Laurel Baillie also on 28th March 1969 when giving evidence stated that he knew that Mrs. Ethlyn Baillie was the next largest shareholder to him, and that no notices were sent to her to attend general meetings and to quote what Mr. Laurel Baillie said on 28th March 1979. "I suppose it was an oversight why no notices were sent to her from 1968 to 1979. I personally did not want her to attend any of these meetings of the company".

I can only comment that this seems to be an oversight on 11 occasions for 11 consecutive years.

Again in regard to the re-allocation of shares on the 12th June 1973, Mr. Laurel Baillie the Managing Director of the Plaintiff Company says that no notice was sent to the defendant Mrs. Baillie and quote:-

" I did not know where to find Mrs. Ethlyn Baillie so I sent her no notice".

Yet he admits under cross examination that since 1971 he has visited Mrs. Baillie at her home at Oakridge, at least to visit his children. Mr. Laurel Baillie also said "I did not know her address but I knew her house".

In this regard Mrs. Ethlyn Baillie has said in evidence that since she left Mr. Baillie he has been visiting the children at 23 East Oakridge and at No. 1 Highland Avenue, the home at which she lived prior to her removing to 23 East Oakridge. She also said that it is not true that Mr. Baillie didn't know where she lived.

One therefore wonders.

One must also wonder, in the face of Mr. Laurel Baillie saying, "Between 1966 and 1968 I gave Mrs. Baillie the privilege to draw what she wanted from the company, I had unqualified confidence in Mrs. Baillie", why is it that during that period Mr. Laurel Baillie's shareholding increased on two separate occasions from 810 shares of £1 - each to 1258 and 2713 shares of £1, while the shareholding of his trusted Secretary - Director - wife was not increased by even one share, but remained at the amount of £420 from 1960 until she left the company in December 1968, and thereafter in 1973 his Mr. Laurel Baillie's two brothers Cebert and Standford had their shares of only \$2 each respectively increased to \$5,000 and \$2,160 by some resolution.

On the 28th March 1979 Mr. Laurel Baillie in his evidence said "I am the big man in charge of the company". "Looking on the present share structure of the company, the company is owned almost entirely by me".

With this evidence alone in mind, especially in the last quote above, it would seem unreasonable to accept that the evidence

given by Mr. Laurel Baillie the Managing Director of the Plaintiff Company - Baillie Realty Corporation Ltd. on the 16th July 1979 that the share capital of the company was divided as follows:-

Laurel Baillie	12,000 shares
Mr. Stanford Baillie	2,160 shares
Mr. Cebert Baillie	5,000 shares
and Mrs. Ethlyn Baillie	840 shares

A total of 20,000 shares, and that he made a mistake when giving his evidence on the 28th March 1979.

I must say at this stage it seems more reasonable to me, on the history of this case, and the evidence given by Mr. Laurel Baillie on the 28th March 1979 that the shareholding of the company is as given by him then, and is as follows:-

Mr. Laurel Baillie	19,156 shares
Mrs. Ethlyn Baillie	840 shares
Mr. Cebert Baillie	2 shares
and Mr. Stanford Baillie	2 shares
Total	20,000 shares

In this regard Mrs. Ethlyn Baillie stated that neither Cebert nor Stanford Baillie had any financial interest in the company.

That when she and Mr. Laurel Baillie started to operate the business at 84 Church Street she was the company-secretary as well as a Director, and nobody else was involved with the Baillie Realty Corporation Ltd. That at this stage the main shareholders were just Mr. L.E. Baillie and herself. Mrs. Ethlyn Baillie further said that the minimum shareholders of the company according to the Memorandum, she thought was 7 persons, so, and quote "We brought in other shareholders".

I therefore accept that the evidence given in this regard on the 28th March 1979 by Mr. Laurel Baillie is the truth and that the alleged resolution passed at the auditors home at 2 Ripon Road on the 12th June 1973 does not contain the truth, that is if such resolution was in fact passed or existed.

Again on this history, my findings on this aspect aside, Mr. Laurel Baillie, the Managing Director of the Plaintiff Company, could not but admit in his evidence that on the present and true share structure of the company that the company is owned almost entirely by him. Surely he could not have said that, if the shareholdings in the company ^{as} is/stated by him on 16th July last that is on 16th July 1979, where he owned only 12,000 shares while the other 3 shareholders between them held 8000 shares.

Mr. Baillie on oath has also stated that Mrs. Baillie the defendant and who incidentally, as I find is the second largest shareholder in the Plaintiff Company, and as such second largest shareholder was never invited to any meetings of the company to discuss the auditors report as says Mr. Laurel Baillie, "I assume she would not be interested". Incidentally the Share Register of the Plaintiff Company Exhibit 37 shows one Mrs. Nellie Green as being the holder of one share in the company and one Mrs. Ann Sinclair as holding a similar share. Neither of these two persons, according to their evidence knew anything about such shares nor did any of them attend any meeting of the company as stated in the minutes of the company Exhibits 37 (a) to (e).

This present action was brought against Mrs. Ethlyn Baillie after the auditors report and it is noteworthy that Mr. Laurel Baillie the Managing Director of the Plaintiff's Company says that he cannot recall if a director's meeting was called to decide on the bringing of the present action.

One should note particularly, and observe that at that time when the action was filed namely the 9th February 1973 the only two other directors of the company, apart from Mr. Laurel Baillie and Mrs. Ethlyn Baillie owned between them only 4 shares being 2 \$1 shares each respectively.

Of course it was not until four months after the filing of this action that a resolution was alleged by Mr. Laurel Baillie to have been passed on the 12th June 1973 re-allocating and increasing

the shares of Cebert and Standford Baillie from \$2 each to \$5,000 and \$2,160 each respectively.

Mr. Laurel Baillie in his evidence also said that since 1968 the Plaintiff Company has held several general meetings and that Mrs. Ethlyn Baillie the defendant had never been given any notice of these meetings and that he personally did not want her to attend any of these meetings of the company. Why was it also, that neither of the two shareholders Mrs. Nellie Green and Mrs. Ann Sinclair not invited to any meetings of the company if they were bona fide shareholders.

Mr. Laurel Baillie the Managing Director of the Plaintiff Company also stated on oath that throughout the years the company has made profit, but has never declared any dividend. This gentleman's evidence on oath has shown that in the year 1973 the Plaintiff Company invested \$33,960 on mortgage with Clinton Hart and Company, and which mortgage has already been repaid and returned to the company.

This investment was done by Mr. Laurel Baillie in the absence of a resolution of the company and without informing or consulting the second largest shareholder, the defendant in this case, the former wife of the Managing Director.

Again from Mr. Laurel Baillie's evidence under cross examination, it is admitted that premises 86 Church Street was purchased by the Plaintiff Company while Mrs. Ethlyn Baillie a major shareholder was still a director and the secretary with the Plaintiff Company and still held that post after a three story building was built on those said premises as a result of, according to Mr. L.E. Baillie both himself and Mrs. Baillie the defendant "knocking heads together" and devised ways to raise money for the construction.

Further, that after Mrs. Ethlyn Baillie the defendant resigned as director-secretary but still holding her original shares in the company, the company's said property 86 Church Street was sold, at a profit to the company of \$48,981, without the defendant gaining

any benefit as shareholder, from that profit, whether in the way of dividends or by increased shares.

Having dealt briefly or lengthily according to ones opinion, with the history of the Plaintiff Company and its present shareholding of four shareholders, I shall now refer to the three premises the subject of this suit, and to the question whether the premises were purchased by the Plaintiff Company with company funds and the titles placed in the names of Mr. Laurel Baillie and Mrs. Baillie the then husband and wife, in two instances, and in one instance in Mrs. Ethlyn Baillie's name only, and whether it has resulted in a resulting trust in favour of the Plaintiff Company, or whether the various premises were purchased from monies received by the then husband and wife from their earnings from the profits of the company for the work they did in running the company, or whether the deposits or payments on any of these properties were made by Mrs. E. Baillie from loans she obtained from the company and/or otherwise. In doing this I shall refer to the evidence given by Mrs. Ethlyn Baillie especially under cross examination and I shall make some brief comments thereon. The following suggestion was put to Mrs. Baillie by Mr. David Muirhead Q.C. during his cross examination of her on behalf of the Plaintiff Company. "I suggest that all the properties listed in the Schedule of Properties on hand at cost in 1967 were firstly company property", and Mrs. Ethlyn Baillie in answer to this suggestion said: "Yes, the balance sheet says so".

Further, Mrs. Baillie under further cross examination said: "Looking on Schedule 1, Surplus from sale of properties (Schedule 8) \$3,401, having seen that I agree that the proceeds of sale of 94 Grange Hill was brought to account in the company's books in the year of its sale 1970".

The defendant further said that when the monay goes to the company she cannot say what happens to it - and to quote, defendant said "I can say the money went to the company". However she said that Mr. Baillie treated Lot 94 like other properties bought and sold, and

the monies brought to account in the company's books, but that he (Mr. Baillie) should not have treated it like that because this lot amongst the other three lots namely 317B, 78, and 16 Edinburgh Avenue were not intended for resale.

Mrs. Ethlyn Baillie further said that 317B and 78 have not always been treated in the identical way as Lot 94, that they have appeared in the same way in the company's books and that although they were treated in the same way, they were not intended for resale like the others.

Mrs. Ethlyn Baillie under further cross examination said that although these four lots were entered in the company's books, the intention was, according to a discussion between Mr. Laurel Egbert Baillie and herself, to treat them different from all the other lots.

That at that time neither she nor Mr. Baillie realized the necessity to declare a dividend first before acquiring personal property as they were the two major people in the company.

The Defendant Mrs. Baillie agreed that the company paid the mortgage on 317B and that it was entered in the company's books and that also in 1966 the Plaintiff Company spent money refurbishing 317B (Exhibit 16). That all three Grange Hill lots were treated in the same way.

Under further cross examination the defendant Mrs. Baillie said that she could not remember writing to anyone on behalf of the Plaintiff Company offering 317B for sale as it was a long time. She further said that when dealing with the Plaintiff Company she writes on behalf of the Plaintiff Company and that when she is dealing with her own personal affairs, all the letter writing was done there from the company, and that in such a case she does not sign on behalf of the company but that she uses the letter headed paper.

Mrs. Baillie also admitted that some of the properties that were registered in her name do not belong to her, and she mentioned properties in her name that belonged to her mother and which came from her father's estate. (But this is not admitted in

relation to any of the three properties subject of this action, so the burden rests on the Plaintiff Company to prove a resulting trust, especially as the three properties just referred to are not registered in the Plaintiff Company's name.

Mrs. Baillie the defendant also said that she never knew why properties for resale were put in individual names rather than in the name of the company, but she agreed to the suggestion that such a devise was agreed to be done to avoid income tax, and that it was done in a common consensus between Mr. L. E. Baillie and herself and that the other shareholders had nothing to do with it as says the defendant "the other shareholders were only on paper". The question of paper shareholding is also borne out by the evidence of Mrs. Nellie Green and Mrs. Ann Sinclair who said that they never even knew that they owned any shares.

In regard to Exhibit 49 which Mrs. Ethlyn Baillie admitted signing as secretary of the Plaintiff Company in connection with the holding of a meeting, Mrs. Baillie said that when the law requires certain matters to be put in writing, such is done although there was no meeting or proper meeting, but rather only a discussion of business between Mr. L.E. Baillie and herself. That there was no meeting held as stated in Exhibit 49. Further that no resolution was passed at any meeting of the company though a letter signed by her stated this. (in my opinion, this is an indication, if such is accepted, of the loose or casual manner in which Mr. L.E. Baillie the Managing Director of the Plaintiff Company and Mrs. Ethlyn Baillie the Secretary/Director of the said company operated the business of the company, and only putting matters in writing as a face card that the Company Law was being complied with).

Even the re-appointment of Directors in a manner required by the Articles of Association was not complied with, though such appointments or rather re-appointments were purported to be made.

Under further Cross Examination by Mr. David Muirhead Q.C.

the defendant Mrs. Ethlyn Baillie said that she does not agree that it was the company's money that was used to purchase 16 Edinburgh Avenue and that the expenditure on 16 Edinburgh Avenue that is recorded in the books of the Plaintiff Company and relating to its construction was from the profits of the company that Mr. Baillie and herself were entitled to, and that such expenses that were coming out of profit did not come from profit at the expense of other shareholders.

Mrs. Ethlyn Baillie however agreed with Mr. Muirhead that the profits belonged to all the shareholders but she went on to say that Mr. L.E. Baillie and herself were the primary people in the company and the others were just merely requirements of the Company Law - they were not interested in the company and that Joseph Baillie and Gloria Baillie had no interest in the company.

Mrs. Baillie then explained that although Mr. Joseph Baillie and Mrs. Gloria Baillie had 350 and 100 shares respectively in the company, they had no interest in the company because says Mrs. Baillie, they both pulled out from the company in 1962, and that although they did not take out their shares they might have got value for money though she could not recall.

It should be noted that 16 Edinburgh Avenue was acquired in 1964.

On this very matter Mr. Laurel E. Baillie said in Chief that No. 16 Edinburgh Avenue remained on the books of the company from 1965 until 1973 as an asset of the company, and under cross examination he said that since 1960 Joseph and Gloria Baillie as well as Hilary Cooke ceased being shareholders in the company.

I might well ask, why if 16 Edinburgh Avenue was acquired by the company, for the company, with the funds of the company from 1964 August or September, it never appeared in the books of the company or in its balance sheet for the year ending 1964 respectively. Of course Mr. David Muirhead in his submission submitted that the late

date was only a mistake. Was it for the reason as stated by the defendant that the intention was that 16 Edinburgh Avenue was to belong to the then husband and wife as joint tenants as appears on the title, and not to the company?

No. 16 Edinburgh Avenue first appeared in the balance sheet of the Plaintiff Company, for the year ending 1965 - see Exhibit 2. Possibly this is so, because the profits of the Plaintiff Company belonged to the two principal shareholders Mr. Laurel Egbert Baillie and Mrs. Ethlyn Baillie who together conducted the business of the company fully trusting each other until 1968 when Mrs. Baillie resigned as Director/Secretary of the company.

Mrs. Baillie was unable to say how the shares of Mr. Joseph Baillie and Mrs. Gloria Baillie were accounted for on their leaving the company in 1962, however under cross examination of Mr. Laurel Egbert Baillie by Mr. Clinton Hinds on the 28th March 1979, Mr. Laurel Egbert Baillie the Managing Director of the Plaintiff Company stated "The number of shares in the company were increased to 20,000 at \$1 each - at this moment I own 19,000 shares plus, out of the 20,000. There are now 4 shareholders in the company, - they are 1. Myself Laurel Baillie, 2. Mrs. Ethlyn Baillie, 3. Cebert Baillie and 4. Standford Baillie".

Mr. L. E. Baillie further said under cross examination on that day. "Since 1960 the following ceased to be shareholders in the company - Joseph Baillie, Gloria Baillie and Hilary Cooke, Cebert Baillie owns one share at £1, but now 2 shares at \$1 each, and the same applies to Standford Baillie the other brother".

I therefore find that by this evidence that Mr. Laurel Baillie is agreeing with the defendant Mrs. Ethlyn Baillie that Joseph and Gloria Baillie had no interest in the company or its profits when No. 16 Edinburgh Avenue was purchased, or since that time.

To recapitulate on the evidence given on this point by Mrs. Baillie, she said (a) "the other shareholders were only on paper".

(b) Mr. L.E. Baillie and herself were the primary people in the company and the others were just merely requirements of the company law - they were not interested in the company and that Joseph Baillie and Gloria Baillie had no interest in the company".

To analyse even further, on the same day the 28th March 1969, Mr. Laurel Baillie stated on oath under cross examination, agreeing with Mr. C. Hinds for the defendant, - "In 1966 and 1969 a melodramatic transfer of shares were made, in which I personally acquired the share holding of J.D. Baillie, Gloria Baillie, Hilary Cooke, Nellie Green and Ann Sinclair. All these persons did not sign transfers The shares are now in my name". Of course both Nellie Green and Ann Sinclair as stated earlier said that they never knew that they owned shares in the company.

I must therefore ask the question: How is it that if since 1960 as stated by Mr. Laurel Egbert Baillie, that Joseph Baillie, Gloria Baillie and Hilary Cooke ceased being shareholders in the company could the shares of these three persons, in 1966, in respect of the first two named shareholders, and in 1969 in respect of Hilary Cooke's shareholding be transferred in his name.

It would seem logical to find that out of no shares nothing could be transferred. It should also be noted with reference to Lot 317B, part Grange Hill and Lots 78 and 94 part Grange Hill, that Mr. L.E. Baillie under cross examination, said that the important decisions about these lots as well as in relation to No. 16 Edinburgh Avenue were already made by the defendant Mrs. Baillie and himself.

Further, that when Lots 317B and 78 were bought, it was defendant's and his intention that they were to help defendant's father.

Mr. L.E. Baillie further said under cross examination that Lot 78 Grange Hill is one of the lots in respect of which the title was made out in the name of Mr. Charles Williams the defendant's father and later transferred from him to Mrs. Ethlyn Baillie - Title in evidence Exhibit 6. Exhibit 6 shows consideration money being £1,500,

and Mr. L.E. Baillie says that the significance of that, is that the title is saying that Mrs. Baillie paid to Charles Williams £1,500, but no actual payment was made.

Mr. L.E. Baillie, on this very matter, agreed that the Statement of Claim says that Plaintiff Company paid £1,500 for Lot 78 Grange Hill. Again I must ask, how is it being said that no actual payment was made while at the same time it is being said that the company paid £1,500.

Now, under cross examination by Mr. David Muirhead Q.C.

Mrs. Ethlyn Baillie said that all the outgoings and expenses relating to the construction of No. 16 Edinburgh Avenue came from the profits of the company, which profits Mr. L.E. Baillie and herself were entitled to. She also said that all shareholders of the company should be entitled to a share in the profits and that no profits were distributed, and that as Director/Secretary no steps were taken to protect the interest of the other shareholders.

Mrs. Ethlyn Baillie further said, that inspite of the enteries of expenditure shown in the various ledgers and the profits belonging to all the shareholders, that Mr. L.E. Baillie and herself were the primary people in the company and the others were just merely requirements of the company law and not interested in the company in any way.

In answer to me Mrs. Ethlyn Baillie said that Mr. Joseph Baillie and Mrs. Gloria Baillie did in fact have 350 and 100 shares respectively in the company in 1960, but that they had pulled out from the company in 1962. One should again note that this was prior to the purchase of 16 Edinburgh Avenue in 1964.

As I have stated earlier, the evidence is that Mr. and Mrs. Joseph Baillie left the company in 1962 and that No. 16 Edinburgh Avenue was not purchased until 1964, in fact Mr. Laurel Baillie said under cross examination, as I have already pointed out in this judgment and quote: "Since 1960 the following have ceased to be shareholders in the company - Joseph Baillie, Gloria Baillie and Hilary Cooke."

On another point, Mr. Laurel Baillie seems to be agreeing with

Mrs. Ethlyn Baillie when he said, under cross examination, that the company approved of the purchases by the company of the premises, subject of this action being placed in their joint and single names, but as Chairman of the Board of the company he took no steps to protect the interest of the company. He seems to further agree with what Mrs. Ethlyn Baillie said, namely that they were the primary people in the company and the others were not interested in the company in any way, when he Mr. Laurel Egbert Baillie said, again under cross examination, "Mrs. Ethlyn Baillie could draw any amount she wanted from the company as that privilege was given to her, she being one of the two people who owned the company".

It would seem that his saying: "Being one of the two people owning the company" that that would indicate that there were no other financial shareholders but shareholders on paper only.

To continue, Mr. L.E. Baillie also said "Her privilege to draw whatever she drew, she was entitled to it. I gave her that privilege". "Each of us could individually take money from the company and do whatever we wanted to do for matters directly connected with the company or our personal drawings. Since 1968 that situation changed".

Even this last statement by Mr. Laurel Egbert Baillie the Managing Director of the Plaintiff Company falls in line with what Mrs. Ethlyn Baillie stated under cross examination on the 5th March 1980, in the afternoon session, when she admitted that her initials appeared on copy letters, and indicating by such initials that she signed the letters as Secretary of the Company on behalf of the Plaintiff Company - for example letter dated 1st October 1965. Exhibit 46.

However, Mrs. Ethlyn Baillie stated, that inspite of the face of the letter; - "Looking on this document, I can recall having written to Clinton Hart and Company on behalf of Mr. L.E. Baillie and myself, not on behalf of the company. The company would regard itself

as we".

From this evidence, including both the evidence given by the defendant Mrs. Ethlyn Baillie as well as that given by Mr. Laurel Egbert Baillie the then and present Managing Director of the Plaintiff Company, it would seem to me that the company, though registered as a public company was run by the then husband and wife Mr. and Mrs. Laurel Baillie as their private preserve, with full confidence in each other.

Mrs. Ethlyn Baillie even thinking that the company was a private company as her evidence discloses, when she told Mr. David Muirhead Q.C. and who represented the Plaintiff Company that the company with 7 shareholders was a private company according to the law. Running a company in the manner the Plaintiff Company conducted its business, as the evidence discloses, created a deception to the public and possible others, but it was not run to the prejudice of the clients of the company, and as the profits of the company during the relevant period were used for the purchase of properties in the joint or single names of the two people who owned the company or in the joint or single names of the two primary people in the company, and which company had no other real shareholders or shareholders interested in the company in any way, regardless of which of the two witnesses evidence is looked at, the position remains the same, and the properties the subject of this action though appearing in the books of the company are registered, not in the name of the Plaintiff Company, but otherwise as the titles disclose.

Before further dealing with such further evidence as to how and who paid the purchase money for the three properties subject of this suit, I shall first deal with the legal implications, should I hold from the evidence as the Plaintiff Company wishes, or as submitted by his Attorney-at-Law, that the monies for the purchase of the three premises the subject of this suit were provided by the company and not by the former husband and wife, I must state here and now that if I accept from the evidence given by the defendant Mrs. Ethlyn Baillie and from the evidence on a whole that the Plaintiff Company as such,

did not provide company funds to purchase the three properties or premises subject of this suit, there could be no resulting trust to the company.

However what would be the position if without proper proof coming from the Plaintiff Company that they did provide the funds for the purchases, would there be a resulting trust in the circumstances and facts of this case, I say no, it would not result in a resulting trust for the following reasons, which reasons involve principles of equity and principles concerned with corporations and limited liability companies as they relate to individuals, especially to a person or to persons holding almost all the shares in the company, or at least the controlling shares.

First of all, it is the law that a company itself is a distinct legal person from the shareholders or person or persons who control all or most of the shares.

Secondly where property is registered in the name of an individual or individuals or even in the name of a distinct legal person, then unless the person in whose name the title is registered admits that such property was purchased by someone else (such person not being in the position of a husband to a wife or parent to a child under the old principles of advancement or gift) then the person who is claiming that they or he provided the purchase money must not only plead such a fact but prove by evidence that they did provide the purchase money.

There is no presumption of resulting trust where property is purchased and registered in the name of a particular person or persons unless there is proof by evidence that the person in whose name the property is registered in, did not provide the purchase money or to put it another way, the plaintiff proving that he the plaintiff provided the purchase money, unless of course the defendant in whose name the property is registered in, admits the circumstances giving rise to a resulting trust or in fact admits such resulting trust, which trust would however not be enforced if such registration was done to defeat

creditors or to avoid the payment of legal taxes or for other improper motive.

Of course one hasn't got to deal here with the case of an imperfect gift of a house still registered in the name of the giver being protected by equity in favour of the donee occupier by giving rise to an estoppel and the minimum equity to do justice to the donee or promisee, by compelling the giver or donor to give effect to his promises by ordering him to execute a conveyance of the property to the donee. A situation of that sort does not arise in the instant case.

In the circumstances of the instant case including the circumstances in which the name or names in which the properties the subject of this suit is or are registered in, in the absence of such proof as is stated supra, the presumption would run against a resulting trust in favour of the plaintiff company, and in such a case, the principle is that he against whom the presumption runs must both plead and prove a proper ground for rebutting that the presumption runs against him.

Now, as the titles stand in the present suit, let me pose an hypothetical case; suppose Mr. Laurel Baillie the Managing Director of the Plaintiff Company and Mrs. Ethlyn Baillie a substantial Shareholder in that company in accordance with the Registered Titles to the properties subject of this action, as joint tenants in fee simple of the first two named holdings- 16 Edinburgh Avenue in the parish of Saint Andrew and lot 317B, part of Grange Hill in Portland or Mrs. Ethlyn Baillie only in respect of lot 78, part Grange Hill in the parish of Portland, and I repeat, as the titles will show, had contracted or agreed to sell these three (3) holdings to a third party, but before the contract was finalized they, jointly in the case of the first two (2) properties, or Mrs. Baillie singly in the case of the last named property, executed a transfer of the properties to a private company of which one or the other had control, or even to the Baillie Realty Corporation Ltd., which later company was virtually under their complete control, or of the managerial control of one or the other or of both of them, or as in

this case in accordance with the evidence from Mr. Laurel Baillie, virtually under his complete control, what would be the legal position?

Surely in such a case, this would amount to a breach of contract by the Laurel and Ethlyn Baillie joint tenants, in relation to the first two holdings, and by the defendant Mrs. Ethlyn Baillie in respect of the third holding, and if this private company or the Plaintiff Company as the case may be, as well as the two Baillies jointly in relation to the first two holdings and this private company or the Plaintiff Company as the case may be along with Mrs. Ethlyn Baillie in relation to the third holding were sued by the third party in whose favour the agreement for sale of the three properties was made, for specific performance of the agreement for sale, then obviously, to everyone, I hope, specific performance of that or those agreements for sale would be ordered by the Court against them jointly and/or singly along with the company in whose favour the transfer was executed.

Such a suit against that company as a joint defendant would not breach the doctrine of "Not piercing the corporate veil". The "corporate veil" would not be pierced, as the Baillie-joint-tenants-defendants, and Mrs. Ethlyn Baillie singly would be under a duty as parties to the original contract of sale to see that it was performed and the company although a separate legal person would be legally acting through them, him or her as the controlling officers or officer, and such company would be bound by the knowledge they had.

In this hypothetical situation where the present Plaintiff Company in the instant case, is placed in the hypothetical case in the position of a joint defendant, such Realty Company in whatever capacity it is looked at, is the creature of Mr. Laurel and Mrs. Ethlyn Baillie, and although no such contract of sale as is mentioned in the hypothetical case was made in the instant action, or contemplated as far as the evidence shows, such registered titles in the joint names of the Baillies and in the single name of Mrs. Ethlyn Baillie, could be a mask which they could hold before

thier faces or that of the company in an attempt to avoid recognition by the eye of equity.

I am strengthened in this view by the case of Jones and another v. Lipman and another (1962) 1All E. R. p. 442, not cited by either side.

In the instant case of Baillie Realty Corporation Ltd. v. Ethlyn Baillie, both Mr. Laurel and Mrs. Ethlyn Baillie are jointly and individually separate entities to the Baillie Realty Corporation Ltd. of which they are both directors.

The first two named, and the third named properties, the subject of this action, are respectively in their joint names, and in the defendant's name alone, as such individuals, as tenants in fee simple, separate and apart from the company, and from the evidence, I accept that such properties although placed in the "Schedule of Assets" in the balance sheet of the Plaintiff Company, do not belong to the Company, but as I shall show later, belong to the individuals jointly in respect of the first two named properties and to the defendant singly and are so registered, but apart from the Registered Titles, the "Schedule of Assets" in the balance sheets, are now being held by Mr. Laurel Baillie the Managing Director and holder of the controlling interest in the Plaintiff Company before the face of the company and before the face of, I hope, unwitting auditors, and possibly others, but not before me, as a mask, after the defendant - Director-Secretary Mrs. Ethlyn Baillie, his former wife had resigned from her active part in the company, in a clever attempt by him the Managing Director of the Plaintiff Company to avoid the true position as seen by the eye of equity.

At this stage one should remember that Mr. Laurel Baillie who like the defendant Ethlyn Baillie acquired and had registered in his own name only, a parcel of land at Grange Hill, Portland similar to lot 78 Grange Hill which is registered in the defendant's name only, stated on oath in examination-in-chief that it is incorrect to say that one of these two lots was to belong to him beneficially and the other to the defendant beneficially which defendant's Grange Hill lot

is being claimed as being held in trust for the Plaintiff Company.

Mr. Laurel Baillie however went on to say "I sell the one that was in my name and kept the proceeds. The property was sold and the proceeds accounted for to the company". The question is, was it an accounting to the company or was it the fact that he kept the proceeds, as he was entitled to, beneficially? Whatever is the position in regard to Mr. Laurel Baillie's Grange Hill lot a similar situation should also apply to lot 78 claimed by the Plaintiff Company in the Statement of Claim, and thus the defendant Ethlyn Baillie should in such similar circumstances have lot 78 beneficially, even if the transaction is accounted for to the company and notwithstanding that lot 78 is mentioned in the "Schedule of Assets".

Again, premises 16 Edinburgh Avenue, although purchased from an earlier date namely 1964 allegedly from company funds according to Mr. Laurel Baillie, did not appear in the balance sheet of the company under "Schedule of Assets" prior to 1965, although Mr. Laurel Baillie the Managing Director of the Plaintiff Company signed the 1964 balance sheet of the company at the end of December 1964, Part Exhibit 2.

Further, Mr. Laurel Baillie under cross examination by Mr. C. Hinds says that it was not until after Mrs. Ethlyn Baillie left the company in December 1968 that any of the company's auditors asked about the transfer of any of the three (3) properties subject of this suit, into the name of the company - the first such letter from any auditor being 26th November 1971. Why, I must ask, this sudden interest by the auditors, if the properties belonged to the company all along.

Again, although No. 16 Edinburgh Avenue was purchased as far back as 17th August 1964 on the defendant Ethlyn Baillie's birthday, and registered in the joint names of Mr. Laurel Baillie and Mrs. Ethlyn Baillie on 14th September 1964, the minutes of the meeting of the Directors of the Plaintiff Company held on the 20th September 1965 Exhibit 36 shows that that meeting, according to those minutes, Exhibit 36 was to authorise the purchase of 16

Edinburgh Avenue. The transfer Exhibit 5 is dated 17th August 1964.

Mrs. Ethlyn Baillie said in her evidence that the lot, 16 Edinburgh Avenue was bought in August 1964, that a contract was drawn up, and Mr. Baillie and she signed the contract as well as the vendor. That, that contract was typed by her. That a total deposit of £500 or £550 was paid as a deposit after an initial deposit of about £200. Mrs. Baillie further said that the £500 or £550 came from profits that they were entitled to from the company.

Further that the lot was bought for £1,850 and a short term loan was raised from Donald Bernard and Company to pay off the balance of £1,300 and that such loan was raised in their both names.

That a loan was raised from the bank to pay off the loan from Messrs. Donald Bernard and Company, and that that mortgage was discharged, and that that loan from the bank was made to Mr. Baillie and herself as interim financing and was paid off. Mrs. Ethlyn Baillie further said "Up to this point, the company, Baillie Realty Corporation Ltd. played no part at all in this transaction".

Further, Mrs. Ethlyn Baillie said that No. 16 Edinburgh Avenue was not bought with company money and it was not bought for the company. That it was bought as the matrimonial home.

Mrs. Baillie further said in evidence and quote:-

" Mr. Baillie's words and conduct in the buying of 16 Edinburgh Avenue, he could not have intended that 16 Edinburgh Avenue was bought for the company. My intention at the time of purchase of 16 Edinburgh Avenue was that myself and my then husband would be the sole beneficiary of the property - the sole owners of the property".

Mr. Laurel Baillie, when giving evidence in chief, produced two minutes of the Board of Directors of the company dated 29th March 1965 and 20th September 1965, tendered in evidence as Exhibits 35 and 36 respectively. Mr. Baillie said that at the meeting of the 29th March 1965 Exhibit 35 two people were present, Mr. Laurel Baillie and Mrs. Baillie and that at the meeting of the 20th September 1965, apart from himself and the defendant being present at that meeting the

auditor Mr. C. B. Lewis was present.

In regard to these two meetings recorded on Exhibits 35 and 36 Mrs. Ethlyn Baillie said in evidence. "Looking on Exhibit 35 I was never at any meeting on the 29th March 1965 as recorded in Exhibit 35. Edinburgh Avenue was transferred to Mr. Baillie and I on 17th August 1964. There was no meeting to consider the purchase as is in Exhibit 35 because the premises was under construction".

Further Mrs. Baillie said that she was never at any meeting referred to in Exhibit 36 in which such authorization was being made as in item 3 in the body of the Exhibit. That this minute Exhibit 36 refers to the authorization of the purchase and the subsequent building thereon. That at this time she and Mr. Laurel Baillie had already removed on the 2nd week of September 1965 and living in the premises.

Further Mrs. Baillie said that she knows nothing about the contents of Exhibit 36, and that there was no time at all when any discussions took place about 16 Edinburgh Avenue being used as residence for the Managing Director of the company. That during the period of her association with the company as secretary and Director, decisions were made by herself and Mr. Baillie.

That if any decision was taken about the house she would have known as both of them would have participated.

In regard to this evidence Mr. Laurel Baillie on the other hand when cross examined by Mr. C. Hinds, said that the meeting of the 20th September 1965 Exhibit 35 was not a meeting called to O.K, or agree to the purchase and that from what he could remember the purchase was already agreed to by Mr s. Baillie and himself possibly at home. That he cannot recall if No. 16 Edinburgh Avenue was bought before the 20th September 1965 and that he is saying this inspite of what he read on Exhibits 35 and 36 and he Mr. Baillie relays on the minutes Exhibits 35 and 36. Further that it was clear to him from Exhibit 36 that 16 Edinburgh Avenue was not yet purchased up to 29th March 1965 and that looking on Exhibit 36 dated 20th September 1965 he could not say if

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the premises 16 Edinburgh Avenue was already purchased or not.

Mr. Laurel Baillie further said that copy title for 16 Edinburgh Avenue Exhibit 5 is correct and shows that the transfer is dated 17th August 1964 and registered 14th September 1964 in the names of Laurel Egbert Baillie and Ethlyn Baillie his wife as joint tenants.

Mr. Laurel Baillie's evidence about Exhibit 35 and 36 clearly does not tally with Exhibit 5, and Mrs. Ethlyn Baillie's evidence on this point is preferred.

I must wonder why the company was being asked at a Director's meeting to authorise the purchase of 16 Edinburgh Avenue which premises were already purchased as far back as the 17th August 1964 and registered in the joint names of Laurel Baillie and Mrs. Ethlyn Baillie on the 14th September 1964 over one year before this meeting or supposed meeting (see Photo Copy Registered Title Exhibit 5).

It should be noted that, according to Exhibit 36 which was signed by the Chairman of the Plaintiff Company Mr. Laurel Baillie, only two directors supposedly attended that meeting, namely Mr. Laurel Baillie and the defendant Mrs. Ethlyn Baillie and the then auditor Mr. C. B. Lewis, and from the evidence on oath given by Mr. Laurel Baillie under cross examination by Mr. C. Hinds, Mr. Laurel Baillie said "The acquisition of 16 Edinburgh Avenue was sanctioned and approved by the company. The company had given its approval prior to the purchase of the land".

The Minutes Exhibit 36 seem difficult to reconcile with this sworn evidence and with Exhibit 5.

I now, in continuation of the legal principles given earlier in this judgment take support from the case of Tunstall v. Steigmann (1962) 2 W.L.R. p.1045. Here, in this case just referred to, the landlord who was the owner of premises held on a lease for 3 years by the tenant, owned the shop next door where she carried on the business of a pork butcher. The tenants lease having terminated,

the landlord opposed an application for a new tenancy on the ground that she intended to occupy the premises for the purpose of a business to be carried on by herself, in accordance with the provisions of the Landlord and Tenant Act 1954.

Before the hearing, the landlord transferred her business as pork butcher to a limited company in which she held all the shares with the exception of two, which were in the possession of her nominees. There was no question that she had sole control of the business.

On these facts the County Court Judge had held that it was the landlord's intention to carry on the business, notwithstanding that the business was owned by a limited company, she would occupy the premises for the business of managing the company.

The Court of Appeal in reversing the County Court Judge's decision, held that he had placed too much emphasis on the dicta in the case of Pegler v. Craven (1952) 2 Q.B. 69 which case stated that a company could be a person's alter ego.

Wilmer L.J. said at page 1053 of the Tunstall v. Steigmann's case:-

" Here the landlord and her company are entirely separate entities. This is no matter of form, it is a matter of substance and reality. Each can sue and be sued in its own right, indeed there is nothing to prevent the one from suing the other".

continuing the quote:-

" Possibly if the landlord had been sued personally for any debt incurred by her company, she would have been fully entitled to insist that the debt was not hers. To pierce the corporate veil in such circumstances would be to destroy in large part the value of incorporation".

Similary in the instant case of Baillie Realty Corporation Ltd. v. Ethlyn Baillie, if the joint tenants of 16 Edinburgh Avenue and of lot No. 317B, part of Grange Hill in Portland and the single tenant of Lot 78, part of Grange Hill, Portland in the name of Ethlyn Baillie had been sued personally, and in such suits, jointly in the case of the first two properties or the defendant only in the case of Lot 78,

part of Grange Hill, Portland for debts incurred by the company, they would have been fully entitled to insist that the debts of the company were not theirs. I repeat, that in the instant case, to pierce the corporate veil in such circumstances would be to destroy in large part the value of incorporation.

Similarly, if the Plaintiff Company, Baillie Realty Corporation Ltd. was sued for a debt incurred by Mr. Laurel Baillie in relation to 16 Edinburgh Avenue which he alleges he occupied as Managing Director, the company would be fully entitled to insist that the debt was not theirs.

By merely giving a label in the books of a company under "Schedule of Assets" to a particular type of ownership will not necessarily by any means have the effect indicated by the label; for the truth and substance in cases of this kind must be examined. Let me examine the evidence a little more.

In examining the evidence by Mr. Laurel Baillie the Managing Director of the Plaintiff Company as to whether that evidence is sufficient to show that properties that have been registered in the names of individuals were paid for by the company, one must examine the evidence given on a whole and at this juncture, the evidence given by Mr. Laurel Baillie the Managing Director of the Plaintiff Company to see whether it has satisfactorily satisfied that proof on the balance of probability, bearing in mind what the defendant Mrs. Ethlyn Baillie has said that it was not the Plaintiff Company that paid for the properties and it was not bought with company money. Mrs. Baillie further said in evidence that neither Lot 94 which was in Mr. Laurel Baillie's name, nor Lot 78 which was in her name, nor Lot 317B which was in their joint names, were bought with company funds or for or on behalf of the company. She further said that the money they used to pay for these lots were belonging to Mr. Baillie and herself jointly and not the company and that looking on Exhibit 27 it will show that it is a statement from Donald Bernard and Co. re the purchase of Lot 56 Constant Spring Gardens which is

also known as 16 Edinburgh Avenue, and that the statement Exhibit 27 was addressed to Mr. Baillie and herself personally. The £651.18/2 is a debit balance brought down as outstanding in this transaction. The £651.18/2 is shown as owing. On the credit side is a payment of £200 paid by Livingston, Alexander and Levy directly and not through the Baillie Realty Corporation or anyone else.

Mrs. Baillie when asked, why it is that in Exhibits 40 and 41, the ledger leaf and cash book respectively of the company, appear payments in respect of 16 Edinburgh Avenue, said: "This is where the money belonging to us - Mr. Baillie and myself, from profits, so it is natural that these payments which are for our benefit, which is the building of the house would be made from such profits belonging to us".

Mrs. Baillie further said "My current account was kept in my name in the company's books. Mr. Baillie also had a similar account. The company belonged to us so whatever profit is made goes in the company's bank account and as we are the only two people in the company we draw the profits belonging to us.

It is one cheque book, and both of us use it. Up to my severing connection with the company in December 1968, whatever Mr. Baillie and I acquired personally came from the business and all these monies that were spent for whatever purpose whether for personal purchases or otherwise passed through the books of the company - Medical Expenses, school books, Mr. Baillie's clothes were bought in the same way. We had no other source of income".

Now Mr. Baillie said in evidence that the decision to purchase 16 Edinburgh Avenue was made at home between Mrs. Baillie and himself.

The title to 16 Edinburgh Avenue in the name of Mr. Laurel Baillie and Mrs. Baillie the defendant is dated 17th August 1964 and the minutes of the meeting of the 20th September 1965 signed by Mr. Laurel Baillie Exhibit 36 shows that approval was being sought at that meeting of the company to purchase 16 Edinburgh Avenue. It is a matter of coincidence that Mrs. Ethlyn Baillie's birthday is on

the 17th August 1964 the same date that the title was placed in the joint names of the then husband and wife Mr. and Mrs. Laurel Baillie, yet Mr. Laurel Baillie is saying that although the title to 16 Edinburgh Avenue is in their joint names the property belongs to the company. Mrs. Baillie says there was no such meeting of the company which she attended as is stated in Exhibit 36.

It seems strange to me that a property that is claimed as belonging to the Plaintiff Company and of which title was transferred from its former owner on the 17th August 1964 did not appear on the balance sheet of the company for the year ending 1964 and only appeared on the balance sheet for year ending 31st December 1965 the very year that the alleged meeting as shown in Exhibit 36 was held seeking the approval of the company to purchase a property that was already purchased and transferred to the joint names of Mr. Laurel Baillie and Mrs. Ethlyn Baillie.

Balance sheet for 1965 part Exhibit 2 showing "Schedule of Fixed Assets at 31st December 1965, £13,950.7/1 as well as under Schedule of Mortgage Loans £5,988.18/9 from Manufactures Life.

Exhibit 27 shows that Donald Bernard and Company Solicitors when dealing with 16 Edinburgh Avenue on 7th September 1964 referred to the purchase of 16 Edinburgh Avenue - Lot 56 Constant Spring Gardens in Account Laurel Baillie et ux.

Exhibit 28 shows payment off of the loan on 16 Edinburgh Avenue by L.E. Baillie et ux on 8th January 1965, no mention of the company in this Exhibit.

Exhibit 29 dated 27th February 1969 is a cash statement re 16 Edinburgh Avenue sent to L.E. Baillie et ux.

Still dealing with 16 Edinburgh Avenue, Mr. Laurel Baillie said in his evidence in chief that the £13,950 represented the cost of construction of the building on 16 Edinburgh Avenue and in the valuation section of Exhibit 2, it is shown that only the cost of the building is mentioned. No figure is mentioned for the land.

In contrast, in both the 1973 and 1975 balance sheets of the company the value of the land at 84½ Church Street is mentioned

separately from the building.

Mrs. Baillie says that 84½ Church Street was bought in the name of the Baillie Realty Corporation as well as No. 86 Church Street.

Mr. Baillie when shown Exhibit 36, said "It is clear from Exhibit 36 that 16 Edinburgh Avenue was not purchased up to 29th March 1965 yet Exhibit 5, the Certificate of Title for this premises shows that the premises was transferred to Mr. Laurel Baillie and Mrs. Ethlyn Baillie as joint tenants from 17th August 1964 and the title registered on 14th September 1964.

Is it as stated by Mrs. Ethlyn Baillie that there was no meeting of the company for which Exhibit 36 is the minute thereof?

It would seem to me that although the title to 16 Edinburgh Avenue was in the joint names of Mr. L. Baillie and Mrs. E. Baillie, that the expenditure on the property as recorded in the books of the company and their placing it in the Schedule of Fixed Assets of the company was possibly for Income Tax purposes, but such did not affect the true title or cause a resulting trust as claimed.

Mr. L. Baillie under cross examination said: "The house and land were acquired not as an investment but an asset for the company and at the same time projecting to the Income Tax Department that it was acquired as a home for the Managing Director and absorbing all kinds of expenses".

It seems to me, and I hold, that there is no need to project a thing that is in fact in existence - if 16 Edinburgh Avenue, both land and building were on the books of the company as assets of the company that would project itself, in fact only the cost of the building is projected. It is just like saying that a certain thing is deemed to be such and such, but it should be noted that a thing is deemed to be a thing because it is not the thing it is deemed to be.

Further, Mr. L. Baillie in giving evidence, stated that No. 16 Edinburgh Avenue was acquired in 1964 for the company, however the expenditure appears not to be in the books of the Plaintiff Company but

stated to be in the books of a subsidiary company namely, Holdings and Investments Ltd. which company had the same two Directors Mr. L. Baillie and Mrs. E. Baillie as the Plaintiff Company had.

Further that the £200 deposit paid on 16 Edinburgh Avenue is entered in the Plaintiff Company's books under the heading "E. Baillie Loan Account". The auditors later cancelled this entry and put the entry in "E. Baillie's Current Account". This or these entries would not seem to alter the true position of Mrs. Ethlyn Baillie's Account being used to make the deposit, especially as Mr. Laurel Baillie has said in evidence "The placing of the £200 on the debit side of Mrs. Baillie's current account B. 6 means that the amount is still owed by Mrs. Baillie".

Thus, if the Plaintiff Company did own 16 Edinburgh Avenue as a resulting trust or otherwise, how could a deposit paid by Mrs. E. Baillie on the property on behalf of the company be a debt owed by her.

However, Mr. Laurel Baillie the Managing Director of the Plaintiff Company says "As far as I know the accounts of the Plaintiff Company are not very accurate". Is Mr. Baillie relying on inaccurate accounts?

One should note that there is no account shown in the company's books which were produced to the Court which shows any funds belonging to the company which were used to pay for 16 Edinburgh Avenue or for any of the lots subject of this action, on the contrary it shows that payments were made from Mrs. Baillie's Current Account or Loan Account.

With reference to the Grange Hill properties including Lots 317B Grange Hill and Lots 78 and 94, first of all, in 1964 Grange Hill first appeared in the books of the company under "Schedule of Fixed Assets" - see balance sheet for December 1964, but none of the Grange Hill lots are mentioned separately. This situation continued in the balance sheets of the company for 1965, 1966 and 1967, but

omitted from the "Schedule of Fixed Assets" in the balance sheet for 1968.

However in the balance sheet for 1968 one finds, for the first time the following:-

Mortgages on Properties for Resale 317B Grange Hill.

78 Grange Hill, also in that same balance sheet the following entries under "Schedule of Properties on Hand at Costs".

Inspite of these entries in the balance sheets of the Plaintiff Company, there is no evidence to show that these three properties belonged to the company by virtue of a resulting trust. In fact Lot 94 Grange Hill first appeared in the company's books in 1968, yet the title Exhibit 8 is dated 14th January 1963.

Then when I examine various exhibits tendered in this case I can see a particular situation, for example Exhibit 10D. Letter from Motta and Oppenheim in relation to a balance of £1,000 purchase price, I see that that letter Exhibit 10D was addressed to Mr. L. E. Baillie personally and not to the Plaintiff Company.

Exhibit 10C, letter dated 7th October 1963 along with statement from Messrs. Donald Bernard and Company re legal costs £36.12/6 was addressed to Mr. L. E. Baillie and not to the company.

Then Receipt No. 6747 dated 15th April 1964 for £8.6/8 interest, in connection with Lot 94 Grange Hill is worded thus:-
"Received from Baillie Realty Corporation Ltd. for L.E. Baillie (underling mine). Exhibits 11A and 11B only shows that Baillie Realty Corporation Ltd. kept the personal account of Mr. L.E. Baillie.

The fact that there appeared on the Plaintiff's Company balance sheet the following:-

"Mortgages on Properties for Resale", may be just a record that properties which the company had to sell for clients or individuals were subject to mortgages. This certainly is no proof that such properties belonged to the company.

Now when one looks at Exhibit 12, Account L. 17, one sees that the payments £1,045 made on Lots 94 and 78 Grange Hill

were made by Mrs. Ethlyn Baillie and not by the Plaintiff Company.

Then Exhibit 13 Account B2 shows that Lot 94 Grange Hill was sold to B. Berry on August 1970 amount £4,998.2/5 credited and debited. Exhibit 14, was an agreement dated 10th July 1965 by Mr. L.E. Baillie and the defendant Mrs. Ethlyn Baillie entered into with one Florence Lewis-Henry to purchase No. 317B Grange Hill - not an agreement between the Plaintiff Company and Florence Lewis-Henry.

Exhibit 15. The payment of £8 Mortgage Interest and £10 towards a loan was on Lot 317B Grange Hill, and was paid by Laurel Baillie through the Plaintiff Company. The paying through the company does not mean that the property belonged to the company. It could be a loan from the company.

Again Exhibit 17 shows that £3,082.5/2 was credited from E. Baillie's Current Account in the company's books in relation to Lot 317B Grange Hill.

I could go on and on referring to the various exhibits, but none of them amount to proof that the properties, the subject of this action belong to the company by virtue of a resulting trust, neither would the auditors letters asking that the properties be transferred to the company amount to such proof. However in the account book for 1963 to December 1966 Exhibit 41 is shown one payment recorded in respect of 16 Edinburgh Avenue. That entry is dated September 9, 1964, and has "Payment - Donald Bernard Account 16 Edinburgh Avenue, £451.18/2 paid by cheque - Barclays Bank". The words "Account 16 Edinburgh Avenue is obviously altered in the accountbook from something else, and so admitted by Mr. L. E. Baillie, but he says that the alteration is in the defendant Ethlyn Baillie's handwriting, and that what was there before the alteration were the words Account Laurel Baillie". Mrs. Ethlyn Baillie however says that she did not make the alteration. That she does not recognise the handwriting and that the alteration is not in her husband's handwriting.

This evidence again shows that apparently both Mrs. Ethlyn Baillie's personal accounts and Mr. Laurel Baillie's personal accounts

were recorded in the company's books. This again would be no proof that the properties subjects of this action belonged to the Plaintiff Company.

No books were produced showing that the company paid for any of the three properties. The nearest the Exhibits go is to show that the company expended money on the residence where the Managing Director of the company lived as part of his perquisites, but the property 16 Edinburgh Avenue still remained in the joint ownership of Mr. Laurel Baillie and Mrs. Ethlyn Baillie.

Futher Mr. Laurel Baillie's evidence was to the effect that Mrs. Ethlyn Baillie, as a Director and his trusted wife could draw funds from the company for her own use whenever she wished.

Mrs. Ethlyn Baillie in her evidence stated that both her current account and Mr. Laurel Baillie's current account were recorded in the books of the company. She said:- "The company belonged to us, so whatever profit is made goes in the company's bank account and as we are the only two people in the company we draw from the profit which belongs to us. It is one cheque book and both of us use it. A cheque would be drawn and afterwards entered in the cash book and then posted to the ledger, to the account it belongs. If one is purchasing say 16 Edinburgh Avenue it goes under the account 16 Edinburgh Avenue Up to my severing connection with the company in December 1968, whatever Mr. Baillie and I acquired personally came from the business".

In agreement with this evidence Mr. Laurel Baillie said under cross-examination on the 7th July, 1979. "In December 1968, when Mrs. Baillie left the company she was getting pay. I cannot recall how much she got. That would be in a pay roll book and was nominal, but she could draw any amount she wanted. That privilege given to her was consistent with her being one of the two people who owned the company. Her privilege to draw whatever she drew she was entitled to it. I gave her that privilege". Mr. L. E. Baillie further said "Between 1960 and 1968 I gave Mrs. Baillie the privilege to draw what

she wanted from the company. I had unqualified confidence in Mrs. Baillie".

Finally even if the money for the purchase of these three properties subject of this action was provided by the Plaintiff Company which I hold, in the circumstances of this case is not so, Mrs. Baillie was lead to give up her job to enter into a husband and wife business partnership, with nominal or very little pay. Mr. Baillie does not remember how much pay was given to his then wife but he agreed she could spend as she liked and that she made a significant contribution to the company.

I find that whatever Mr. Laurel Baillie later had in his mind, that during the years 1960 to 1968 he lead Mrs. Baillie to believe that the properties the subject of this action belonged to the parties personally as appeared on the titles, and in pursuance of this belief, especially in relation to 16 Edinburgh Avenue, Mrs. Baillie, on a small salary, in view of such belief, spent on 16 Edinburgh Avenue from profits from the company such money as she was personally entitled to for her own personal use arising from her contribution physically and mentally to the company. Thus Mrs. Baillie apart from other legal and equitable principles, is also entitled to have the court pronounce in her favour when the Managing Director Mr. Laurel Baillie along with the other Director the defendant, of the Plaintiff Company, encouraged or acquiesced in the defendant spending and looking after these properties in the belief that the ownership of the properties were as appeared on the titles and which would give rise to an estoppel and the minimum equity to do justice to the defendant.

Further, I do not accept that the minutes tendered in evidence are all genuine, especially those which showed that Mrs. E. Baillie, Miss Nellie Green and Mrs. Ann Sinclair attended meetings which they did not attend. I accept each of these three person's evidence that such meetings were never attended by them.

Mrs. Baillie further said that she never attended any meeting on 8th March 1962. In regard to Exhibit 35, I accept that Mrs. E. Baillie never attended any meeting on 29th March 1965 as recorded in Exhibit 35.

Without going further into the alleged meetings of the company for which various minutes were tendered, and as stated by both Mrs. Nellie Green and Mrs. Ann Sinclair they also did not attend the meetings as appears on Exhibit 37(a) to (i).

In regard to the cases cited by Mr. C. Hinds namely:-

Gascoya v. Gascoy, (1918) KB p. 223

Re Emery's Investment Trust (1959) 1 ALL E.R. p.557 and Tinker v. Tinker (1970) 1 ALL E.R. p. 540. All these three cases were cited to show that where property was purchased in the name of a wife or an investment made in a wife's name and the wife either holds onto or sells the investment, that even if the wife knows that such was done for an illegal purpose or with improper motives, the purchaser husband or investor could not regain the property by using as evidence the illegal purpose or notice, to rebut the presumption of advancement or gift.

Mr. Hinds submitted that the Plaintiff Company through their Managing Director Mr. L. E. Baillie and with the connivance of the defendant Mrs. Ethlyn Baillie the Director-Secretary operated the company in such a way that the basic fundamental rules of commercial intercourse are ignored to their financial advantage.

That there was misconduct

- (1) Avoidance of Tax
- (2) Misrepresentation to the Mortgagees
- (3) The unavailability of the properties to creditors on a possible winding up.

That he was making this submission on the basis that the properties the subject of this action, as stated by Mr. L. E. Baillie, belonged to the company as they were mentioned or entered in the books of the company, though the legal titles were not in the company's name. He therefore submitted that on this basis and on the principles laid down in the three cases cited above, the company cannot use this illegality by them to have the property vested in them. That the Plaintiff Company's persistent misconduct as a company and from their motives it precluded them from relying on equitable principles.

However Mr. C. Hinds stated that the evidence disclosed that when the purchases were made it was the intention of the two directors on behalf of the Plaintiff to invest the legal estate in 16 Edinburgh Avenue in the joint names of Mr. and Mrs. L. E. Baillie and Lot 78 and 317B Grange Hill as appears in the respective titles.

Mr. C. Hinds also submitted on behalf of the defendant that on the basis, if it be so/^{that} the properties belonged to the Plaintiff Company, that the company withheld from the Mortgagees, that the Plaintiff Company had an equitable interest in 16 Edinburgh Avenue and was therefore dishonest.

However I hold that there might not have been a dishonest withholding from the Mortgagees, as the property might very well have belonged, in the minds of Mr. and Mrs. Baillie, to them jointly in two instances and singly in one instance.

Mr. Hinds further submitted that the Plaintiff Company is asserting title to 3 properties in which it tried to evade tax and to defeat creditors. I now ask the question, was the Plaintiff Company through Mr. L. E. Baillie its Managing Director, in giving such reasons to the Court setting up its illegal intention, as an explanation so as to enable the Plaintiff to now reap the benefit which the illegality had hidden from the public and the Registrar of Titles?

Mr. Hinds then submitted that it was not the intention of the company at the time of acquisition of the properties that they the company should be the owner of the beneficial interest, and it was not the intention that the legal owners of the various properties to hold as trustees for the Plaintiff Company.

Mr. Hinds referred to various exhibits as being bogus and named some of them and further in support, quoted Mr. L. E. Baillie as saying in evidence that 16 Edinburgh Avenue was entered in the Company's Books for the purpose of saving income tax.

That the purchase money for 16 Edinburgh Avenue was not reflected in the Company's Book until 1965 although it was purchased from 1964 allegedly from Company's funds.

Mr. Hinds further submitted that Mr. L. E. Baillie is using the company as a front to wrestle from Mrs. Baillie what they owned jointly.

Mr. David Muirhead Q.C. in his reply used the same three cases cited by Mr. Hinds in support of the proposition suggested by him that this is not a case of husband and wife but the case of the defendant a Director Shareholder seeking to deprive the company of their beneficial interest in properties which they rightly hold on a resulting trust, by her dishonestly attempting to confer a benefit on two shareholders to the exclusion of the other shareholders.

To this submission I might at this juncture state that Mr. L. E. Baillie under cross-examination by Mr. C. Hinds on 28th March, 1979 stated, that apart from himself and Mrs. Ethlyn Baillie owning shares in the company, a company whose shareholding was 20,000 shares, all the other shareholders except two ceased to own shares in the company from 1960, and that the two shareholders remaining, apart from themselves owned between them only 4 shares. Thus the remaining 19,996 shares were owned by himself and his then wife Mrs. Ethlyn Baillie. So there could be no dishonest attempt by the defendant Mrs. Ethlyn Baillie to confirm a benefit on herself and Mr. L. E. Baillie to the exclusion of the other two shareholders, and even if that was so it would be de minimis.

Mr. Muirhead Q.C. further submitted that certain entries made by Mrs. Baillie in the books of the company, and her signing minutes of the company created an estoppel, so that she could not deny that the entry of 16 Edinburgh Avenue and the two other properties subject of this action in the books of the company were not evidence of such properties belonging to the Plaintiff Company.

I must state here and now that even if such could be regarded as an estoppel, if there was no explanation for such entry, Mr. L. E. Baillie himself supplied an explanation by saying that the reason for making such entry in the books of the company in relation to these 3 properties was to avoid income tax and all other kinds of things.

Mr. Muirhead asks that the Creditors be allowed to have resort to the properties as assets of the company. This matter has already been dealt with earlier when I analysed this matter and referred to the case of Jone and another v. Lipman and another (1962) 1 ALL E.R. p. 442 when I stated that placing the 3 properties in the joint names of the Baillies and of Mrs. Baillie in one instance could be a mask which both Mr. L. E. Baillie the Managing Director of the Plaintiff Company and Mrs. Ethlyn Baillie a director could hold before their faces or that of the company in an attempt to avoid recognition by the eye of equity.

Mr. David Muirhead Q.C. further submitted that the passages read from the Modern Company Law Book by Gower 1957 p. 472 etc. or from the 3rd edition of Gower pp. 552 and 556 etc. states what the law is on conflict of Duty and Interest. That, in the instant case, there is a counter-claim by the Defendant Mrs. Baillie and the principles cited from Gower imposes an obligation on Mrs. Baillie as a trustee and director of the company. That the cases of Gascoyne v. Gascoyne cited by Mr. Hinds supports his contention that not Mrs. Baillie, if it arose, would/be allowed to breach her duty as a director trustee to deprive her future creditors of the assets to which the company's account show that they would be entitled.

I may add, that the counter-claim by the defendant seeks to retain her own properties or interests in them which the conveyances on the face of them show she is entitled, and to prevent the Plaintiff from taking them, and not, as submitted, to deprive the company of any property belonging to them.

To Summarise:- The questions to be decided in this case are very simple and are.

1. Were the respective properties subject of this action bought with company funds and thus resulted in a resulting trust in their favour, or were such purchases or records entered in the books of the company merely to save personal income tax and other form of taxes.

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2. Or were the said properties bought out of the earnings of the two major director-shareholders or from profits which they were personally entitled to, and which would prevent a resulting trust from existing even though the facts or some of the facts concerning these properties were entered in the company's book.
3. If the position is at (1) supra, is it a fact that the Plaintiff Company in order to sustain the presumption of a resulting trust or to rebut any argument against a resulting trust arising, and having to give reasons which savoured of illegality or of the attempting or succeeding in avoiding tax. It is clear from the evidence of the Managing Director of the Plaintiff Company Mr. Laurel Baillie that the entries made in the books of the company were to save the directors personally from certain personal income tax. So even if the purchases were made with company funds, once such illegality is brought to the attention of the Court, equity will not lend its aid, and the properties would remain as they appear on the titles.

If the position is at (2) supra, were the entries in the company's books made with the intention of giving a false impression of the state of the company's assets so as to enable them to get better financial backing from Mortgagees and Banks? If this is the case then titles would not be affected, and equity would again not lend its aid to either the Plaintiff Company or to the defendant, and the titles and beneficial interest would remain as they appear on the titles.

From the evidence and exhibits, I find that the purchases were not made from company funds, and so there is no resulting trust, and even if I am wrong on this, the illegality of attempting to defeat the revenue would cause the properties to remain as they appear on the titles. Finally, I hold that the truth and substance in the

instant case are that Mr. Laurel Baillie, the Managing Director of the Plaintiff Company and by far the largest shareholder, and the person in charge of the company has attempted to use the company as a channel through which to enable him for his own benefit to punish and deprive his former wife the defendant Mrs. Ethlyn Baillie of what is justly due to her in the subject matter of this action even though they may both have acted in a manner to defeat the income tax department.

As the question of her present interest in the company does not arise for my determination, I say no more about that, but I must add that it appears to me that an auditor or auditors was, or were being wittingly or unwittingly used by the Plaintiff Company through Mr. Laurel Baillie the Managing Director of the Company to assist Mr. Baillie in carrying out his acts of punishment and attempted unjust deprivation of the defendant Mrs. Ethlyn Baillie of what is justly belonging to her.

Judgment is therefore given to the defendant on the claim with costs to be taxed or agreed and the declarations prayed for by the Plaintiff Company rejected.

Judgment is given to the defendant on the Counter-claim for the declarations as prayed for in such counter-claim with Costs to be taxed or agreed.

Execution stayed for six (6) weeks.


H. V. T. CHAMBERS,
Judge Supreme Court.