Privy Council Appeal No. 113 *of* 1913.

John McLaughlin - - - - - *Appellant,*

v.

The City Bank of Sydney - - - *Respondent.*

FROM

THE HIGH COURT OF AUSTRALIA.

AND

Same - - - - - - *Appellant,*

v.

Same - - - - - - *Respondent.*

FROM

THE SUPREME COURT OF THE STATE OF NEW SOUTH WALES.

(Consolidated Appeals.)

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST JULY 1914.

Present at the Hearing:

EARL LOREBURN. SIR JOSHUA WILLIAMS.
LORD ATKINSON. SIR ARTHUR CHANNELL.
LORD SUMNER.

[*Delivered by* EARL LOREBURN.]

It is not desirable to say a word beyond what is necessary in view of the deplorable length of this costly litigation. The appellant is a solicitor who lost his reason in August 1900 and recovered it at some date between June 1902 and March 1903. During his illness his wife obtained a power of attorney, signed by him, which was admittedly void, although her good faith was not impugned.

[58] J. 362. 80.—7/1914. E. & S.

Under the power of attorney, or professedly under the power of attorney, the wife granted a mortgage, and handed over the deeds of the mortgaged property to the Bank, and she also operated upon the account at the Bank, paying in and drawing out money. The cheques which she drew upon the Bank were upon the security, or the supposed security, of the deeds.

The appellant in this action—the manifold proceedings of which it is quite unnecessary to summarise—claimed in substance two things (1) that a number of debits to his account on cheques drawn by his wife must be disallowed to the Bank, and (2) that the title deeds must be restored. As regards the debits there are two of them to which their Lordships think it necessary to draw attention. One of them was this: A sum of 2,100*l.* was transferred by the wife to a trust account, from which it had been taken and placed to his private account by the appellant. No justification was proved for the original placing of this money to the private account. Their Lordships do not desire to express any opinion in regard to it beyond saying that no justification was in fact proved before them. This money was not the money of the appellant at all; it was trust money which for some reason had been placed to his own credit, and was restored by the wife to its true owners. It is quite impossible that a payment of that kind should be disallowed to the Bank. Also it is to be observed that the appellant did not ask for any re-transfer of this sum to him when he recovered his reason. He adopted by his conduct what had been done, and, by leaving it so, he was released from a claim that he might otherwise have had made upon him in respect of the 2,100*l.*

The other item to which reference should be made is the sum of 1,775*l.* This money was paid

by the wife to one McSharry as a compromise of disputed cross-accounts, including a claim against McSharry by the appellant for costs said to be due to the appellant. He had been ordered to deliver Bills of Costs, but was disabled from delivering them. The appellant, when he recovered his reason, never required payment of what he says is, and was, due to him from McSharry, nor did he ask to rescind an order which had been made discharging the prior order for delivery of Bills of Costs. It is immaterial whether that was an order in its final shape or not. He left the settlement unassailed by any legal proceeding. He did nothing for so long a time that the Statute of Limitations ran out, and he became unable himself to re-open the transaction as against McSharry. Quite apart from the Statute he took the full benefit of the settlement, and having disabled himself by his acts from questioning, as against McSharry, this transaction, in their Lordships' opinion he cannot question it as against the Bank who cashed the cheque by which the settlement was effected.

In regard to the other items impugned by Sir Robert Finlay in his argument, their Lordships think it sufficient to say that they adopt the view that was expressed by the Chief Justice.

In regard to the claim for the recovery of title deeds, an action was brought for the recovery of those deeds. The defence was that the Bank had a lien. The claims made by the appellant against the Bank were in respect of monies which they paid upon cheques drawn by his wife during the period referred to. These cheques were obviously honoured upon the faith of the security known by the Bank to be in their possession, and believed to be effective. If the appellant kept the benefit of the money paid by the Bank, as he did, he thereby affirmed the

transaction as a whole, and the deeds in their Lordships' opinion stand as security for that money.

That will dispose of all the questions which were raised in this case, and it is enough to say that their Lordships will humbly advise His Majesty that these appeals should be dismissed with costs.

In the Privy Council.

JOHN McLAUGHLIN

v.

THE CITY BANK OF SYDNEY.

AND

SAME

v.

SAME

(*Consolidated Appeals.*)

DELIVERED BY EARL LOREBURN.

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