

Anning v Anning (1963) 109 CLR 9

<https://lawcasesummaries.com/knowledge-base/anning-v-anning-1963-109-clr-9/>

Facts

- William Anning was ill in 1899 and executed a few days before his death a deed poll, conveying to the appellant (his wife) and the respondents (his five children) in equal shares all his personal estate whatsoever, including Chudleigh Park Station, which was a leasehold from the Crown, his partnership share in Mount Sturgeon Station, all cattle and horses thereon, and money on current account and at fixed deposit in several banks.
- Besides these specified items the personalty included jewellery, furniture, implements, debts and mortgages.
- After the execution of the deed of gift, which was intended to save the personalty from succession duty, he executed a will of realty.
- Nothing further was done to effectuate the transfer of the property before his death.
- The appellant, being executrix of the will and guardian of the children, brought an administration action against the respondents to have it determined whether there was an effectual gift by the deed or an intestacy

Issues

- Was the deed of gift an effective transfer?

Held

- There was no effective transfer.
- The deed was intended to take effect as an absolute conveyance, and, if ineffective for that purpose, could not be made effectual as a declaration of trust.
- There were differing approaches by the three judges (Griffiths CJ, Isaacs J and Higgins J) as to what extent the parties were required to go to effect a perfect gift.
- The High Court in *Corin v Patton* adopted Griffiths CJ approach:
 - Donor must do everything they are required to do to transfer property
 - Donor must do everything they are able to do to transfer property
 - All steps necessary must have occurred before the gift is perfected and it doesn't matter who has to them

Quotes

"In equity there is a valid gift of property transferable at law if the donor, intending to make a complete disposition and transfer to the donee, does all that on his part is necessary to give effect to his intention and arms the donee with the means of completing the gift according to the requirements of the law.

There is no equity to perfect an imperfect gift because of the absence of consideration a purported assignment, if incomplete as a legal assignment, effects nothing in equity."

Full Text

The full text is available here: <https://jade.io/summary/mnc/1907/HCA/13>

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