Voluntary Conveyances of Land: The Presumption of Resulting Trust Redux?

National Crime Agency v Dong [2017] EWHC 3116 (Ch)

In *National Crime Agency v Dong*,[1] Chief Master Marsh discussed the vexed question of whether, in light of s.60(3) of the Law of Property Act 1925, a presumption of resulting trust arises upon a voluntary conveyance of land. Contrary to the approach taken in earlier cases, Chief Master Marsh favoured the view that the presumption survives s.60(3). It will be suggested that, while his judgment is interesting from a theoretical point of view, Chief Master Marsh's reasoning was not ultimately convincing. The result is, unfortunately, that the case merely adds to the uncertainty on the point in question.

Although this note concentrates on the issue of the interpretation of s.60(3), there was another interesting feature of the case, which it will be convenient to address briefly at this introductory stage. This is Chief Master Marsh's conclusion that, in determining whether a resulting trust arises in the context of a voluntary transfer, what is relevant is the common intention of the parties rather than the unilateral intention of the person making the transfer.[2] This is inconsistent with earlier cases that suggest that a resulting trust can arise even if the recipient of the property was unaware of the transfer.[3] It does, however, resonate with the hypothesis, recently advanced by the current author,[4] that the classic doctrine of resulting trusts, recognised by the law of equity for many centuries, is being swallowed up by the common intention analysis developed by Lord Diplock in *Gissing v Gissing*.[5]

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[1] [2017] EWHC 3116 (Ch).
[2] [2017] EWHC 3116 (Ch) [35]-[38].
[3] Note, in the voluntary transfer context, *Duke of Norfolk v Browne* (1697) Pr. Ch. 80; *Re Vinogradoff* [1935] WN 68. Note also, in the purchase money resulting trust context, *Shephard v Cartwright* [1955] AC 431; *Sidmouth v Sidmouth* (1840) 2 Beav 447.
[4] John Mee 'The Past, Present, and Future of Resulting Trusts' (2017) 70 Current Legal Problems 189, 213-221.
[5] [1971] AC 886 (HL). Chief Master Marsh also commented briefly on the type of evidence that is admissible to rebut the presumption of resulting trust, rejecting (without naming) the rule in *Shephard v Cartwright* [1955] AC 431 (HL) that suggests that acts and statements of the claimant made after the transaction in question are only admissible if they are against the interest of the claimant: [2017] EWHC 3116 (Ch) [37]-[38]. This was in line with the remarks of Lord Phillips

The Facts

The central issue in the case was the beneficial ownership of a house in South London that was registered in the name of Mr Feng Xing but was occupied by the defendant, Mr Gui Hui Dong, and his family. The National Crime Agency (NCA) had obtained summary judgment against Mr Dong for £681,890.28 plus interest, in respect of unpaid tax, and an interim charging order was made against Mr Dong's beneficial interest in the house in question, 'such as it may be'.[6]

The house had been purchased in Mr Dong's name in 2008. After the purchase, the house 'was demolished and completely rebuilt and extravagantly fitted out at a cost of several hundred thousand pounds … [with] marble floors and walls throughout the first floor and a purpose-built entertainment room complete with a home cinema in the basement'.[7] In 2011, the house was transferred by Mr Dong to Mr Feng 'for nil consideration'.[8] According to an attendance note written by Mr Dong's solicitor at the time, Mr Dong's stated intention at the time was that Mr Feng would hold the property on trust for Mr Dong. Mr Feng was described in the attendance note as the 'brother' of Mr Dong but it was accepted that this was 'a loose description of the relationship that arises under the concept of "guanxi"' in Chinese business culture, so that Mr Feng was in fact a trusted 'friend' or associate of Mr Dong.[9] Although Mr Dong's solicitor advised him to utilise a Trust Deed to record the intended trust, Mr

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MR in *Lavelle v Lavelle* [2004] EWCA Civ 223 [14]-[18] and the suggestion by Davis LJ in *R v Bello* [2015] EWCA Crim 731 [27] that 'if ever there was an evidential rule purportedly laid down in *Shephard v Cartwright*, that has by now become entirely outmoded'. Contrast the suggestion by Man Yip and James Lee '"Less than straightforward" people, facts and trusts: reflections on context: *Favor Easy Management Ltd v Wu*' [2013] Conv 431, 437 that, rather than the lower courts choosing to depart from the rule, "it must be for the Supreme Court to review the rule in *Shephard*".

[6] [2017] EWHC 3116 (Ch)[3]-[4]. Mr Dong was subsequently convicted of money laundering and sentenced to 11 years in prison: *ibid* [5].

[7] *Dong v National Crime Agency* (INCOME TAX : Discovery Assessments) [2017] UKFTT 588 (TC), [18] (Judge John Brooks), quoted by Chief Master Marsh [2017] EWHC 3116 (Ch) [8].

[8] [2017] EWHC 3116 (Ch) [9].

[9] [2017] EWHC 3116 (Ch) 21. Chief Master Marsh accepted Mr Feng's explanation that '[t]he concept of "guanxi" connotes a series of relationships in which there are mutual obligations and favours owed between the parties concerned. The Chinese people prefer to deal with people they know and trust and in business it is like being friends, and friends can count on each other in good and tough times.'

Dong declined to do so. Mr Dong and his family continued to occupy the property after the transfer.

Mr Dong claimed that certain Chinese investors had paid for the purchase of the property and that his only entitlement was to be a 10% commission on the proceeds of sale when the property was eventually sold.[10] Various documents were relied upon to support this claim. Chief Master Marsh, however, concluded that these reflected 'merely … contractual arrangements that did not affect ownership of the Property, either at law or beneficially.'[11] Therefore, he held that Mr Dong was the beneficial owner the time of the purchase.

In relation to the subsequent transfer of the property, Mr Dong argued that, due to language difficulties, his solicitor had misunderstood him and that his intention had not been to retain the beneficial ownership in the property. The NCA relied on the existence of a presumption of resulting trust, arising from the voluntary (i.e gratuitous) transfer of the land to Mr Feng. Notwithstanding the existence of s.60(3) of the Law of Property Act, counsel for Mr Dong conceded the existence of such a presumption. Nonetheless, Chief Master Marsh discussed the point at some length, ultimately concluding that the presumption of resulting trust did indeed arise upon a voluntary conveyance of land.[12] Although this presumption was 'readily displaced by contrary evidence',[13] in this instance the evidence, in particular the attendance note made by Mr Dong's solicitor, confirmed that the intention of Mr Dong and Mr Feng had been that Mr Dong would retain the beneficial interest. Therefore, the NCA's charging order took effect against Mr Dong's sole beneficial interest in the house.[14]

Previous Case Law on the Effect of Section 60(3)

Having noted counsel's concession on the question of whether a gratuitous conveyance of land triggered a presumption of resulting trust, Chief Master

[10] [2017] EWHC 3116 (Ch) [51].
[11] [2017] EWHC 3116 (Ch) [66].
[12] [2017] EWHC 3116 (Ch) [23]-[34].
[13] [2017] EWHC 3116 (Ch) [68].
[14] Chief Master Marsh decided to make the interim charging order final: [2017] EWHC 3116 (Ch), [76]-[81].

Marsh commented that 'the legal position is far from clear'.[15] Section 60(3) states that:

> 'In a voluntary conveyance a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee.'

Attempts by the courts to interpret this subsection have generally been based on the assumption, which is in fact questionable,[16] that a presumption of resulting trust arose upon a voluntary conveyance made prior to 1926. A pre-1926 presumption of resulting trust, if it existed, would have operated alongside the presumption of resulting use,[17] which undoubtedly arose upon a voluntary conveyance of land prior to 1926.[18]

In *Hodgson v Marks*[19] and *Tinsley v Milligan*,[20] the question of the impact of s.60(3) was left open. At first instance in *Lohia v Lohia*,[21] Judge Strauss QC held that that 'on a plain reading of s 60, the presumption has been abolished'.[22] However, on appeal,[23] the Court of Appeal did not find it necessary to reach a conclusion on the point and preferred to express no views on 'this knotty question'.[24] Unfortunately from the viewpoint of clarity, in the subsequent Court of Appeal case of *Ali v Khan*,[25] the existence of the Court of Appeal decision in *Lohia* was overlooked, and Morritt V-C (with whom Rix LJ and Sir Swinton Thomas agreed) simply stated that the first instance decision in *Lohia* established 'that the presumption of a resulting trust on a voluntary conveyance

[15] [2017] EWHC 3116 (Ch) [23]. The case law is reviewed in J Mee 'Resulting Trusts and Voluntary Conveyances of Land' [2012] Conv 307, 308-310.
[16] See text to notes 47-57 below.
[17] The presumption of resulting trust would have arisen only if (as would normally have been the case) the presumption of resulting use had been rebutted.
[18] See text following note 42 below.
[19] [1971] Ch 892, 933D *per* Russell LJ. In fact, unlike the judges in later cases, Russell LJ made no assumption that a presumption existed prior to 1926.
[20] [1994] 1 AC 340, 371 *per* Lord Browne-Wilkinson.
[21] (2000) 3 ITELR 117; R Chambers '*Lohia v Lohia*' (2001) 15 Trust Law International 26.
[22] (2000) 3 ITELR 117, 129.
[23] [2001] EWCA 1691.
[24] [2001] EWCA 1691 [34] *per* Sir Christopher Slade. Note also the remarks of Mummery LJ, quoted as text to note 72 below.
[25] [2002] EWCA Civ 974.

of land has been abolished by s.60(3) Law of Property Act 1925'.[26] Morritt V-C accepted that it would still be possible for a claimant to establish the existence of a resulting trust on the evidence; thus, his view was that the effect of s.60(3) was to reverse the burden of proof.[27] The same approach was taken by Richards J in *Crown Prosecution Service v Malik*.[28] Finally, in *Prest v Petrodel Resources Ltd*,[29] Lord Sumption assumed that a presumption of resulting trust arose upon a gratuitous conveyance of land[30] but 'without discussing the authorities or acknowledging that there was an alternative view'.[31] It seems clear, unfortunately, that Lord Sumption simply overlooked the existence of s.60(3).

On the whole, notwithstanding Lord Sumption's apparent blunder in *Prest*, the weight of previous authority on the point indicated that, contrary to Chief Master Marsh's view, the presumption of resulting trust upon a voluntary conveyance of land did not survive s.60(3) of the Law of Property Act 1925.

Chief Master Marsh's Argument in *Dong*

Chief Master Marsh emphasised that 'the heading to s.60 is unusually explicit in describing the subject matter of the section as: "Abolition of technicalities in regard to conveyances and deeds"'.[32] He later suggested that '[d]ue weight must be given to the words used in the sub-section and their context', noting that s.60 appears in a part of [the Law of Property Act that] is largely concerned with the nuts and bolts of conveying interests in land' and that the other two subsections of s.60 both 'deal with what may fairly be described as technicalities.'[33] Chief Master Marsh's view that s.60(3) was intended to deal with a 'technicality' is supported by the legislative history of the matter. The subsection was not included in the original reforming legislation, the Law of Property Act 1922, but instead formed part of the Law of Property Act 1924, and fell into a category of

[26] [2002] EWCA Civ 974 [24].
[27] [2002] EWCA Civ 974 [24].
[28] [2003] EWHC 660 (Admin) [27], [30].
[29] [2013] UKSC 34; [2013] 2 AC 415.
[30] [2013] UKSC 34; [2013] 2 AC 415 [49].
[31] *Dong* [2017] EWHC 3116 (Ch) [29].
[32] [2017] EWHC 3116 (Ch) [25] (emphasis in judgment).
[33] [2017] EWHC 3116 (Ch) [33].

'amendments of the law on minor details to remedy the errors and omissions' that had been identified in the 1922 Act.[34]

Of course, it remains to be clarified what 'technicality' was being addressed. Chief Master Marsh quoted the following comment from *Snell on Equity*:

> 'The preferable interpretation [of s.60(3)] would be that the provision merely introduces the possibility that the grantee may take the beneficial interest in the land even though the words "to the use or benefit of the grantee" are not expressed in the conveyance. That is to say, the provision was only intended as a conveyancing reform to simplify the words of limitation[35] in the conveyance, not to preclude the application of the substantive law of resulting trust to voluntary conveyances of land.'[36]

'[G]iving due weight to the view expressed by the learned editors of Snell',[37] Chief Master Marsh concluded that it was implausible that the subsection was intended 'to do away with a presumption of law of long standing'[38] and that its purpose was instead to remove the consequences of 'a failure to use a time-honoured conveyancing formula',[39] i.e. a failure to state that the land was being 'conveyed for the "use or benefit" of the grantee'.[40] He bolstered this conclusion by making two further arguments. One was that it would be anomalous for the presumption to have been abolished only in relation to land but not in relation to chattels, especially given that 'the interest in land being conveyed without

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[34] See Memorandum prefixed to the Law of Property (Amendment) Bill 1924 (H.L.), p. I, and the discussion in J Mee 'Resulting Trusts and Voluntary Conveyances of Land' [2012] Conv 307, 318.
[35] In fact, it is not accurate to use the term 'words of limitation' here; such words 'measure out the quantity of estate' that the purchaser is to have, determining whether he or she is to take a fee simple, fee tail or life estate: *Goodright v Wright* (1717) 1 P. Wms 397 *per* Parker C.J., quoted by C Harpum, S Bridge, M Dixon *Megarry and Wade: The Law of Real Property* (8th edn, 2012) 3–023.
[36] [2017] EWHC 3116 (Ch) [28], quoting J McGhee (ed) *Snell on Equity* 33rd ed, 25–017.
[37] [2017] EWHC 3116 (Ch) [33].
[38] [2017] EWHC 3116 (Ch) [34].
[39] [2017] EWHC 3116 (Ch) [26].
[40] [2017] EWHC 3116 (Ch) [34]. In fact, Chief Master Marsh's statement of the point is somewhat garbled in this paragraph: 'the mischief towards which s.60(3) is aimed is the failure to include formula [sic] of words in a conveyance, namely the failure to say that the property is not expressed to be conveyed for the "use or benefit" of the grantee'.

consideration might be worth very much less than the value of some types of chattel'.[41] The second argument related to the particular factual context of *Dong*:

> '[I]t must often be the case that a party seeking to contend there is a resulting trust following a voluntary conveyance has a limited ability to produce extrinsic evidence. The grantor, and sometimes the grantee, hold all the cards. A third party will usually hold no cards at all. The presumption has the potential to even out the evidential imbalance without leading to an unfair starting point.'[42]

Analysis

It is clear that the ancient presumption of resulting *use* arose upon a voluntary conveyance of land prior to 1926.[43] The presumption could be rebutted by evidence that a gift was intended and, therefore, it was standard practice to include a statement in a voluntary conveyance (and apparently, out of an abundance of caution, in conveyances for consideration also)[44] to the effect that the conveyance was being made 'unto and to the use of' the grantee.[45] As Chief Master Marsh pointed out, the need to include such words 'may fairly be described as a technicality'.[46] Chief Master Marsh's argument in *Dong* was that the purpose of section 60(3) was to eliminate this technicality. Since the source of the technicality was the existence of the presumption of resulting use, the implication of Chief Master Marsh's argument is that section 60(3) operated to eliminate the presumption of resulting use (although he did not expressly refer to this presumption in his judgment). According to Chief Master Marsh, the removal of the technicality left the presumption of resulting trust intact.

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[41] [2017] EWHC 3116 (Ch) [34].
[42] [2017] EWHC 3116 (Ch) [31].
[43] *Beckwith's Case* (1589) 2 Co Rep 56b, 58a; *Armstrong v Wolsey* (1755) 2 Wils KB 19; C Harpum, S Bridge and M Dixon *Megarry and Wade: The Law of Real Property* 8th edn (2012) p 416. The presumption did not apply where the conveyance was made to a near relation of the transferor or was for valuable consideration: *Megarry and Wade* ibid.
[44] F.T. Maw *Elphinstone's Introduction to Conveyancing* 7th edn (1918) pp.12-13; p.129.
[45] *Anon*. (1535) Benl. 16; Sir John Baker, *Oxford History of the Laws of England* (2003) vol.6, 1483–1558, p.675.
[46] [2017] EWHC 3116 (Ch) [26].

However, the proposition that the presumption of resulting trust continued to exist after 1926 runs into a number of problems. The first objection is that it is by no means clear that there actually was a presumption of resulting trust prior to 1926. Like a number of modern judges before him, Chief Master Marsh assumed the existence of a pre-1926 presumption of resulting trust. However, as the current author has discussed elsewhere, it seems that the most that could be said in favour of the existence of the presumption is that the point may have been unsettled, with the better view seeming to be that no presumption of resulting trust arose.[47] The authority in favour of the existence of a presumption boils down to the decision of Lord Nottingham in *Elliot v Elliot*,[48] a clear dictum by the same judge in *Lewys v Williams*,[49] and some less clear remarks by him in *Grey v Grey*.[50] On the other side are the decision of Lord Hardwicke in *Lloyd v Spillet*[51] and the clearly expressed view of the same judge in *Young v Peachy*,[52] a strongly worded dictum of James L.J. in *Fowkes v Pascoe*,[53] and the remarks of Farwell LJ in *Pink v Pink*[54] (explaining that a remark of Jessel MR in *Strong v Bird*,[55] which appeared to support the existence of the presumption, must be understood to refer to the purchase money resulting trust).[56] It seems significant that there is no judicial support for the idea of a presumption after the 1670s.[57]

Leaving aside the question of whether there was a pre-1926 presumption of resulting trust, a second objection is that it is difficult to see how the wording of section 60(3) is apt to eliminate the presumption of resulting use but not that of resulting trust. The subsection refers only to a 'resulting trust' not being

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[47] See the detailed discussion, including of the issues of principle, in J. Mee 'Resulting Trusts and Voluntary Conveyances of Land: 1673-1925' (2011) 32 Journal of Legal History 215; J Mee 'Resulting Trusts and Voluntary Conveyances of Land' [2012] Conv 307, 313-316.
[48] (1677) 2 Ch. Cas. 231; *Lord Nottingham's Chancery Cases*, vol.2 (Selden Society Vol.79, 1961) 566.
[49] (1674) *Lord Nottingham's Chancery Cases*, vol.1 (Selden Society Vol.73, 1957) 105, 106.
[50] (1677) 2 Swans. 594, 598.
[51] (1740) 2 Atk. 148; Barn Ch. 384.
[52] (1741) 2 Atk. 254, 256-257.
[53] (1875) 10 Ch. App. 343, 348.
[54] [1912] 2 Ch. 528, 536-537.
[55] (1874) L.R. 18 Eq. 315, 318.
[56] Note also the carefully reasoned decision of Cussen J in the Australian case of *House v Caffyn* [1922] VLR 67.
[57] Aside from the dictum of Jessel MR in *Strong v Bird*, which (as has been mentioned) was expressly explained away by a higher court in *Pink v Pink*.

implied upon a voluntary conveyance and makes no reference to resulting uses. According to Chief Master Marsh, arguing for the survival of a putative presumption of resulting trust, it is significant that the subsection did not expressly state the presumption of resulting trust was abolished but merely stated that such a trust 'is not to be implied "merely by reason of" a failure to use a time-honoured conveyancing formula'.[58] He argued that:

> 'It would have been very easy for the draftsman to have said that the presumption to which the sub-section is addressed is abolished. After all the LPA consolidated the fundamental reforms to the way in which land was held and conveyed and is explicit about change where it needs to be.'[59]

This argument is, however, easily turned around. If Chief Master Marsh's interpretation is correct, why did the subsection not even mention the presumption of resulting use, let alone state explicitly that it was to be abolished? It is possible, at the cost of some complexity, to argue that the subsection did indeed eliminate the presumption of resulting use, on the basis that – given the repeal of the Statute of Uses, which had previously executed uses, i.e. turned them into legal interests – any presumed resulting use would remain an equitable interest and so might, with some degree of plausibility, be referred to as a resulting trust.[60] However, it seems impossible to explain how the words in the subsection could operate to eliminate the presumption of resulting use but not the presumption of resulting trust (assuming it existed before 1926). Even if one accepts the argument that the reference to 'resulting trusts' was intended to encompass resulting uses, it seems obvious that the term also encompasses resulting trusts themselves. The result would be that, after 1926, no presumption would arise upon a voluntary conveyance; section 60(3)

[58] [2017] EWHC 3116 (Ch) [26].
[59] [2017] EWHC 3116 (Ch) [26].
[60] See J Mee 'Resulting Trusts and Voluntary Conveyances of Land' [2012] Conv 307, 321.

would have eliminated the presumption of resulting use and also any presumption of resulting trust that might have existed before 1926.[61]

A second problem with Chief Master Marsh's interpretation is that it seems implausible that the drafters would have wanted to reform the law to remove the presumption of resulting use, regarding it as an obsolete technicality, but would have wished to preserve the functionally very similar presumption of resulting trust.[62] The obvious objections to the presumption of resulting use were that it created uncertainty as to the effect of a voluntary conveyance and required the inclusion of a verbal formula to ensure that the voluntary conveyance would be effective to pass the property to the grantee. It seems, however, that similar objections apply to the presumption of resulting trust. At first instance in *Lohia v Lohia*,[63] Judge Strauss QC pointed out that, unless the subsection were construed as eliminating the presumption of resulting trust, it would 'be something of a trap for the unwary conveyancer, since the suggestion implicit in its wording that it is no longer necessary to use the old formula would be misleading, except in cases in which the presumption of advancement applied.'[64] This point was not addressed by Chief Master Marsh.

A third criticism of the approach in *Dong* is that the argument in favour of the recognition of a presumption of resulting trust in the context of voluntary transfers of land puts a high premium on 'tidiness' in terms of treating land and chattels in the same way (despite the existence of a specific legislative provision changing the position in relation to land). It is arguable that it is not, in fact, particularly important to treat land and chattels in the same way in this context, especially given the differences in the applicable mechanisms for transfer. This

[61] The current author's view (ibid, 321-325) is that the subsection was probably drafted on the assumption that there was no presumption of resulting trust, and that the intention was simply to eliminate the presumption of resulting use. However, as has just been pointed out, the wording seems equally apt to eliminate any presumption of resulting trust that might have existed.
[62] It is arguable that unfamiliarity with the law of uses has made it easier for some modern English commentators to dismiss the doctrine of resulting uses as a mere technicality, while simultaneously treating the parallel presumption of resulting trust as a modern, substantive doctrine worthy of preservation. The current author can possibly claim some degree of insight into the issue, coming from Ireland where the presumption of resulting use upon a voluntary conveyance survived, and conveyances to uses continued to be employed for various reasons, until the advent of the Land and Conveyancing Law Reform Act 2009, which eliminated the need for conveyances to uses and which, by s.62(3), abolished the presumption of resulting use upon a voluntary conveyance.
[63] (2000) 3 ITELR 117.
[64] (2000) 3 ITELR 117, 129.

seems to have been the view of Judge Strauss QC in *Lohia*, where he concluded that, in light *inter alia* of the 'trap for the unwary conveyancer' point, the desire for uniformity between land and chattels was not 'a factor of sufficient potency' to displace what he regarded as the natural interpretation of the subsection as eliminating the presumption of resulting trust.[65] It is difficult to accept Chief Master Marsh's argument that it is not appropriate to treat land differently to chattels because 'the interest in land being conveyed without consideration might be worth very much less than the value of some types of chattel'.[66] While, inevitably, some chattels are worth more than some interests in land, land is commonly regarded as an especially valuable commodity and, for this and other reasons, the law treats land differently to chattels in a variety of ways.[67]

Finally, and more generally, it is arguable that the presumption of resulting trust is a vestige of legal history which does not reflect the likely intention of a person making a transfer in modern times. This argument, if accepted, would suggest that it would be preferable to regard the presumption as having been eliminated at least in relation to land.[68] Chief Master Marsh suggested, as was mentioned above, that the presumption has a modern justification in that it can be difficult, especially for a third party who has 'a limited ability to produce extrinsic evidence', to establish that a voluntary conveyance was made with an intention consistent with the creation of a resulting trust.[69] In such circumstances, he felt that '[t]he presumption has the potential to even out the evidential imbalance without leading to an unfair starting point'.[70] While this is an interesting point, it was clearly influenced by the factual context of the particular case. It is not clear that it is appropriate to apply, in all cases, a presumption which is at odds with the likely intention of the transferor, merely

[65] (2000) 3 ITELR 117, 129.
[66] [2017] EWHC 3116 (Ch) [26].
[67] For example, it is not possible to own land as tenants in common at law: s 1(6) of the Law of Property Act 1925. However, this is possible in relation to chattels (a point, incidentally, which was overlooked recently by Lord Briggs (Lady Hale and Lord Sumption concurring) in *Whitlock* v *Moree* [2017] UKPC 44 [21]).
[68] Compare J Mee 'The Past, Present, and Future of Resulting Trusts' (2017) 70 CLP 189, 198-200, 220-221 (arguing that not merely is the *presumption* of resulting trust outdated but the wider purchase money/voluntary transfer resulting trust doctrines are premised on outdated assumptions).
[69] [2017] EWHC 3116 (Ch) [31].
[70] [2017] EWHC 3116 (Ch) [31].

because it could be helpful in that subset of cases where it happens to be a third party who is trying to establish the existence of a resulting trust. It is, in fact, equally possible to imagine cases where the existence of a presumption of resulting trust would be disadvantageous to third parties. For example, it would be against the interest of X's creditors to have a resulting trust established in a case where X has gone bankrupt having received a voluntary transfer from his associate, Y.

Conclusion

In *Lohia v Lohia*,[71] Mummery LJ commented that the interpretation of s.60(3) was 'so inextricably bound up in centuries of English legal history that it would be bold for this court to pronounce upon it without having heard very extensive argument, preferably in the context in which a decision on the point was crucial to the outcome of the case'.[72] The warning implicit in these remarks was heeded by Eleanor King J in *M v M,*[73] when she commented simply 'I am not so bold'.[74] In *Dong*, however, Chief Master Marsh expressed detailed views on the issue, notwithstanding that counsel had conceded the existence of the presumption. Chief Master Marsh suggested that the existence of doubt as to the status of the presumption was 'very unhelpful to the first instance judge'[75] and it is clear that, in his carefully reasoned judgment, he was seeking to clarify the position. However, another expression of opinion at first instance was never likely to resolve the controversy, particularly in the absence of the 'very extensive argument' that Mummery LJ identified as necessary to illuminate the difficult historical points at issue.

Prior to *Dong*, the case law had tended fairly clearly to the view that no presumption of resulting trust arises upon a voluntary conveyance of land but that it is open to the grantor to prove that a trust in favour of the grantor was intended. The fact that Chief Master Marsh took a different view, coming in the wake of *Prest* where Lord Sumption also believed that the presumption applied

[71] [2001] EWCA 1691.
[72] [2001] EWCA 1691, [24].
[73] [2013] EWHC 2534 (Fam).
[74] [2013] EWHC 2534 (Fam) [173].
[75] [2017] EWHC 3116 (Ch) [32].

(albeit having overlooked the existence of s.60(3)),[76] threatens to undermine the degree of certainty that the cases had previously offered. In the end, however, the arguments offered by Chief Master Marsh do not offer a convincing explanation as to how the wording of s.60(3) could operate to eliminate the presumption of resulting use and yet leave unscathed the presumption of resulting trust (assuming, which is at best a 50/50 proposition, that such a presumption existed prior to 1926). Therefore, while the matter has been further clouded by *Dong*, the better view still seems to be that no presumption of resulting trust arises upon a voluntary conveyance of land.

[76] [2013] UKSC 34 [49].