Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the London Chartered Bank of Australia v. *Lemprière and others, from the Supreme Court of the Colony of Victoria; delivered February* 27, 1873.

Present:

LORD JUSTICE JAMES.
SIR BARNES PEACOCK.
LORD JUSTICE MELLISH.
SIR MONTAGUE SMITH.

THE Plaintiffs in this case had certain dealings and transactions with one Anne Young Aitkin and her husband out of which their present claim arises. She was the widow and administratrix of one Jeremiah George Ware, deceased, who had died (as far back as October 1859) intestate, possessed of property, real and personal, to a very large amount.

A suit was instituted in the Supreme Court of Victoria for the purpose of administering that estate, and, in the course of that suit, a receiver and manager of the rents and profits of the real estates and stations of the intestate was appointed, but the administration of the personal estate by the administratrix was not otherwise interfered with by the Court.

Mrs. Aitkin, then Mrs. Ware, employed the Plaintiffs as her bankers, and had two accounts with them: one her private account; the other, her administration account opened with her as Anne Ware, administratrix. The receiver kept his account with the same Bank.

In March 1862, she intermarried with Mr. Aitkin. Shortly after her marriage, she and her husband

called at the Bank, and at their request the two accounts were transferred to her by her new name, and on that occasion she signed a letter as follows :—

"Dear Sir, "*Geelong, April* 4, 1862.

"Herewith I send you two cheques amounting to 1,363*l.* 3*s* 7*d.* and 4,434*l.* 18*s.* 7*d.*, drawn by me on my private account and administration account, and hereby request you to transfer the amounts to accounts respectively, to be opened in your bank in the name of 'A. Y. Aitkin' and 'A. Y. Aitkin, Administratrix.' Any cheques outstanding, or any bills drawn, accepted or endorsed 'A. Y. Ware' or 'A. Y. Ware, Administratrix,' to be placed to the new accounts respectively. And you will consider any private overdraft of mine secured by my administration deposits in your hands, and please to recognise Mr. John Ware's signature as formerly on the administration account.

"I am, yours truly,

"A. Y. AITKIN.

"The Manager London Chartered
"Bank, Geelong."

And the husband signed his name to the words "I consent" written thereunder.

Afterwards, and up to the time of Mrs. Aitkins' death in June 1867, very large sums were drawn out by her on her private account; and the same was overdrawn at that time to the extent of 13,438*l.* But during the same period very large sums were paid in to the administratrix account which were from time to time placed on deposit at interest with the bank. Amongst the sums so deposited, were two sums of 6,000*l.* and 8,000*l.*, which are especially the subject of this suit. After the death of Mrs. Aitkin, an order was made for the transfer of the balance in the hands of the bank, belonging to the estate to the credit of the cause, and it is alleged and appears to be the fact, that, in the first instance, the manager of the bank was minded to obey such order to its full extent, without setting up any claim to retain the said deposits of 8,000*l.* and 6,000*l.* and "acted so as to make the receiver suppose that those sums were transfered as well as the other moneys in their hands, but before actual transfer, the manager placed those two sums to a suspense account insisting that he had a right to apply them to the over draft on the private account."—See Mr. Justice Molesworth's judgment.

Nothing material however appears to turn on this vacillation of purpose or on this conduct of the manager. The two sums had actually been placed on deposit by Mrs. Aitkin herself before the appoint-

ment of the receiver; the moneys were still in the hands of the bank, and nothing was actually done to affect the right (if the bank had the right) so to retain and apply those deposits. *Primâ facie* the bank had that right under the letter of Mrs. Aitkin concurred in by her husband. Whatever moneys were deposited by her after that letter were paid by her and received by the bank, on the conditions contained in her letter, and the bank could not have been called on to pay over what they so received on the administratrix account, until the private account had been first discharged, unless by some person having some better equity of which the bank had notice. Of course the bank had notice of one such equity from the very nature of the case, viz., that the moneys so paid in were assets of the intestate's estate and might therefore be followed if necessary by the creditors of the deceased, and by the other next of kin beneficially entitled. But no such claim has been made by either creditors or next of kin as such, and it is abundantly clear and is admitted that there are other assets forthcoming far more than sufficient to answer all their claims, and that the overdrafts of Mrs. Aitkin are much less than her distributive share of the net residue. It would appear clear therefore that the Bank had so far the right of retainer claimed by them.

It appears however that, on the occasion of her marriage, and before the date of her letter, she had by marriage settlement settled her share of the residuary estate upon trusts under which several of the Respondents claim to have a preferable right to that share, including all her right and interest to and in the said deposits of 8,000*l.* and 6,000*l.*

But, unless the Bank had notice of that settlement, they cannot be affected thereby so as to deprive them of their right to retain moneys deposited with them under the circumstances above stated. There is a contest of fact as to whether the bank had or had not such notice, the manager deposing that he never heard of it, the husband, on the other hand, deposing that it was distinctly mentioned to him at the interview when the letter was signed, and with reference to the arrangements then made. In this conflict of oath against oath, it would be impossible to hold that the fact of notice (the onus of proving which lies on the Respondent) had been made out

and the probabilities arising from the surrounding circumstances and the transaction itself are in favour of the manager's statement and not the husband's. And this might be sufficient to dispose of the case so far as regards the right to the 14,000*l.* now retained.

But it is not satisfactory to dispose of a case merely on the balance of such conflicting testimony especially as in the arguments in the Supreme Court of the Colony, and here, the case of the bank has been very much put on, their rights derived under the settlement itself.

By that settlement it was agreed—

"That, in pursuance of the said agreement, and in consideration of the said intended marriage, and of five shillings, she, the said Anne Young Ware, with the privity and consent of the said James William Manifold Aitkin, assigned to the Trustee the dower and estate, or right and title to dower, which the said Anne Young Ware hath or is or may be entitled to, or which may hereafter be assigned to her, in and out of all and singular, or any part of the real estate of which the said Jeremiah George Ware, deceased, was seized, or to which he was beneficially entitled at the time of his decease. And all income or share of rental or produce which is now due, or which may hereafter become due and payable, or be assigned to the said Anne Young Ware, as or in respect of her said dower or right of dower. And all the estate, right, title and interest of the said Anne Young Ware, into and out of the same real estate, and all benefit and advantage thereof. To have, hold, receive, and take the said dower, estate, or right and title of, or to dower and income, share of rental, and moneys in trust for the said Anne Young Ware, her executors, administrators, and assigns, until the said intended marriage. And from and after the solemnization thereof, upon trust, during the life of the said Anne Young Ware, to pay all moneys, rents or income, which may come to the hands of such Trustees or Trustee under or in respect of the said conveyance and assignment of dower or estate, right or title of dower hereinbefore contained unto the said Anne Young Ware, for her sole and separate use and benefit, exclusively and independently of her husband for the time being, and without being in any manner subject to his debts, control, interference or engagements. And the receipts of the said Anne Young Ware alone shall, notwithstanding her coverture, be sufficient discharge for the said moneys, rents, or income, and she shall not have power to dispose or deprive herself of the benefit thereof by way of anticipation. And upon the death of the said Anne Young Ware, all moneys, rents or income which may have accrued or become due or payable in respect of such dower of her, the said Anne Young Ware, as aforesaid, and which may not have been received in her lifetime by the Trustees or Trustee for the time being under these presents, shall be held by them upon trust for such person or persons in such manner and for such purposes as the said Anne Young Ware shall, notwithstanding coverture by

any deed or deeds, with or without power of revocation and new appointment, or by Will or Codicil from time to time appoint. And in default of and subject to every or any such appointment as aforesaid, in trust for the executors or administrators of the said Anne Young Ware absolutely as part of her personal estate. And Anne Young Ware, with the privity and consent of the said James William Manifold Aitkin, assigned all that the one equal third part or share, and all other the share and interest to which as the widow of the said Jeremiah George Ware, deceased, the said Anne Young Ware is entitled out of in and to all and singular the personal estate of the said Jeremiah George Ware, howsoever constituted or invested, and of and in the moneys which have arisen, or which may arise, by the sale and conversion into money of the said personal estate of the said Jeremiah George Ware, deceased, or any part thereof; and the corresponding share to which the said Anne Young Ware is entitled, or the income produced by such personal estate in the meantime, and until the same shall be sold and converted into money; and also the share to which the said Anne Young Ware is or may be entitled, of and in the net profits arising from the use and employment of the said personal estate, since the decease of the said Jeremiah George Ware, to hold the said parts or shares, and premises lastly hereinbefore assigned unto the said William George Lempriere and William MacRobie, their executors, administrators and assigns, in trust for the said Anne Young Ware, her executors, administrators and assigns, until the said intended marriage; and after the solemnization thereof, upon trust, that the said William George Lempriere and William MacRobie and other the Trustees and Trustee for the time being, acting under these presents, shall, with and out of any principal moneys which may come to their or his hands or hand by virtue of the assignment lastly hereinbefore contained, in the first place, appropriate and set apart the sum of fifteen thousand pounds, and do and shall pay, transfer, assign or otherwise dispose of the said sum of fifteen thousand pounds, or any part or parts thereof, and the stocks, funds, and securities, in or upon which the same sum or any part thereof may, for the time being, be invested, and the dividends, interest and annual produce thereof, or any part of the same respectively, to such person or persons upon such trusts, for such intents and purposes, and in such manner as the said Anne Young Ware, notwithstanding her said intended coverture by any deed or deeds, with or without power of revocation and new appointment, or by Will or Codicil, shall from time to time direct or appoint. And in default of and until such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend to, and shall during the joint lives of the said Anne Young Ware and James William Manifold Aitkin pay, apply and dispose of the said interest, dividends and annual produce of the said sum of fifteen thousand pounds, or of the stocks, funds or securities in or upon which the same may be invested into the proper hands of her, the said Anne Young Ware, for her own sole and separate use and benefit, exclusively and independently of her said intended husband, and without being in any wise subject to his debts, control, interference or engagements: and from and immediately after the decease of either of them the said Anne

Young Ware and James William Manifold Aitkin, the said sum of fifteen thousand pounds, and the stocks, funds and securities upon which the same sum or any part thereof shall for the time being be invested, and the dividends, interest and annual produce thereof respectively as shall have been unappointed and undisposed of by the said Anne Young Ware shall remain and be upon the trusts following, that is to say, if the said Anne Young Ware shall survive the said James William Manifold Aitkin, in trust for the said Anne Young Ware, her executors, administrators and assigns, for her and their absolute use and benefit; but if the said James William Manifold Aitkin should survive the said Anne Young Ware, then in trust for the executors and administrators of the said Anne Young Ware as part of her personal estate."

It is admitted by all the adult Defendants that Mrs. Aitkin's share is much more than 15,000*l.* mentioned in the settlement, and as between the Plaintiffs and the infant Defendant the question raised and argued is, which has the better right, the bank as creditors, or the infant as appointee, under Mrs. Aitkins' will, she having by her will appointed the same between her husband and her children.

On the part of the bank it was contended that, whether the settlement was known to both parties, or was only known to the husband and wife, the letter must be considered to have been written honestly and with the intention of binding the deposits to the extent of any interest which it was then in her power to charge at law or in equity. The words in that letter "secured by my administration deposits in your hands," must have the same construction and effect as if the letter had gone on to say, so far as I have power to charge them. She had, at that moment, power, by deed or will, to charge them to the full extent of the amount of her dower, and of the 15,000*l.*, and it is contended, and their Lordships are of opinion that, the letter being in favour of purchasers for value is a sufficient and substantial, though informal execution, of the lady's power under the marriage settlement, and as to every thing which she had power to dispose of by deed thereunder, and so that the claim of the bank would be paramount to the claims of any persons under her will. But it was very much pressed by the counsel for the Respondents that no such case was made by the Bill, and no such issue raised as that of the right to have an informal execution of a power supplied in equity. The facts, however, being all

stated, the letter of charge, the settlement, and the will, the fact that the particular head of equity under which the Plaintiffs claim is not distinctly charged does not appear to raise any very serious difficulty.

The issue is not one of fact: it is a conclusion of equity.

But as it is true that this view of the case is not in terms presented by the Bill and does not appear to have been considered in the Colony, their Lordships have thought it right to consider the questions which appear to have been argued and disposed of in the Supreme Court, and which may, in fact, have a material bearing on the rights of the Defendants *inter se*.

The Plaintiffs made and make the following case :—

We are, they say, creditors of a married lady having a separate estate, and a power for our purpose equivalent to a separate estate; and the lady having exercised that power by will in favour of volunteers, we are entitled to be paid our debts out of the moneys appointed in priority to the volunteers.

The Plaintiffs rely on the law, as laid down by the Lord Justice Turner, in Johnson *v.* Gallagher (3 De Gex, Fisher and Jones, p. 513) :—

"Since the case of Jones *v.* Harris (9 Ves. 493) there is not, so far as I am aware, any case opposed in any degree to the doctrine of the separate estate being liable for general engagements, except the case of Aguilar *v.* Aguilar (5 Madd. 414) which followed Jones *v.* Harris and the dicta of Sir John Leach in Greatley *v.* Noble (3 Madd. 79) and Stuart *v.* Lord Kirkwall (3 Madd. 387); and on the contrary, the cases of Murray *v.* Barlee (3 Myl. and K. 209); Owens *v.* Dickson (Cr. and Ph. 48) Burke *v.* Tuite (19 Ir. Eq. and Law Rep. 467); Vaughan *v.* Vanderstegen (2 Drew. 165, 289, 363, and 408); and Wright *v.* Chard (4 Drew. 673) contain very decisive dicta in favour of such liability. The weight of authority, therefore, seems to me to be in favour of the liability. I think, too, that the principle on which all the cases proceed, that a married woman in respect of her separate estate is to be considered as a *feme sole*, is also in favour of it; and upon the whole, therefore, I have come to the conclusion that not only the bonds, bills, and promissory notes of married women, but also their general engagements, may affect their separate estates, except as the Statute of Frauds may interfere where the separate property is real estate, I am not prepared, however, to go the length of saying that the separate estate will, in all cases, be affected by a mere general engagement. The cases of Jones *v.* Harris and Aguilar *v.* Aguilar show that the engagement which, if the married woman was a *feme sole*, the

law would create for repayment of the consideration of a void annuity, would not affect it. It seems to follow that, to affect the separate estate there must be something more than the mere obligation which the law would create in the case of a single woman. What that something more may be must, I think, depend in each case upon the circumstances. What might affect the separate estate in the case of a married woman living separate from her husband might not, as I apprehend, affect it in the case of a married woman living with her husband. What might bind the separate estate, if the credit be given to the married woman would not, as I conceive, bind it if the credit be not so given. The very term 'general engagement,' when applied to a married woman, seems to import something more than mere contract, for neither in law nor in equity can a married woman be bound by contract merely; Aylett *v.* Ashton (1 My1. and Cr. 105). According to the best opinion which I can form of a question of so much difficulty, I think that, in order to bind the separate estate by a general engagement, it should appear that the engagement was made with reference to and upon the faith or credit of that estate, and that whether it was so or not is a question to be judged of by this Court upon all the circumstances of the case." . . . . "The separate estates of married women being thus far bound by their debts, obligations and engagements, it has next become a question how far those debts, obligations and engagements affect the corpus of the property, where the married woman has a limited interest only, as, for instance, a life estate with a power of appointment. The cases on this subject may, as it seems to me, well be classed under three heads; first, where the power of appointment has been general, by deed or writing or by will; secondly, where it has been by will only and the power has been exercised; and thirdly, where there has been a limitation in default of appointment and the power has not been exercised. In cases falling under the third class there cannot, as it seems to me, be any reasonable doubt that the debts and engagements of the married woman cannot prevail against the parties entitled in default of appointment, and the case of Nail *v.* Punter (5 Sim. 555) impliedly decides that point. In cases falling under the second class, where the power of appointment is by will only and has been exercised, but not for creditors, the authorities do not appear to me to be consistent. In Norton *v.* Turvill (2 P. Wms. 144) as explained in Sockett *v.* Wray (4 Bro. C. C. 483) the exercise of the power by the will of the married woman seems to have been held to have let in a bond-creditor against the appointees under the will; and in Hughes *v.* Wells (9 Hare 749) I seem to have intimated that this might be the effect of the exercise of the power, as in other cases of the exercise of the general power of appointment by will, and certainly not upon the ground that power is property. But the Vice-Chancellor Kindersley, in whose judgment I have quite as much confidence as in my own, seems to have dissented from Hughes *v.* Wells in the case of Vaughan *v.* Vanderstegen, and I observe that Sir William Grant has treated the point as doubtful in Heatley *v.* Thomas (15 Ves. 596). I say no more, therefore, upon this point than that it may be considered as open. *But in cases falling under the first class, where the power of appointment has been by deed or writing or will, the Courts have certainly*

held the corpus of the property to be subject to the debts and engagements of the married woman."

It is said, indeed, that the Lord Justice Knight Bruce did not concur with his colleague, and that Lord St. Leonards has expressed an opinion that the Lord Justice Knight Bruce's view was the more correct. It will be observed, however, that the point of difference was as to whether a general engagement could create the obligation—and not at all as to the second point as to how far the obligation, if it exists, binds the corpus of property subject to a power of appointment in the married woman.

The term "general engagement" is an ambiguous and misleading one. If it is meant merely to say that goods sold to a married woman in the ordinary course of domestic life, that contracts expressed to be made by her in respect of property not her separate estate, *e.g.*, for buying or selling or letting or hiring a house, do not necessarily impose a liability to be satisfied out of separate estates which she may happen to have, in that sense, and to that extent, the proposition that her separate estate is not liable to her general engagements is quite accurate. But that does not affect the rule as laid down by Lord Justice Turner as to general engagements, as to which it appears that they were made with reference to and upon the faith or credit of the separate estate. It will be useful to refer to Lord Langdale's expressions, quoted by the Lord Justice Turner (p. 515).

"It is perfectly clear that when a woman has property settled to her separate use, she may bind that property without distinctly stating that she intends to do so. She may enter into a bond, bill, promissory note or other obligation, which, considering her state as a married woman, could only be satisfied by means of her separate estate, and therefore the inference is conclusive that there was an intention, and a clear one, on her part that her separate estate, which would be the only means of satisfying the obligation into which she entered, should be bound. Again, I apprehend it to be clear that where a married woman having separate estate, but not knowing perfectly the nature of her interest, executes an instrument by which she plainly shows an intention to bind the interest which belongs to her, then, though she may make a mistake as to the extent of the estate vested in her, the law will say that such estate as she may have shall be bound by her own act."

It would be very inconvenient that a married woman with a large separate property should not be

able to employ a solicitor or a surveyor, or a builder, or tradesman, or hire labourers or servants, and very unjust if she did, that they should have no remedy against such separate property.

It is true that, in Shattock *v.* Shattock, the Master of the Rolls expressly overruled the judgment of the Lord Justice Turner, and held that even a promissory note given by a married woman living separate and apart from her husband, and having property settled to her separate use for life, with a power to appoint the same by deed or will, and appointing it by will, was not a debt payable out of the property so appointed. In that judgment he bases his dissent from the Lord Justice on the ground that the authorities cited by the latter do not warrant his conclusion.

Their Lordships are not able to concur in that view of the authorities, and have arrived at the conclusion that Lord Justice Turner's judgment is expressed with his usual accuracy.

One of the cases, Heatley *v.* Thomas (15 Vesey, 596), when carefully examined, is a direct authority for the Lord Justice's proposition. There, a bond creditor of the married woman sought payment out of property appointed by her will. A doubt was raised in that case on the true construction of the settlement as to whether it did in fact give her a power of disposal by deed or otherwise *inter vivos* as well as by will, and that doubt being resolved in the affirmative, the Plaintiff obtained the decree sought for by him. Sir William Grant's observations are these :—

"The question is, whether this was separate property to all intents and purposes. In Sockett *v.* Wray, Lord Alvanley did not consider a married woman who had only a power of appointment by will, as having separate property; distinguishing that case from Norton *v.* Turville, where the creditor was allowed to resort to the separate property after the death of the wife, as she had a power of appointing either by deed or will. Upon the question in Sockett *v.* Wray, whether the wife could give the property to her husband, Lord Alvanley held that she could not; that she could not affect it in any way but by a revocable instrument; and the bond was an instrument not revocable. If this was absolute separate property in Mrs. Johnson, upon the plaintiff's construction of the deed, that takes it out of the case of Sockett *v.* Wray, and brings it to that of Hulme *v.* Tennant."

In that case it is obvious that Sir William Grant considered that property settled to a married woman's separate use for life, with power to dispose of it by deed or will, was in effect separate property. That

case was in one respect a strong one, as there was no gift over except in the event of her dying in her husband's lifetime. She survived him, and therefore, irrespective of the settlement, became again possessed of the property in her original right; so that upon the death of her husband, the property stood settled to herself for life, remainder as she should by deed or will appoint, remainder to herself absolutely. But having property over which at the time of making the bond, she had absolute power of disposition notwithstanding her coverture, the bond by which, notwithstanding her coverture she had bound herself, was decreed to be satisfied out of it.

In the present case it is to be noted that the gift is to the married woman for her separate use for life, with remainder, as she should, notwithstanding her coverture by deed or will, appoint with remainder to her executors or administrators. Their Lordships are satisfied that on the weight of authority and on principle they ought to treat this as what in common sense, and to common apprehension, it would be, an absolute gift to the sole and separate use of the lady. The words are an expansion and expression of what would be implied in the word sole and separate use; and they conceive themselves at liberty to hold that such a form of gift to a married woman, without any restraint on anticipation, vests, in equity, the entire corpus in her for all purposes, as fully as a similar gift to a man would vest it in him.

In the Supreme Court of Victoria the question appears to have been discussed and determined mainly on the applicability or non-applicability of the case of Vaughan *v.* Vanderstegen (2 Drewry), which it is necessary therefore to consider. In that case the married woman had only power to appoint by will. The Vice Chancellor held that a creditor was not entitled to be paid out of property appointed by such will, but on a second hearing held that where a fraud had been practised on the creditor, he was so entitled. His reasoning was shortly this: the fraud created an equitable demand which would have been enforced against any property of the married woman, and that being so it would, like a man's debt, be payable not only out of her own assets, but in aid of them out of any property which she had a general power to appoint, and had actually appointed.

It is not easy to see on what principle the fraud could alter the nature of the property subject to appointment or affect the appointees. It is easy to see how fraud might make that a debt to which the married woman would be in equity liable notwithstanding her coverture, and that there being such a liability or debt, equity would deal with any property to which she was notwithstanding coverture absolutely entitled, and any property over which she had a general power of appointment, exactly as it would do in the case of a man or *feme sole* dying indebted. Given the relation of debtor and creditor in equity, all the consequences of such relation would appear to follow just as if there were no coverture in the case.

But that case of Vaughan *v.* Vanderstegen was before the Lord Justice Turner in Johnson *v.* Gallagher, and it was with the full knowledge of that case, and after having had the advantage of well weighing the judgment of Vice Chancellor Kindersley that the Lord Justice laid down the propositions which have been previously cited, and the concurrence of their Lordships with which has been above stated.

It appears to their Lordships therefore that it was not necessary for the Plaintiffs to make out a case of fraud. All that was necessary was to show that the married woman intended to contract so as to make herself, that is to say, her separate property the debtor, and upon the facts of this case that does not appear to be open to any substantial doubt. Assuming for the moment that the letter did not operate as a defective execution of her power, it at all events showed unequivocally that she contracted that her interest in the intestate's estate, *i.e.*, her separate property should be liable to the debt.

In the Supreme Court it was considered sufficient to say that the case was based entirely on fraud, and that the fraud not being proved the Bill ought to be dismissed with costs. Their Lordships agree that the fraud was not proved. They are satisfied that the non-mention of the settlement (if it was not mentioned) was perfectly honest. The lady and her husband well knew that what she had reserved to herself would be an ample security for anything which she was likely to overdraw pending the winding up of the estate which probably was protracted

for many more years than they contemplated, and the lady and her husband (as their Lordships are satisfied) honestly intended to give and did give that ample security.

It may be right, in order to avoid any possible misapprehension of the Judgment of the Supreme Court, to say a few words on the effect of a charge of fraud made and not proved. If the case is based on the fraud, the failure to prove it must be like the failure to prove any other essential ingredient fatal. But if striking out the charge of fraud there is sufficient equity stated and proved, if, as in this case, the fraud is thrown in by way of subsidiary answer to the counter-case of the Defendant, it is a matter only affecting costs.

Their Lordships are of opinion that on each of the several grounds stated above, the Plaintiffs are entitled substantially to the relief they have asked in the second and third paragraph of their Bill.

The injunction asked was probably not necessary, as it is difficult to see how any action at law could be sustained; but it was however proper, as the action at law could not have properly tried the real questions between the parties, which were as to their respective priorities over the separate trust estate of a feme covert. As to the costs of the proceedings, of course, the costs paid by the Plaintiffs must be repaid to them. As to their own costs their Lordships are of opinion, having regard to the nature of the suit and claim, that the proper order will be that they should add their costs to their debt. Their Lordships will therefore humbly recommend to Her Majesty as follows:—That the orders of the Supreme Court of Victoria ought to be discharged, and in lieu thereof a declaration made that the share to which the said Anne Young Aitkin (formerly Ware) was entitled as widow of the said intestate in his personal estate, to the extent of the 15,000*l.* mentioned in the settlement, and the moneys payable in respect of her dower in his real estate, are liable to make good the sum due to the plaintiff, with interest as aforesaid in respect of the said overdraft. And that until such overdraft is fully paid, the plaintiff has a lien upon and is entitled to retain the said deposits of 8,000*l.* and 6,000*l.*, as representing part of the said sum of 15,000*l.*, as security for the same.

That an account be taken of what was due in respect of the overdraft in the Bill mentioned for principal and interest up to the time when the deposited sums of 8,000*l.* and 6,000*l.* were carried to a suspense account, and a like account of principal and interest on those sums up to the same date, and the balance at that date, ascertained. That the taxed costs of the Plaintiffs of the suit in the Courts below and of this Appeal be added to or set off against such balance as the case may be. Any balance due from the bank to be paid to the legal personal representative of Mrs. Aitkin; and, as to any balance due to the bank, they are to be at liberty to apply, as they may be advised in the administration suit, for payment out of her share of the intestate's estate, to the extent of the said sum of 15,000*l.* and the arrears of dower. And the decree is to be without prejudice as to how, as between the persons interested under the settlement and will, and as respects any other estate of Mrs. Aitkin, the debt of the bank ought to be borne.

That the costs paid by the Plaintiffs to any parties be repaid to them.

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