money, such a transaction ought not to stand. Your Lordships therefore will show a strict adherence to the principle, and that nothing here but length of time and acquiescence for nearly fifty years by the father and his son Lewis Hickes, and also by the Appellant;—that nothing but this—induces you to affirm the decree.

March 14, 1816.

LONG ACQUIESCENCE A BAR TO RELIEF.

Ground of the judgment lapse of time before the transaction was impeached.

Decree *affirmed*, solely on the ground of the long acquiescence.

Agent for Appellant, BEETHAM.
Agent for Respondent, LANE.

ENGLAND.

APPEAL FROM THE COURT OF EXCHEQUER.

MORGAN and others—*Appellants.*
LEWES (SIR WATKIN) and his Daughter..... } *Respondents.*

ATTORNEY and agent advances money to his client and principal in various sums and at different periods, from 1773 to 1778, taking securities and getting accounts settled. The transactions impeached in 1783, and decree of the Court below and orders of the Lords proceeding upon its principle, that the settled accounts should be opened and the whole transactions sifted; and that the securities should not be admitted as evidence of the demands, but that the attorney should only be allowed in account the money actually advanced and proved to be so by other evidence than the securities and settlement of accounts.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

But as in the case of accounts in some sense settled, and a considerable period elapsing before they were impeached, vouchers might have been delivered up or lost, the oath of the party admitted as evidence as to the existence and import of such vouchers.

Attorney procures money on mortgage for his client from other clients, and gives up to the client mortgagor a bond, obtained from that client in respect of separate transactions between themselves, as part consideration of the mortgage. A separate account ordered as to the mortgage transaction in order to clear the estates, the attorney being in possession as agent for the mortgagees, and the account confined to the money actually advanced by the clients the mortgagees, and the mortgage security cut down, as to the other alleged part of the consideration, which is referred to a general account between the attorney and the client the mortgagor.

The attorney not allowed to take timber felled on the mortgaged estates in execution for his private debt, the timber being part of the security of the mortgagees, and the produce goes in discharge of the mortgage account. (*Vide* 3 Anst. 769. *Vide* also *Cane v. Lord Allen*, *ante*, vol. ii. 289. and *Vaughan v. Lloyd* cited in *Wharton v. May*, 5 Ves. 48.)

THIS is a case depending on the principles on which Courts of Equity proceed in directing accounts between attorney and client, where the attorney has been dealing adversely with the client during the continuance of that relation.

1773, Morgan offers to procure for Lewes money on mortgage.

Sir Watkin Lewes, being in 1773 seized of estates in right of his wife, in the counties of Glamorgan, Carmarthen, and Pembroke, became acquainted with John Morgan an attorney, who promised to procure for him money at four per cent. on mortgage of the estates, chiefly for the purpose of paying off a then existing mortgage at five per cent. to a Dr. Kent. With a view to this arrangement a new marriage settlement of the estates was made, in

Marriage settlement. Term of 500 years to raise 12000*l.*

which there was a term of 500 years to the use of trustees, George Morgan, and James Morgan, the latter the brother of John Morgan, in trust to raise 12,000*l.* upon security of the estates, 5000*l.* thereof to be applied in paying off Kent's mortgage, and the remainder to be paid to Sir W. Lewes. That project of mortgage however came to nothing; but John Morgan having married in 1775, he offered Sir W. Lewes on mortgage at four per cent. some money settled on his own marriage, in trust to pay the interest to himself for life, then to his wife if she survived, and after the death of both to pay the principal and interest among the children of the marriage, and in default of children to himself absolutely, and by the death of the wife without children he became in fact entitled absolutely. Farrer his father-in-law, and James Morgan his brother, were the trustees in that settlement, and at the suggestion of John Morgan, Lewes consented that James Morgan should be removed from being a trustee of the 500 years' term under Lewes's settlement, and that Chardin Morgan, another brother of John Morgan, should be made trustee in his stead.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

Morgan's marriage settlement.

Trustees. One brother of Morgan a trustee in Lewes's settlement, another a trustee in Morgan's settlement.

By an indenture dated June 2, 1775, the 500 years' term in the estates was assigned in mortgage to Farrer and James Morgan for 6,610*l.*, and by another indenture of the same date, it having been agreed that a receiver should be appointed, the mortgaged premises were demised to John Morgan for sixty-one years, if he should so long live, without impeachment of waste, upon trust that the said John Morgan should, during the term, or until the

First mortgage, June 2, 1775, 6,610*l.*

Morgan appointed receiver upon Lewes's estates.

March 15, 18, 20; April 1, 1816.

ACCOUNT.— ATTORNEY AND CLIENT.

money should be paid, receive the rents, &c., and dispose of the same in payment of the interest of the sum borrowed, and of a salary of 40*l.* to himself; the surplus to be paid to Sir Watkin Lewes or any who should be entitled, and the term of sixty-one years to be determined on payment of the 6,610*l.* and interest. And John Morgan was by this indenture empowered "to remove or put out all or "any of the tenants or occupiers of the said here- "ditaments and premises, and to let and demise "the said premises, or any part thereof, unto such "persons, and upon such terms and conditions, "and in such manner as, with the consent and "approbation of the said William Farrer and "James Morgan, &c. the said John Morgan should "think proper."

Power as to tenants, &c.

Second mortgage, April 2, 1776, 1,390*l.*

By a deed poll, April 2, 1776, indorsed on the indenture of assignment of June 2, 1775, the premises were mortgaged for a farther sum of 1,390*l.* alleged to have been advanced by Farrer and J. Morgan, making their alleged mortgage money 8,000*l.*

Third mortgage, April 3, 1776, 4,000*l.*

By another indenture of assignment of April 3, 1776, the estates were mortgaged during the residue of the term of 500 years to Henry Wilder, to secure a sum of 4,000*l.* advanced by the said Wilder; and by another deed of the same date, Lewes covenanted to allow Morgan a farther salary of 20*l.* a year.

In the mortgage transactions John Morgan acts as agent for mortgagor and mortgagees.

In these transactions John Morgan acted as attorney for both mortgagor and mortgagees; and whatever money was actually paid by the mortgagees was paid into the hands of Morgan, as the confidential agent and banker (as he was called) of Sir

Watkin Lewes; and as there were distinct dealings between John Morgan himself individually and his client Lewes, these matters came to be the subject of two distinct accounts, the mortgage account and general account.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

Two distinct accounts.

With respect to the first mortgage, the sum of 6,610*l.* stated as the consideration, was made up of a sum of 4,209*l.* 7*s.* 1*d.* admitted to have been advanced by the trustees Farrer and James Morgan on the mortgage account, and of a bond for 2,400*l.* executed by Lewes to Cardin Morgan for moneys alleged to have been previously advanced. As to this sum of 2,400*l.*, it was stated by John Morgan, in his answer to the bill hereinafter mentioned, that the several sums of 500*l.*, 220*l.*, 120*l.*, and 950*l.*, for each of which bonds were given to Chardin Morgan, had been advanced at different periods before the 18th November, 1774, on which day the account relative to these sums was settled; and that other sums were subsequently advanced to Lewes through the hands of John Morgan before February 28, 1775, on which day the account relative to all these sums was again settled, and a bond given by Lewes to Chardin Morgan for the amount of the whole, being 2,400*l.* But it appeared that though Morgan had included that sum in the mortgage accounts, the sums composing it, or whatever part of them were actually advanced, had been advanced by Chardin or John Morgan to Lewes without reference to the mortgage, and that the whole of the moneys mentioned in the securities had not always been really advanced at the time when these securities were given and the accounts settled; for

Consideration of the first mortgage.

Accounts settled.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

Consideration of second mortgage.

instance, when the account was settled, and the bond given for this 2,400*l.* on February 28, 1775, a sum of 210*l.* then remained to be paid to Lewes to make up that sum.

The consideration of 1,300*l.* for the mortgage deed April 2, 1776, was stated in John Morgan's answer to a bill aftewards filed in the Exchequer, to be so much money advanced to him as Agent or Attorney for Sir Watkin Lewes by Farrer and James Morgan, before the execution of the deed. But upon investigation, it clearly appeared that 190*l.* of this sum was advanced by John Morgan himself; and there was no sufficient evidence that any part of it had been advanced on the mortgage accounts.

Consideration for third mortgage.

The consideration (4,000*l.*) for the third mortgage April 3, 1766, appeared to have been actually advanced; so that the sums actually advanced on the mortgage account amounted together to 8,209*l.* and a fraction; and in the course of the exceptions and proceedings below, it was urged as an objection to the allowance of the whole of that sum, that the whole had not been applied by Morgan to Lewes's use.

After the execution of these securities Morgan delivered an account to Lewes, giving him credit for the whole sum of 12,000*l.* as advanced on the mortgages, and discharging himself by the payment of Kent's mortgage and of Chardin Morgan's bond for 2,400*l.*, by bills of costs due to himself for business done for Lewes, amounting to upwards of 800*l.*, and by various other sums applied by him to the use of Lewes.

This account was settled, and allowed by Lewes, on the 24th of February, 1777. March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

Account settled.

It is unnecessary for the purposes of the present appeal to state the particulars of the various other transactions between Morgan and Lewes, the sums advanced or alleged to have been advanced by Morgan to Lewes, and the securities taken. But it ought to be noticed, that it was hardly pretended by Morgan that the whole sums mentioned in these securities were actually advanced to Lewes at the time they were executed, but only that the whole had been applied then or afterwards to Lewes's use, and it became a question whether the settled accounts ought not to be opened and each of the items separately investigated, though the vouchers had been delivered up, or alleged to have been delivered at the time of settling; and whether the securities themselves ought to be admitted as evidence of the actual advance of the sums mentioned in them. Neither Morgan nor Lewes, it should be observed, had kept regular accounts of the dealings and transactions between them.

The sums mentioned in the securities not always fully advanced at time the accounts were settled, and the securities were executed.

In 1778 several proceedings at law and in equity were commenced, and judgments obtained, by Morgan against Lewes on his securities, and among others, actions of ejectment were brought on the several demises of William Farrer and James Morgan the mortgagees, against the tenants of the Glamorgan and Carmarthen estates, in respect of the tenements comprised in the mortgages, and also of tenements not so comprised; and in 1779 John Morgan, as attorney for the mortgagees, was put in possession of the estates, and continued in the pos-

1778. Proceedings at law and in equity by Morgan against Lewes.

Judgments obtained.

Ejectment by mortgagees, and John Morgan as their agent put in possession.

March 15, 18, 20; April 1, 1816.

session till 1798 when a receiver was appointed by the Court of Exchequer.

ACCOUNT.—ATTORNEY AND CLIENT.

Timber taken in execution by John Morgan for his private debt.

Sir W. Lewes had previously felled some timber on the estates for the purpose of raising money, which timber Morgan took in execution by virtue of writs of *Fi. Fa.* issuing upon judgments obtained for moneys due to himself personally and individually.

Awards: first afterwards set aside, and second (Blake's) appeared never to have been considered as binding.

In the course of these proceedings two references to arbitrators took place, one to Messrs. Holt and Parry, and another to Mr. Blake, solicitors; and two awards were made (the first of them on the principle of settled accounts), which came to nothing. Lewes at length got another solicitor to undertake his cause and procure money to settle with Morgan, and applied to Morgan for an account. Morgan returned for answer that he calculated the money due on all the securities to amount to near 17,000*l.*, but that 16,000*l.* would be accepted if paid as a gross sum to end disputes, after which he would furnish an account and abstract. Lewes refused to give a gross sum without an account, and required an account stated in the usual manner, which was refused.

1783. Bill in Exchequer by Lewes.

Prayer of it.

General account.

Lewes therefore, in 1783, filed his bill in the Exchequer against the mortgagees, and all proper parties, of which the prayer was of this nature; that a general account might be taken of all dealings and transactions between Lewes and the defendants; and an account of the rents of Lewes's estates received by the defendants or any of them;

Mortgage account.

that so much of the several mortgage sums of 6,610*l.* 1,300*l.* and 4,000*l.* as should appear to have come to the hands of George Morgan

might be answered by him accordingly, and so much of them as should appear to have come to the hands of the deceased Chardin Morgan in his life time might be answered out of his assets by his personal representative James Morgan, or that James Morgan should set out an account of Chardin's personal estate; that the award made by Parry and Holt might be declared void and set aside; that John Morgan might be compelled to make out a proper account of fees and disbursements, and that the same might be referred to the master to be taxed; *and that Lewes on paying what should be found due to the said defendants on the said several accounts might be let in to redeem his estates;* that a receiver might be appointed till redemption; and that an injunction might issue to stay proceedings at law, and restrain the selling of timber cut down, and the cutting down more, or committing waste; and that the remaining timber might be sold for Lewes's benefit.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

These words considered as applying only to the mortgage accounts.

The Court on 2d July, 1796, decreed an account of all dealings and transactions between Lewes and John Morgan;—and an account of moneys received by John Morgan as agent for Lewes, and for the mortgagees, Farrer and James Morgan, and how the same had been applied; that Dep. Rem. should tax John Morgan's bills of costs; an account of rents and profits of the mortgaged estates, and of timber felled thereon, and on the estates not in mortgage received by John Morgan or any person or persons by his order or for his use, or which without his wilful default, &c.; an account of the rents and profits of Lewes's estates not in

Decree, July 2, 1796.

General account.

Mortgage account.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

Directions.

mortgage received by John Morgan, &c.; that all parties should have just allowances, and be examined on interrogatories touching the said several accounts; that all parties should produce on oath, if required, all books, papers, deeds, evidences, and vouchers in their custody, &c.; and it was further, &c. decreed, that if, in taking the accounts and taxing the costs, it should appear to the Deputy Remembrancer that any one or more voucher or vouchers, in support of any one or more article or articles in the said accounts, and in the bills of costs of the said John Morgan, was then or were then lost, and could not be found, then John Morgan was required to make oath before one of the Barons, or a Commissioner duly authorised to take affadavits therein, that such voucher or vouchers did theretofore exist, and of the contents or purport of such voucher or vouchers, and that the same had been delivered up to Sir W. Lewes; and the Dep. Rem. was armed with a commission for the examination of these matters; and if any special matter should arise, the Dep. Rem. had liberty to state the same by special or separate report; and the consideration of interest and other directions were reserved until the Dep. Rem. should have made his general report; and parties to be at liberty to apply to the Court as there should be occasion.

Where vouchers delivered up or lost, oath of the party admitted as to their existence and import.

Liberty to make a separate report.

After some proceedings before the Dep. Rem. Lewes applied to the Court for an order for a separate report as to the mortgage transactions. And by an order of June 20, 1801, the Dep. Rem. was directed to make a separate report of all dealings

Order, June 20, 1801, for separate report

and transactions between the said Sir W. Lewes and John Morgan as far as related to the moneys actually received and paid on account of the mortgages and judgments in the bill mentioned: and also of all and every the sum and sums of money received by Morgan as agent for Lewes, and for the Defendants the mortgagees, and when and how such sum and sums of money was or were applied to their account; and of the rents and profits of the mortgaged estates; and of the timber which had been felled thereon, and on the estates not in mortgage received by John Morgan, &c.; and also of the rents and profits of the estates not in mortgage of which John Morgan was or had been in possession, &c.; and the Dep. Rem. should tax the costs of the mortgagees in the ejectments, and also the costs of the judgments, and state the amount in his separate report.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT. on mortgage account, including the judgments, (*Vide* Lord Redesdale's speech in judgment, *post*).

It was represented on behalf of Lewes, that the Court must by its decree have meant that the securities themselves should not be admitted as evidence of the money actually advanced to Lewes, or Morgan as his agent, but the Deputy Remembrancer understanding it differently made his separate report on July 16, 1802, drawn upon the principle that the bonds and other securities were evidence of the money actually advanced and paid on account of the mortgages and of the judgments, and accordingly that the 2,400*l.* formed part of the consideration for the first mortgage, and that the 12,000*l.* had been advanced on the mortgages, and that of the total sums for which judgment had been entered up, those

July 16, 1802, first separate report; proceeding on the principle that the securities were evidence of the demands.

March 15, 18, 20; April 1, 1816.

particular sums, for which bonds or other securities were given, had been actually paid.

ACCOUNT.—ATTORNEY AND CLIENT.

Exceptions by Lewes on the principle that the securities were not evidence of actual advance.

To this report Lewes took several exceptions; five of them, which were the only exceptions connected with this appeal, proceeding on the principle that the securities were not evidence of the moneys actually advanced, and objecting to the report as to the 2,400*l.* on the ground that, the bonds being out of the question as evidence, the several sums mentioned as making up this sum of 2,400*l.* never were advanced at all to Lewes, or that if they were, they had been advanced by John Morgan himself on a general account, and ought to have made no part of the particular account directed by the decretal order of 20th June, 1801, which was confined to moneys actually advanced on the mortgage and judgment accounts. On the same principle the exceptions objected to the statement of the advance of the 1,300*l.* on the mortgage account, there being no evidence, except the existence of certain bonds for 1,200*l.* of the advance of that sum, which bonds ought not to be taken as evidence of actual advance. And it was insisted that the Dep. Rem. ought to have certified that only 8,209*l.* 7*s.* 1*d.* had been received by Morgan, as Lewes's agent, on the mortgage account; and that Morgan had applied only 7681*l.* 5*s.* 6d. to Lewes's use, and that the balance, 528*l.* 1*s.* 7*d.* ought to be carried to the general account.

Mortgages had nothing to do with the application.

Exceptions over-ruled, and report confirmed, Feb. 9, 1804.

The Court of Exchequer, by decretal order of the 9th Feb. 1804, overruled the exceptions and confirmed the report.

Appeal, order

Lewes having appealed from this order to the

House of Lords, their Lordships by order 9th Feb. 1807, in substance reversed the order of the Court of Exchequer, over-ruling the exceptions and confirming the report; and then proceeding upon the principle of a separate account, and that the securities were not to be taken as evidence of the actual advance of the sums for which they were given, the order directed that the Dep. Rem. should review his report, and particularly inquire what sums of money were really advanced to Lewes, as and for the consideration of the several bonds alleged to be consolidated by the 2,400*l.* bond, and of the several other securities mentioned.

March 15, 18, 20; April 1, 1816.

ACCOUNT — ATTORNEY AND CLIENT.

of the Lords, 1807, reversing the above order of Court of Exchequer.

This inquiry directed only with a view to the separate report and mortgage account, and on the principle that the securities were not to be taken as evidence of actual advance, and that the pretended settled accounts were not to be taken as such.

This order of the Lords being made an order of the Court of Exchequer, and the Dep. Rem. having been ordered to review his report accordingly, other reports and orders were made on the principle, of course, of the order of the Lords, that the securities were not to be taken as evidence of the demands mentioned in them, and that the accounts were not to be taken as settled accounts, the Dep. Rem. however, still finding upon other evidence, that the several sums mentioned in his schedules were actually advanced in whole or in part consideration of the several bonds consolidated by the bond for 2,400*l.* and that the 2,400*l.* was by consent, on delivering up the bond, made part of the consideration for the mortgage, and generally that the whole sum of 12,000*l.* had been advanced on the mortgage account.

In consequence of an order and reference back of May 24, 1810, the Dep. Rem. by report of June 25, 1811, stated, that a sum of 500*l.* had been actu-

Report, 1811.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

ally advanced in one gross sum as the consideration for a bond to that amount, and that the other sums mentioned in the schedules had been actually advanced, but not as the consideration for the other bonds consolidated by the bond for 2,400*l.* neither the sums nor dates of advance corresponding with the securities; that the 2,400*l.* was by consent made part of the consideration for the first mortgage; that John Morgan had out of his own moneys advanced 12*s.* 11*d.* to make up the consideration of the first mortgage, and 190*l.* to make up the consideration for the second mortgage, and that the 2,400*l.* and these other small sums being deducted, the sum of 9,409*l.* 7*s.* 1*d.* was the only money actually advanced by the mortgagees to Lewes or his agent.

Exceptions by Lewes.

To this report Lewes took five exceptions. The first was, that the Dep. Rem. had certified that, according to the evidence before him, the sum of 500*l.* had been advanced as the consideration for the bond in the report mentioned, whereas he ought to have certified that there was no evidence before him that the money had ever been really advanced by Morgan to Lewes, out of Morgan's proper moneys, as and for the consideration of the bond. The second exception objected to the statement that the delivering up of the 2,400*l.* was by consent of Lewes admitted as part consideration of the first mortgage, the Dep. Rem. not having been directed to give any opinion as to that point. The third exception was, that the Dep. Rem. ought to have deducted the whole alleged consideration for the second mortgage, and to have found that 8,209*l.* 7*s.* 1*d.* constituted the total amount of money advanced on the

"Out of Morgan's proper moneys." It seems to signify nothing out of what fund.

mortgage account. The fourth exception objected to the report, inasmuch as it stated that the whole sum of 12,000*l.* had been applied by Morgan to Lewes's use, whereas it ought to have stated, as alleged in the exception, that of the 8,209*l.* 7*s.* 1*d.* mortgage moneys, only 7681*l.* 5*s.* 6*d.* had been applied by Morgan to Lewes's use, and that this latter sum was the only money due from Lewes on the mortgage account. The fifth exception related to certain alleged omissions in the report not necessary to be stated.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT. Mortgagees have nothing to do with the application.

Three exceptions were also taken by Morgan to this report, insisting that the Dep. Rem. ought to have found that the several sums were advanced as the consideration for the bonds consolidated by the 2,400*l.* bond, and that farther evidence had been given that the 2,400*l.*, and the delivering it up, was part of the consideration of the first mortgage.

The cause coming on to be heard on the report and exceptions, the Court by order of July 5, 1813, decreed that Lewes's four first exceptions be allowed, and the fifth overruled; and that all the Defendant's exceptions be overruled; and that the Dep. Rem. should review his report accordingly, and compute interest on the 8,209*l.* 7*s.* 1*d.* principal mortgage money. And it was farther directed that he should take an account of the rents and profits of Lewes's estates, in mortgage or not in mortgage, received by Morgan or the mortgagees, and also an account of money received by them, or any of them, for timber cut down on the estates, and set off these receipts against the principal and interest of the mortgage money. And the usual directions in

Order, July 5, 1813, allowing Lewes's four first exceptions, &c.

Directions.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

Appeal.

taking such accounts were given. And it was ordered that the Dep. Rem. should be at liberty to proceed *de die in diem*, and that the cause should be continued in the paper of causes till the coming in of the report, until which time farther directions were reserved. From this decretal order the Defendants appealed.

It was contended for the Appellants, John Morgan and the mortgagees, that it was manifest from the prayer of the bill, that Lewes's claim to relief, by being let into possession of his estates, was founded on his paying the whole of the moneys due to John Morgan personally, as well as the money due to the mortgagees, or to John Morgan as their agent, and that such was the meaning of the original decree; and that the Court by that decree did not mean to exclude the admission of the securities as evidence of the advance of the money stated as the consideration for them, and that the settled accounts ought to be taken as such: and that the whole of the 12,000*l.* ought to be taken as having been advanced on the mortgages. An objection was also taken to the last decretal order on the point of form, that, on a hearing on exceptions, farther and distinct directions had been given.

On the other hand it was contended that it was clearly meant by the Court, that two separate accounts, the mortgage account and general account, should be taken; and that the order for a separate report on the mortgage account proceeded on that ground; that it was also manifestly meant that the securities themselves should not be taken as evidence of the advance of the moneys stated as the

consideration for them, and that the accounts purporting to be settled should not be taken as settled accounts. And that as to the point of form, the directions were conformable to the practice of the Court of Exchequer.

March 15, 18, 20; April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

Mr. Leach and *Mr. Roupell* for the Appellants; *Sir S. Romilly* and *Mr. Garrett* for the Respondents.

In the course of the hearing the Lord Chancellor said: The Court of Exchequer, in the decree of 1796, seems to have proceeded on the principle in the case of Vaughan and Lloyd, and to have thought that as Morgan took securities as he chose, and advanced money as he chose, the transactions ought to be fully sifted. But at the same time, as the transactions were rather late in being impeached, and as the accounts had been in some sense settled, they allowed Morgan's affidavit of the existence and import of such vouchers as he had delivered up. The principle in Vaughan and Lloyd is this, that where one acts as agent for another on the one side, and for himself on the other, on account of the control which a man of business may have over his client, the Court requires that he should make the transaction extremely clear, and throws upon him that burthen of proof, which, in ordinary cases, would be on the other party.

5 Ves. 48.

Vid. Cane v. Lord Allen. *ante*, vol. ii. 289.

Lord Eldon. The recollection I have of this cause, in which I was Counsel, enables me to represent in substance that Morgan was a middle man between the mortgagor and the mortgagees,

April 1, 1816. Judgment.

April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

Prayer of bill not adapted to settled accounts.

Decree, July 2, 1796: meaning of it.

and also the separate agent of Sir W. Lewes; and I remember also that there were two distinct accounts to be taken, and your Lordships will perceive that the prayer of the bill is adapted not to settled accounts, but goes to all dealings and transactions between the parties; and this accounts for the decree of the Court of Exchequer, and the order made in this House in my absence. In making this decree, though it is not expressed in the most accurate language, it could never have been the object that, in taking the accounts, the sums stated in the mortgage securities should be considered as having been actually advanced, or that the sums stated in the bonds as the consideration for them were to be taken as having been actually advanced, and as actually due; or that, looking upon these as settled accounts, so much was due as appeared to be due upon these accounts. Such of your Lordships as are familiar with proceedings in Courts of Equity must know, that if that had been the meaning of the Court, the decree would have been framed in a different manner, and you would have heard of liberty to surcharge and falsify, and of an account under such a mortgage and such a bond, to such an amount, and of such a date, &c. And I know that it was the object of Sir W. Lewes to have the whole of these accounts opened up and investigated, relying on the principle in the case of Vaughan and Lloyd, where the Court of Chancery, and with great justice in my opinion, acted on the principle that, where an Attorney advances money to his client, tendering it of his own accord, and exacting security, he

Vaughan v. Lloyd. Cor. Thurlow, 1781, cited in 5 Ves. 48.

may be called upon to show the actual advance of the money by other evidence than the securities themselves. I do not wish to reflect harshly on Morgan; but it is a principle of justice that an Attorney so dealing with his client, and acting both for himself and his client, should be bound to show that he acted as well for his client as he did for himself.

April 1, 1816.

ACCOUNT.—ATTORNEY AND CLIENT.

Attorney dealing with his client, bound to show that he acted as much for the interest of his client as for his own.

The decree was in these terms:—"that it should "be referred, &c. to take an account of all deal- "ings and transactions between the said Sir Watkin "Lewes and John Morgan." That is one account. But that is not taken, and still remains to be taken. "And also an account of all, &c. sums of money "received by the said John Morgan as agent to "the said Sir Watkin Lewes, and also the De- "fendants, the mortgagees; and when and how "such sum or sums was or were paid, or applied "to their account respectively;" and then it was ordered that Morgan's costs should be taxed, and that an account should be taken of the rents and profits of the mortgaged estates, and of the timber felled thereon, and on the estates not in mortgage received by Morgan, &c.; and of the rents and profits of Lewes's estates, not in mortgage, of which Morgan was in possession, received by Morgan, &c. &c. Directions were given for the production of books, papers, and vouchers; and then, from the length of time that had elapsed, and many of the accounts being in some sense of the word settled, I recollect it was pressed on the Court on Morgan's behalf, that the vouchers for many of the articles in the accounts had been given up or lost, and the

Decree, July 2, 1796.

Attorney advances money to client, and accounts settled between them.

The settled accounts opened,

April 1, 1816.

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Court therefore ordered, "that if it should appear "to the Deputy Remembrancer that any one or "more voucher or vouchers, in support of any one "or more article or articles in the said accounts, "and in the said bill of costs of the said John "Morgan, was then or were then lost, and could "not be found; then the said Morgan was thereby "required to make oath before one of the Barons, "or a commissioner duly authorized to take affi-"davits therein, that such voucher or vouchers did "theretofore exist, and of the contents or purport "of such voucher or vouchers, and that the same "had been delivered up to the said Sir Watkin "Lewes, &c."

though not challenged for a great length of time, but as vouchers might have been given up or lost. Oath of the party admitted as to existence and purport of such vouchers.

Decree directed two accounts.

Now whatever may be said as to the language of the decree, the order subsequently made in this House made it mean this; that a general account should be taken of all dealings and transactions between Morgan and Lewes; and another account as to the mortgages where Morgan was acting as Solicitor for mortgagor and mortgagees. The decree is not at all adapted to the ordinary relief in cases of redemption, but goes to all dealings and transactions between the parties. What may be disallowed, however, in the account between the mortgagor and mortgagees may yet be allowed in the account between John Morgan and Sir W. Lewes. It is important in the first place to clear the mortgage accounts, and then the general accounts may be taken; and I cannot help thinking that this must have been the object of the Court of Exchequer in calling for this separate report, which does not appear to me to go to the general account,

but only orders a separate report of all dealings and transactions, so far as relates to this subject of the mortgage account, and that the general account therefore still remains to be taken. The separate report goes also to the judgments, and there is no exception to it in that respect.

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Then this House made this order (*reads it, vide ante*). Now on this I have to observe, that it is an order which has no reference to the general account, and whatever becomes of this 2,400*l.*, this order merely relates to whatever part of it is to be carried to the account under the separate report, and not to what might be due under the account of the general dealings and transactions. Then the order proceeded on the ground that the securities were not to be taken as evidence of the actual advance of the money stated as the consideration for them, and such an order could not have been made unless the matter had been so understood; for if the accounts were to be taken upon these bonds as bonds, it would have been so directed. But there is hardly one of the accounts that do not falsify the bonds, and the instruments being so falsified cannot be admitted as evidence of the demand.

Order of the House of Lords, 1807; meaning of it.

Your Lordships will recollect that it was argued, that this last decretal order of the Court of Exchequer was wrong in giving the directions. But I do not think that objection well founded, the hearing being on exceptions to the separate report, and the directions relating to that only. There is no direction as to the judgments; but I do not think that they form a necessary part of this account.

Objection in point of form not well founded.

Let it be observed that all we are doing now is,

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disallowing these sums as items in the mortgage account; and it does not follow that the sums may not still be found due, though not on this account. The Court of Exchequer and this House have said that, as it was pretended that this 2,400*l.* was a charge on the estates, there ought to be an inquiry as to how and when it was paid; and if it was not paid as represented, this House was of opinion that, though it might be brought into the general account of all dealings and transactions, it was not to be considered as one of the items in this separate mortgage account. Then I say that no prejudice is done to Morgan as to this 2,400*l.*, or as to the judgments; for if the money was advanced at any time, justice may be done in the general account.

With respect to the timber, if the mortgagee is in possession he must account for the timber felled on the estates. The mortgagor cannot cut timber, as he thereby lessens the security of the mortgagee; and Sir W. Lewes could not enter without being a trespasser. Then Morgan being solicitor for mortgagor and mortgagee, and a sort of middle man between the two, is he to turn himself into a creditor of Sir W. Lewes so as to take the timber for his own private debt? It is not to be endured. In my judgment, therefore, the decretal order is in substance right, and may be affirmed with some alterations in the exceptions and directions, which will be easily made, if we agree in the general view of the case.

Morgan not allowed to take the timber for his own private debt.

Lord Redesdale. The understanding which the House had of the case, when it made the order of 1807, was clearly what the noble Lord has ex-

pressed; and this is conformable to the principles of Equity recognized in a similar case. Morgan acted in two characters, being employed by Lewes both as solicitor and general agent; and the chief question arose upon a principle particularly applicable to attorney and client. If A. lends to B. 1,000*l.* for instance, actually advancing the money, and takes a bond, there is an end of the transaction so far, and the bond is the security for and evidence of the debt. If A. advances money to the agent of B. and takes the security of B., his security is the evidence of his debt, and he has no concern with the transactions between B. and his agent. If a banker advances to one 1,000*l.* on bond in this way, that he carries it to the credit of the borrower instantly to be drawn for as money which is his cash as much as any other part of his cash, the bond is evidence of the debt, the subsequent payments being items in the general accounts. But if an agent obtains a bond from his principal by a misrepresentation, then, as the nature of the dealings are not the same, the bond cannot be produced as evidence of the debt. Then in the case of an attorney who is both agent and adviser he is liable to a more strict rule, and every shilling must be proved, or the client is bound for nothing. That was the situation in which Morgan and Lewes stood.

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Attorney and Client.

Principal and Agent.

If agent obtains a bond from his principal by misrepresentation the bond is not evidence of the debt; and an attorney being both agent and adviser is liable to a more strict rule.

The mortgagees having advanced the money to John Morgan as agent for Lewes, they had nothing to do with the subsequent application of the money, whether it was applied to the use of Lewes or not; and I say that, because in the language of one of the exceptions some doubt is expressed whether it

The mortgagees, having advanced the money to the agent of the mortgagor, had nothing to do with subsequent application.

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was all applied to the use of Lewes. That may be the fact, and it may be a material question as between Morgan and Lewes. But the trustees are entitled to have 8,209*l.* accounted for to them as principal mortgage moneys. The object of the order for the separate report was to deal with the trustees as far as they were mortgagees, because it was a great point with Lewes to get possession of his estates, of which the mortgagees had been in possession since 1779, and they had nothing to do with the general account.

Attorney and agent bound to keep regular accounts.

Then what are the sums secured by the mortgages? Where one is attorney and agent he is bound to keep regular accounts, and if Morgan had done so, some credit might under the circumstances of this case have been given to the books. But he did not keep such accounts; and if he suffers any loss, it is owing to his own neglect in not keeping such accounts and vouchers as every prudent man ought to do; and it is impossible to put the man who does not deal regularly upon the same footing with him who does. In the case of *Vaughan v. Lloyd*, the Attorney dealt exactly in the same way, Vaughan being in Lloyd's hands, exactly as Sir W. Lewes was in the hands of Morgan. I was Counsel for Lloyd, and I really believe he did suffer some loss; but that was owing to his own neglect in not keeping regular accounts; but I believe he suffered no great loss on an account which was cut down from about 30,000*l.* to 9,000*l.* There can be no safety in the common transactions between man and man, if the fact, that I have not kept regular accounts, is to enable me on my own assertion to charge another.

Vaughan v. Lloyd, 5 Ves. 48.

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Settled accounts.

The settled accounts in this case confute themselves. So we cannot presume that any sums were advanced, except such as appear to have been so by receipts and evidence, independent of the instruments. The decree of the Court of Exchequer therefore proceeded on a right view of the subject, and the order of 1807 was also right; and this last order of the Court of Exchequer proceeds generally on a right view of the case, though the Court overlooked some circumstances. Then as to the question of regularity, the cause standing in their paper, and the order being made on the ground of the separate report, and of the exceptions to that report, it appears to me to be generally a proper order. The timber account might discharge the mortgage account. As to the judgements, they seem to have been included in the order for the separate report only because, in case it had been necessary to resort to that, the mortgagees might have an equity upon them to stand in John Morgan's place in his account against Lewes.

Objection on point of form not well founded.

Lord Eldon (C.) What do you think of Morgan's taking the timber in execution?

Lord Redesdale. I clearly think the produce of the timber must be applied in discharge of the mortgage account, and never can be taken by Morgan for his own private account.

Produce of the timber to be applied in discharge of the mortgage account.

Lord Eldon (C.) I repeat that this record appears to me to open and establish this principle, that when an attorney takes it upon him to take securities from his client which do not express the real nature of the transaction it is incumbent on him, by other evidence than the securities them-

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selves, to prove what was the real nature of the transaction, and what sums were really advanced.

Decretal order of the Court of Exchequer of July 5, 1813, affirmed as to the allowing of the first exception in so far as it went to the certification that the 500*l.* was actually advanced as the consideration for the bond; reversed as to the allowance of the rest of the first exception, which was over-ruled without prejudice to any question that might arise on the general account; affirmed as to the allowance of the second and third exceptions; affirmed also as to the allowance of the fourth exception with a variation, so as to bring it within the principle that Lewes should pay to the mortgagees whatever should appear due on the mortgage account, without prejudice to any question that might arise on the general account; and so far as not reversed or varied, affirmed generally.

Agent for Appellants, ———
Agent for Respondents, HUBERSTY.

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

COLCLOUGH—*Appellant.*
BOLGER and others—*Respondents.*

March 20, 22; June 28, 1816.

A. TENANT for life under a marriage settlement, remainder to his first and other sons in tail, with power to A. to lease.