[PRIVY COUNCIL.]

McLAUGHLIN . . . . . APPELLANT;
PLAINTIFF,

AND

THE CITY BANK OF SYDNEY . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA AND THE SUPREME COURT OF NEW SOUTH WALES.

PRIVY COUNCIL.*
1914.
July 1.

Lunatic—Payments by wife of lunatic for his benefit—Money borrowed by wife—Deposit of title deeds by wife as security for loan—Ratification by lunatic when sane—Money lent by bank to wife—Accounts.

The wife of A., while he was temporarily insane, applied certain money standing to his credit with a bank to replace certain trust moneys which before his insanity A. had paid to his own credit with the bank. After recovering his sanity A. did nothing for 4½ years by way of claiming a refund of the money from the trust estate.

Held, that A. had ratified the payment by his wife.

Before A. became insane he had begun an action against B. to recover a certain sum of money and B. had thereupon obtained an order that A., who for many years had been B.'s solicitor, should deliver a bill of costs for taxation. Subsequently to A. becoming insane, A.'s wife granted a mortgage and handed over the deeds of certain of A.'s property to the bank as security for advances to be made to her, and borrowed a certain sum of money from the bank and paid it to B. by way of compromise and full settlement of the claims of A. and B. against each other, the order for delivery of a bill of costs being rescinded by consent. After recovering his sanity A. left the settlement unassailed by legal proceedings, and did nothing for so long a time that the *Statute of Limitations* ran out, and he also took the full benefit of the settlement.

* Present—Earl Loreburn, Lord Atkinson, Lord Sumner, Sir Joshua Williams and Sir Arthur Channell.

Held, that the bank was entitled to recover from A. the money so lent, and had a lien upon the above-mentioned deeds as security for that money.

Decisions of the High Court: *City Bank of Sydney* v. *McLaughlin*, 9 C.L.R., 615, and *McLaughlin* v. *City Bank of Sydney*; *City Bank of Sydney* v. *McLaughlin*, 14 C.L.R., 684, affirmed.

CONSOLIDATED APPEALS from the High Court of Australia and the Supreme Court of New South Wales.

These were consolidated appeals from the decisions of the High Court: *City Bank of Sydney* v. *McLaughlin* (1) and *McLaughlin* v. *City Bank of Sydney*; *City Bank of Sydney* v. *McLaughlin* (2), and a consequential decision of the Supreme Court of New South Wales.

The judgment of their Lordships was 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. 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 summarize—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 was transferred by the wife to a trust account, from which it had been taken and placed to his private

(1) 9 C.L.R., 615. (2) 14 C.L.R., 684.

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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. The other item to which reference should be made is the sum of £1,775. 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 reopen 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 moneys 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.

[HIGH COURT OF AUSTRALIA.]

THOMAS RYAN . . . . . APPELLANT;
RESPONDENT,

AND

HENRIETTA RYAN . . . . . RESPONDENT.
PETITIONER,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1914.

PERTH, *Oct.* 30; *Nov.* 2.

Barton, Gavan Duffy, and Rich JJ.

Husband and Wife—Judicial separation—Dismissal of petition—Discovery of fresh evidence—New trial—Appellate Jurisdiction Act 1911 (*W.A.*) (*No.* 4 *of* 1912), *secs.* 3, 4, 5—*Judiciary Act* 1903 (*No.* 6 *of* 1903), *sec.* 37.

Where a petition for judicial separation has been heard by a Judge without a jury and dismissed, a new trial may, having regard to the *Appellate Jurisdiction Act* 1911 (W.A.), secs. 3, 4, 5, and the *Judiciary Act* 1903, sec. 37, be granted by the High Court on petitioner proving to the Court that the granting of such new trial, in the light of fresh evidence discovered since the hearing of the petition, will conduce to the ends of justice.

Decision of *Rooth* J. and order of Full Court (W.A.) set aside.