PRIVY COUNCIL. 1916.

BULL v. ATTORNEY-GENERAL FOR NEW SOUTH WALES.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, and the information of the Attorney-General of New South Wales dismissed with costs throughout. The respondent will pay the costs of this appeal.

[HIGH COURT OF AUSTRALIA.]

GOLDRING . . . . . APPELLANT;
PLAINTIFF,

AND

THE NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LIMITED } RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1916.

SYDNEY, *Nov.* 13.

Griffith C.J., Isaacs and Gavan Duffy JJ.

Mortgage—Validity—Effect of decree absolute for foreclosure—Estoppel.

In a suit against a mortgagor who had mortgaged reversionary interests in residuary real and personal estate to a company incorporated in 1869 under the Companies Acts in force in Victoria, to secure moneys advanced to her by the company, a decree for foreclosure was made absolute in 1895, and the company subsequently sold the properties mortgaged as absolute owners thereof. In 1915 a suit was instituted in the Supreme Court of New South Wales against the company by the mortgagor, who alleged that the mortgage transactions were *ultra vires* the company and the mortgages, therefore, invalid.

Held, that the mortgagor was estopped by the decree for foreclosure from disputing the validity of the mortgages.

Decision of the Supreme Court of New South Wales affirmed on that ground.

APPEAL from the Supreme Court of New South Wales.

The appellant, Maria Goldring, being entitled under the will of Montague Levey, who died in 1884, to a reversionary interest in his residuary real and personal estate, on 9th May 1889 mortgaged that interest to the respondents, the National Mutual Life Association of Australasia Ltd., a company incorporated in 1869 under the Companies Acts in force in Victoria, to secure a sum of money advanced by the Association to her and interest thereon, and subsequently borrowed a further sum from the Association, secured by an instrument of further charge upon the same interest. On 9th October 1891 one Montague Ferdinand Levey, who also took a reversionary interest in residuary real and personal estate under the said will, assigned his interest to a trustee to hold upon such trusts as the appellant should direct. On 16th October 1891 the appellant mortgaged the last-mentioned interest to the Association to secure a further sum advanced and interest thereon. The appellant having made default under the various mortgages, the Association on 14th May 1894 instituted a foreclosure suit in the Supreme Court of New South Wales against the appellant and others, and a decree absolute for foreclosure was made in such suit on 21st February 1895. In December 1902 the Association sold the properties mortgaged, as absolute owners thereof, for the sum of £23,236.

On 12th July 1915 the appellant instituted a suit in the Supreme Court of New South Wales against the Association, alleging that they had no power to advance moneys or invest their funds upon the security of reversionary interests, submitting that they were therefore liable to account to her for the moneys received upon such sale, and claiming the difference between the amount of such moneys and the amount due by her to them under the mortgages at the date of sale, with interest thereon to date. *Harvey* J., before whom the suit was heard, held that the mortgage transactions in question were not *ultra vires* the Association, and dismissed the suit with costs.

From this decision Mrs. Goldring now appealed to the High Court.

H. C. OF A. 1916.

GOLDRING v. NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA LTD.

Rolin K.C. and *Waddell*, for the appellant. The plaintiff is not estopped by reason of the decree made in the foreclosure proceedings. The point as to the invalidity of the mortgages was not available as a defence to the suit for foreclosure. See *Scott* v. *Colburn* (1).

[ISAACS J. referred to *Great North-West Central Railway Co.* v. *Charlebois* (2).]

The mortgage transactions were *ultra vires* the respondent company (*Ashbury Railway Carriage and Iron Co.* v. *Riche* (3)).

[ISAACS J.—In the present case it is not a matter of reopening a foreclosure, but of declaring it null and void. The property, at any rate, passed (*Ayers* v. *South Australian Banking Co.* (4)). It seems to me a claim for money had and received.

GAVAN DUFFY.—So it seems to me.]

It is submitted that that is not so (*Lyell* v. *Kennedy* (5) ; *Sinclair* v. *Brougham* (6)).

[GRIFFITH C.J. referred to *Halsbury's Laws of England*, vol. XVIII., p. 209.]

Leverrier K.C., *Lingen* and *R. K. Manning*, for the respondents, were not called upon.

The judgment of the COURT, which was delivered by GRIFFITH C.J., was as follows :—

This is a suit by the plaintiff to set aside a judgment given by the Supreme Court of New South Wales in 1895 in a suit for foreclosure of mortgages, in which mortgages the present plaintiff was the mortgagor and the present defendants were the mortgagees. They were mortgages of a reversionary interest. The plaintiffs in that suit alleged authority to carry on their business and to lend money on the security of real and personal estate, and that the mortgages had been given to secure money duly lent. The decree for foreclosure when made settled all questions between the parties to the transaction. The principle is stated in *Halsbury's Laws of England*, vol. XVIII., p. 209, in these words : " When

(1) 26 Beav., 276.
(2) (1899) A.C., 114.
(3) L.R. 7 H.L., 653.
(4) L.R. 3 P.C., 548.
(5) 14 App. Cas., 437.
(6) (1914) A.C., 398.

judgment has been given in an action the cause of action in respect of which judgment is given *transit in rem judicatam, i.e.*, is at an end, and its place is taken by the rights created by the judgment." That judgment finally determined the rights of the parties. The doctrine in question is founded upon reason. In this case, nearly twenty years after judgment, the present plaintiff finds some ground for impeaching its validity, that is, she says the mortgagees had no right to lend money on the security in question. A judgment may be impeached for fraud, but I do not know of any other ground; certainly mistake is not such a ground. On that judgment being pronounced all the remaining rights of the parties were extinguished by the judgment. The matter was not decided by the learned Judge below on the ground of estoppel, but the point was taken in the pleadings, and it is a question in the foreground of the case. The Court therefore is precluded from considering the case on its merits, that is, as to the validity or not of the mortgage transactions, and it would not be right to express an opinion on that point. The appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant, *Minter, Simpson & Co.*
Solicitors for the respondents, *Norton, Smith & Co.*

C. A. W.