

1944

AMYLITA G. COLE (DEFENDANT)..... APPELLANT;

*April 25,
26, 27.

AND

HOWARD COLE (PLAINTIFF)..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
COLUMBIA

Property (timber licenses) purchased by husband and assignment thereof taken in his wife's name—Husband suing her to recover the property—Rebuttal of presumption of gift—Alternative contention against husband of intent to protect property from creditors.

APPEAL by the defendant from the judgment of the Court of Appeal for British Columbia (1) dismissing her appeal from the judgment of Sidney Smith J. holding that certain timber licenses which had been purchased by the plaintiff and of which assignment had been taken in the name of the defendant, who was then the plaintiff's wife, were the property of the plaintiff. The Court of Appeal held that, on the evidence and the trial Judge's findings, the presumption of gift to the defendant had been rebutted; and also held against an alternative contention by the defendant that it should be found that the plaintiff had taken the property in the defendant's name so as to protect it from creditors and therefore should be refused assistance of the Court in recovering it.

C. F. H. Carson K.C. and *G. E. Housser* for the appellant.

D. N. Hossie K.C. for the respondent.

On the conclusion of the argument for the appellant, the judgment of the Court was delivered orally, as follows:

THE CHIEF JUSTICE (orally, for the Court).—We do not find it necessary to call on counsel for the respondent in this case.

We have had an opportunity fully to consider it and, moreover, Mr. Carson has presented to us not only a very complete argument, but, we may say, a very fair one, for which the Court is greatly indebted to him.

For the purpose of his argument, Mr. Carson accepted the testimony of the respondent. We have no doubt that on that testimony, taken in conjunction with the docu-

*Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

(1) 59 B.C. Rep. 372; [1943] 3 W.W.R. 532; [1944] 1 D.L.R. 37.

mentary evidence, and despite the presumption that arises when a property is purchased by a husband in the name of his wife, the finding of the two Courts below cannot be interfered with.

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Rinfret C.J.

As for the second point raised here, the respondent did not set up an agreement which, on the face of it, shows an illegal object; and in fact he denied such an object. The trial Judge and the Court of Appeal have determined that it does not appear that the respondent had any illegal object in view and we are not prepared to say that they were wrong.

In the circumstances, the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Walsh, Bull, Housser, Tupper, Ray & Carroll.*

Solicitors for the respondent: *Walkem & Thomson.*
