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IN THE HIGH COURT OF AUSTRALIA

DANSWAN.

V.

DANSWAN.

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY.

on WEDNESDAY, 24th November, 1948.

DANSWAN Y. DANSWAN

ORDER

The appeal is dismissed with costs.

REASONS FOR JUDGMENT

LATHAM C.J.

This is an appeal from a decision of the Full Court of the Supreme Court of New South Wales affirming an order of Street J. by which he reviewed and confirmed an order of the Prothonotary in relation to a question arising between husband and wife as to the title to monies in a Commonwealth Savings Bank account in their joint names: see Married Women's Property Act 1901, s. 22.

The Prothonotary made a finding in these terms:-

"I am of opinion after a careful consideration of the whole of the evidence that, in the present case, one must come to the conclusion that the moneys in the joint account in the Savings Bank is the result of a joint effort on the part of both parties to save all they could from the moneys that came to them by reason of the husband's military service and from the wife's earnings with a view to pooling their resources and to its being used after the husband's return to civil life at the conclusion of his war service in a home, business or other venture that would be to their mutual benefit."

The money in the account consists of monies which were paid in during the time that the husband was on military service in Australia or elsewhere. The findings I have read show that the parties established a fund for their common benefit. The manner in which the fund was used from time to time shows that it was intended to be used for living expenses and maintenance generally and that ultimately it was hoped to provide a home or a business for the mutual benefit of the two parties. It was a general, what one might call a matrimonial, account, to be contributed to by husband and wife as best they could from all available sources. The wife paid in the military allotment moneys paid to her. These were her own monies. That was her contribution to the account, together with a balance from an

account in her own name. The husband paid in certain lump sums, larger sums in the total than the amount paid in by the wife. There was no agreement as to the precise shares of husband and wife. Unfortunately they have fallen out and separated and the only fair conclusion that can be reached in all the circumstances is that the balance in the account should be held to belong to them equally.

Accordingly in my opinion the appeal should be dismissed.

RICH J. I agree.

STARKE J. I agree.

DIXON J. I agree.

WILLIAMS J. I agree.