The High Court explicitly accepted this reasoning and said that

> [t]hose requirements of natural justice are not infringed by a mere lack of nicety but only when it is firmly established that a suspicion may reasonably be engendered in the minds of those who come before the tribunal or in the minds of the public that the tribunal or member or members of it may not bring to the resolution of the questions . . . fair and unprejudiced minds.[12]

The interesting question which arises is has the High Court, in dismissing the motion for prohibition, applied the test of the mind of the reasonable man (*Lannon's* case), or of the reasonable court (*Barnsley's* case)?

At first glance it would appear that they have followed the older view. The High Court said that the President's former statement

> was clearly open to the inference that the minds of the members of the Commission . . . tended to favour the adoption of the principle of equal pay so soon as the economic and industrial situation of the community would permit . . .[13]

But they noted that the existence of such a general tendency of mind would not justify a 'reasonable apprehension' that a member of the Commission could not fairly approach a matter before it. This was so because the Commission's actions in the 1967 National Wage Case did not *prima facie* mean that it was deliberately attempting 'to implement pro tanto a policy of equal wages'.[14] Rather, the Commission was aware of the enormous implications involved in such a policy and it had made an open invitation to those concerned to fully debate the issues concerned. The High Court noted that it is

> the duty of the members of the Commission always to have and to display a willingness, indeed an anxiety, to give full and fair consideration to every relevant argument that may be addressed to them for a revision or even an abandonment of announced opinions.[15]

Does this imply (a) that the reasonable man would expect a higher degree of impartiality from the Commission in these circumstances than he would of a lawyer, in the position of Mr. Lannon, sitting on a fair rents board, and (b) that the presumption that the higher the court, the harder it is to prove bias, is firmly entrenched in Australian law?[16]

M. LEAH FREEMAN

TAYLOR v. DEPUTY COMMISSIONER OF TAXATION[1]

Completion of gifts in equity—Resolution of Milroy v. Lord[2]

> I take the law of this Court to be well settled, that in order to render a voluntary settlement valid and effectual, the settlor must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him.

[12] *Ex parte The Angliss Group* (1969) 43 A.L.J.R. 150, 152.
[13] *Ibid.*
[14] *Ibid.*
[15] *Ibid.*
[16] See Wade, Note, (1969) 85 *Law Quarterly Review* 24 for an interesting discussion about the test of 'real likelihood'.
[1] (1969) 43 A.L.J.R. 237. High Court of Australia; Barwick C.J., Taylor and Menzies JJ.
[2] (1862) 4 De G. F. & J. 264; 45 E.R. 1185.

This language of Turner L.J. in *Milroy v. Lord* is sufficient for the case where the statutory or common law rules for the assignment of property demand that the donor and the donee perform separate and distinct acts. But what of the case where the prescribed formalities can be performed by the donor or donee (or third party) equally? The giving of the notice to the debtor as required by the Property Law Act 1958, section 134 is a case in point. Here the language employed in *Milroy v. Lord* proves insufficiently precise; is it sufficient for the donor to perform only those acts which he must perform, or need he carry out all those acts which it lays in his power to fulfil? The issue divided the High Court in *Anning v. Anning*,[3] Griffith C.J. taking the former view whilst Higgins J. favoured the latter.

Taylor v. Deputy Commissioner of Taxation[4] is of interest for it treats of this issue. Before receiving notice of a claim by the Commissioner of Taxation for "back taxes" levied on the estate of one Taylor, the executors of Taylor had delivered a transmission application and the certificate of title of a piece of land under the New South Wales Real Property Act to the devisee of the land. Notice of the claim was then received which prevented the devisee from becoming registered. The executors, appealing from an adverse decision at first instance,[5] argued before the High Court that the land was not an available asset, raising the defence of *plene administravit*. They argued 'that they had, before notice of the respondent's claim, done everything necessary to be done by them' in order to transfer the land. Were the actions of the executors to be measured according to the formulation of *Milroy v. Lord* laid down by Higgins J., then they would not have done 'all that was necessary', for 'necessary' in that case would mean 'possible' and it lay in their power to register the instruments. Measured by Griffiths C.J.'s formulation, however, they would succeed. The High Court in this case was brief: 'On this aspect of the case it is unnecessary to go beyond the observations of Griffith C.J. in *Anning v. Anning* . . .'[6]

This view accords with that adopted by Windeyer J. in *Norman v. Commissioner of Taxation*,[7] and repeated by His Honour in *Olsson v. Dyson*.[8] Dixon C.J. in *Norman's* case had also, apparently, given the imprimatur of his name to this view. The position taken by the Court of Appeal in *Re Rose*[9] left the position in England ambiguous.

All three members of the High Court who decided the present case had an opportunity in *Olsson v. Dyson* to express their views on the matter. But the opportunity was not taken. It is curious that this much debated point should be now treated with such little comment.

LESLIE GLICK

[3] (1907) 4 C.L.R. 1049.
[4] (1969) 43 A.L.J.R. 237.
[5] *Deputy Commissioner of Taxation v. Taylor* (1968) 12 F.L.R. 173; (1968) 88 W.N. (Pt 1) (N.S.W.) 429.
[6] (1969) 43 A.L.J.R. 237, 239.
[7] (1963) 109 C.L.R. 9.
[8] (1969) 43 A.L.J.R. 77, 83.
[9] [1952] Ch. 499.