

when his physical and mental condition were greatly impaired, he subsequently becoming an incurable lunatic, was set aside. Chief Justice Hagarty dissented, but explicitly stated that he treated the case as one of fact.

In *Trusts and Guarantee Co. v. Hart* (1), Mr. Justice Street, delivering the judgment of the Queen's Bench Divisional Court, says: "The rule has not been confined to the more common and obvious cases of trustee and cestui que trust, but has been treated as applying to every case where confidence has been reposed."

*McCaffrey v. McCaffrey* was cited in argument before the Chancery Divisional Court in *Casey v. Maloughney* (2) and some discussion occurred as to the law in cases of husband and wife, but the judgment of the court did not deal with the point.

Altogether it is submitted that the cases of *Nedby v. Nedby* and *Barron v. Willis* must be regarded as being in a state of "splendid isolation," and intended only to act as warnings to importunate wives and husbands that, where a particular equity requires it, the court will not be bound by any hard and fast rule, but will endeavour to apply the law so as to do justice to all concerned.

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In connection with the above article we would note a case of *Hopkins v. Hopkins*, decided since it was written, at the last sittings of the Court of Appeal. Whilst, as Lord Penzance says, "Persons standing in certain relations to one another, such as parent and child, man and wife, doctor and patient, attorney and client, confessor and penitent, guardian and ward are subject to certain presumptions when transactions between them are brought in question"—it nevertheless seems clear that whilst the relations of husband and wife are included in the list, there would not be the presumption against a gift by a husband to his wife which there would be in the case of attorney and client, etc., and the matter becomes largely one of evidence and onus probandi.

(1) (1900) 31 O. R. at p. 420.

(2) Not reported. Judgment delivered 19th Feb., 1900.