

30, 1936

In the Privy Council.

No. 58 of 1935.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

IMPERIAL BANK OF CANADA ... (*Defendant*) *Appellant*,

AND

MARY VICTORIA BEGLEY ... (*Plaintiff*) *Respondent*.

CASE FOR THE RESPONDENT.

1. This is an appeal by Special Leave from a judgment of the Supreme Court of Canada dated the 21st day of December, 1934, reversing a judgment of the Appellate Division of the Supreme Court of Alberta by which the judgment of the Trial Judge had been reversed. Record.

2. The Respondent is the widow of Robert Wilson Begley, a farmer, who died on the 26th of December, 1928. p. 31, ll. 7-9.

3. From the estate of her deceased husband the Respondent realised in money about \$13000.00 which, on the 21st June, 1929, was placed to her credit in a Savings Account in the Appellant Bank in Calgary, originally 10 account No. Be. 271, later changed to Be. 3. p. 19, ll. 31-40.
p. 19, l. 6.
pp. 299 to 303, Ex. 2.

4. The Respondent had been for about 10 years a customer of that Bank, being a Savings Account depositor in a small way. p. 18, l. 39 to
p. 19, l. 5.

5. Following her husband's death the Respondent, who was not well, had been in Spokane for some months and returned to Calgary on the 19th June, 1929, and remained in Calgary one week. p. 32, ll. 16-34.

6. On the 24th June, 1929, as she intended to be away for another period of some months, she granted a Power of Attorney on the Bank's printed form No. 70 (Exhibit 4) to one James Wesley McElroy, a friend for 30 years, who had been the Administrator of her husband's estate, to enable 20 McElroy to invest her money. p. 34, l. 42 to
p. 35, l. 29.
p. 20, ll. 11-19.
p. 251, Ex. 4.
p. 31, ll. 10-11.

Record.
p. 38, ll. 2-24.
p. 81, l. 42 to
p. 83, l. 26.

7. Investments, according to her, were to be made in Government Bonds, subject, however, according to her solicitor John W. Moyer, to the right to invest in securities approved by him (Moyer).

p. 20, ll. 20-
24.

8. The Attorney, James W. McElroy, was at the time a customer of the Appellant Bank.

p. 20, ll. 25-
45.
p. 27, l. 4 to
p. 28, l. 14.
p. 28, ll. 38-
45.
p. 122, l. 28
to p. 124.
l. 28.

9. He was then and had been for many years indebted to the Bank, and the Bank had been for years pressing him for payment. The Bank held security by mortgage on McElroy's land, which shortly before the acts complained of, was discharged or postponed to enable McElroy to mortgage the same lands to raise money to apply to his indebtedness to the Appellant. 10

p. 228, Exs.
15 & 16.
p. 229,
Ex. 17.
p. 230,
Ex. 18.
p. 231,
Ex. 19.
p. 232, Exs.
20 & 21.
p. 237,
Ex. 22.
p. 103, l. 15
to p. 106, l. 6.

p. 131.
ll. 24-35.

10. In April, 1929, the Bank Manager, A. H. Weaver, in pressing McElroy for payment, learned that a sale, which had been in prospect, of McElroy's farm to one Herron, from the proceeds of which he expected to make full payment, might fall through, and at that time McElroy stated to the Bank Manager that if the sale to Herron did not materialise he could borrow from the Respondent sufficient money to pay his debt.

p. 131.
ll. 36-41.

11. This was not communicated to the Respondent who knew nothing of it. On the 7th June, 1929, the account not having been paid, Weaver again pressed McElroy and got the statement from him that Mrs. Begley had not yet got back from the States and the promise that he " would make 20 arrangements with her " when she got back.

p. 33, l. 32 to
p. 34, l. 9.

12. During the week from the 19th June to the 26th June, 1929, the Respondent was in the Bank twice. On one occasion she saw and talked with the Manager, Mr. Weaver.

p. 38, l. 34 to
p. 39, l. 19.
p. 133.
ll. 11-24.

13. On the other occasion she saw and talked with Mr. Chambers, the Accountant, and got money for a journey to Hamilton and arranged for more to be sent to the Bank's Hamilton Branch for her. Neither the Manager nor the Accountant mentioned to her the fact that McElroy had promised to pay his debt to the Bank with money he said he could borrow from her, although Chambers knew of the proposal.

p. 29,
ll. 42-44.

14. There is no evidence to show that Mrs. Begley knew McElroy was indebted to the Bank.

15. On the 24th June, 1929, McElroy asked the Respondent to lend him money, and she ignored his request and instructed that her money at the Bank should be invested in Government Bonds. Record.
p. 38,
ll. 2-19.
16. The Respondent left Calgary on the 26th of June, 1929, for Hamilton, and the following day at Brandon wrote a personal letter to McElroy, which was placed in evidence by the Appellant, in which she expressed the hope that he would invest all that was possible in Government Bonds so as to earn the extra interest, but to be guided by Moyer (her solicitor). p. 38, l. 45 to
p. 39, l. 19.
p. 255, Ex.
41, ll. 35-37.
- 10 17. Three days later, on the 29th June, 1929, McElroy went into the Bank, saw the Accountant Chambers, requested that the amount of his account be calculated and informed him that he was going to pay the Bank's account against him in full, and stated, "I am going to borrow sufficient money from Mrs. Begley's account." p. 133, l. 45
to p. 134,
l. 12.
18. He requested Chambers to prepare a Demand Note in Mrs. Begley's favour for \$8500.00 and to prepare a cheque on her account for that amount, both of which documents were prepared by Chambers and signed by McElroy. p. 134,
ll. 12-33.
19. McElroy then handed him \$18.78 and Chambers prepared a deposit slip crediting \$8518.78 to McElroy's account. p. 134,
ll. 34-39.
p. 312, Ex.
72, ll. 20-21.
- 20 20. This \$8518.78, consisting as to \$8500.00 of the cheque written out by Chambers on Mrs. Begley's account in McElroy's favour but not endorsed by him, together with the additional \$18.78, was deposited by Chambers personally to the credit of McElroy's account in the Bank, and thereby his indebtedness to the Bank was balanced. p. 20, l. 46 to
p. 21, l. 28.
p. 23, l. 43 to
p. 24, l. 21.
21. The cheque for \$8500.00 was on the said 29th June, 1929, charged to Mrs. Begley's account Be. 3. In the Pass Book the entry is dated the 27th June. p. 256, Ex. 6.
p. 22, ll. 11-
16.
p. 301, Ex. 2,
l. 12.
22. The note for \$8500.00 in favour of Mrs. Begley, although drawn and signed on the 29th June, was dated the 1st July, 1929, and carried 7% interest, it was left with the Bank by McElroy for safe-keeping for Respondent. p. 25, l. 11 to
p. 26, l. 27.
p. 135, l. 44
to p. 136,
l. 13.
p. 258,
Ex. 13.
23. The note was taken by the Bank without Mrs. Begley's instructions and the Bank took no security for the note. p. 29, l. 45 to
p. 30, l. 15.
p. 30, ll. 37-
41.
24. In putting this transaction through, Chambers made no enquiry of the Respondent nor of the Bank Manager, as the Trial Judge finds, nor of John W. Moyer, who was known to the Bank to be the Solicitor for the Respondent, nor even of McElroy himself, as to whether or not the Respondent had agreed to make a loan to McElroy or had authorised the cheque. p. 29, ll. 1-12.
p. 132, ll. 4-8.
p. 143,
ll. 5-24.
p. 155, l. 43
to p. 156,
l. 18.
25. Moyer knew nothing of this and would not have approved had he been asked. p. 85,
ll. 15-38.

Record.

p. 32,
ll. 35-45.
p. 81, l. 6 to
p. 85, l. 14.
p. 122,
ll. 14-27.

26. John W. Moyer was, to the knowledge of the Bank, solicitor for McElroy in his former capacity of Administrator of the Respondent's husband's estate, and was also solicitor for the Respondent in the matter of the instructions to McElroy and the authority given him. At the same time Moyer was and had been for some years solicitor for McElroy and it was on McElroy's recommendation and introduction that the Respondent became acquainted with Moyer.

p. 81,
ll. 21-25.

27. Between Moyer and McElroy there had been various business dealings entirely apart from the relationship between them of solicitor and client.

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p. 105, l. 36
to p. 106, l. 6.
p. 110, ll. 1-6.

28. At the time when \$8500.00 of McElroy's indebtedness to the Bank was, as above detailed, in effect discharged out of the Respondent's moneys, the Bank held as security for McElroy's indebtedness to it a note from McElroy for part, and an unregistered third mortgage for \$6604.00 on a farm of 444 acres against which there were two prior mortgages amounting apparently to about \$15000.00.

p. 110,
ll. 7-12.

29. The evidence discloses that the Bank does not know what happened to this security. If it was released that took place at the time.

p. 39, ll. 2-10.
p. 39,
ll. 20-25.

30. Respondent having left Calgary on the 26th June, 1929, for Hamilton, remained away nearly six months, returning to Calgary about the middle of December, 1929. The Bank did not, during her absence, notify her of the fact that her money had been used to pay her Attorney's debt to the Bank, nor that the Bank held McElroy's note in her favour for the amount.

p. 40, l. 43 to
p. 41, l. 5.

31. Enquiries made, after her return from Hamilton, by the Respondent of McElroy as to investments of her money got her no satisfaction. He wouldn't explain.

p. 41, l. 11 to
p. 42, l. 26.

32. After her return to Calgary she was in the Bank's office several times but says that she was not informed by the Bank of the transaction until the following June, and that then she was not informed of all the facts, being simply told by Chambers, (Appellant's Accountant), that the Bank held McElroy's note for her for safe-keeping and the amount was a debit to her account. She was shewn the note but didn't read it and she misunderstood Chambers that it was \$4500.00 and not \$8500.00.

p. 138, l. 2.

p. 29, ll. 1-39.
p. 39,
ll. 13-25.
p. 142, l. 29
to p. 143,
l. 22.
p. 79, l. 46 to
p. 80, l. 23.
p. 131, l. 42
to p. 132, l. 1.

33. It is quite clear from the evidence that no Bank official ever told her that the money had been used by McElroy to pay his debt to the Bank. McElroy gave her that information when she was in the hospital under the circumstances related in paragraph 39 below. He told her that Weaver, the Manager, had suggested it. This latter statement was, however, denied by Weaver.

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34. On the 2nd January, 1930, Respondent lent McElroy \$1400.00 which transaction was effected by a cheque signed by her on the same occasion and personally delivered by her to McElroy. This loan reduced her credit balance, as shewn by the account Be. 3 to \$1253.60.

Record.
p. 39, l. 46 to
p. 40, l. 35.
p. 276.
Ex. 14.
p. 301,
Ex. 2, l. 34.

35. As a matter of fact during her absence in Hamilton, McElroy had drawn cheques on her account for his own purposes totalling \$3000.00 in addition to the cheque which the Bank received for \$8500.00. The cheques drawn were all signed, "J. W. McElroy" and beneath the signature, "Attorney for M. V. Begley." These cheques did not bear any account number, and were in favour of the following named persons, dated as indicated respectively and for the amounts set opposite the respective names :

p. 44, l. 24 to
p. 45, l. 4.
p. 22, l. 42 to
p. 23, l. 42.

Aug. 21, 1929	John W. Moyer	...	...	...	\$500.00
July 22, 1929	Strong & Dowler	...	...	...	1000.00
Oct. 25, 1929	Strong & Dowler	...	...	...	500.00
Nov. 13, 1929	Canadian Acceptance Corporation	...	...	...	265.00
Nov. 13, 1929	Strong & Dowler	...	...	...	735.00

p. 263, Ex. 7.
p. 261, Ex. 8.
p. 269, Ex. 9.
p. 272.
Ex. 10.
p. 273.
Ex. 11.

36. These cheques came into the Appellant Bank through the Bank of Montreal and were charged to Respondent's Savings Account, Be. 3, as follows :

Aug. 22	\$500.00	John W. Moyer
July 23	1000.00	Strong & Dowler
Oct. 26	500.00	Strong & Dowler
Nov. 13	735.00	Strong & Dowler
Nov. 16	265.00	Canadian Acceptance Corporation.

p. 301, l. 17.
p. 301, l. 14.
p. 301, l. 18.
p. 301, l. 21.
p. 301, l. 22.

37. The one cheque in favour of John W. Moyer was for a loan of \$500.00 made of her funds by McElroy to Moyer (her Solicitor) and this came to Mrs. Begley's knowledge in May, 1930, and it was immediately afterwards paid to her.

p. 46, ll. 10-18.
p. 54, l. 26 to
p. 55, l. 5.

38. It does not appear what the other cheques were given for but it does appear that they were not given on Mrs. Begley's business or for anything she owed. Nor were they issued with her knowledge or authority ; nor with the authority or knowledge of Moyer.

p. 44, l. 24 to
p. 45, l. 4.
p. 86., l. 45
to p. 87, l. 20.

39. In June, 1930, Respondent went to a Calgary hospital (as mentioned above in paragraph 33), to undergo an operation for goitre, which had been causing her ill health for a long time. Before going to the hospital she went to the Bank for money to invest through the Northern Trust Company and then ascertained, she says for the first time, that her balance was very much less than she thought it should be, and she looked so worried over this discovery that Mr. Chambers remarked her worried expression. He asked her if there was something wrong and she explained that her balance was less than it should be and he then brought forward the note and informed her that McElroy had drawn the money and left the note for her.

p. 41, l. 11 to
p. 42, l. 26.

Record.
p. 137, l. 31
to p. 138, l. 7.
p. 142, l. 29
to p. 143, l. 4.
p. 143,
ll. 18-22.

40. Chambers' account of this transaction differs from hers to some extent as to what took place and also as to the time when it did take place. Chambers says it took place in December, 1929, and she says it took place in June, 1930. Chambers says she was perplexed and flustered. Chambers on this occasion informed her that McElroy had drawn her money (she thought to the extent of \$4500.00, which was undoubtedly a misunderstanding on her part), but he did not tell her that the Bank had received the money. The Bank never told her that.

p. 155, ll. 3-6.
p. 167.
ll. 17-32.
p. 179,
ll. 21-23.
p. 199, l. 30
to p. 200,
l. 38.

41. There is no evidence that Respondent had authorised the withdrawal by McElroy of the \$8500.00. She swears she did not, and the Trial Judge and Appellate Division and Supreme Court of Canada held that she did not.

p. 43, l. 23 to
p. 44, l. 3.
p. 96,
ll. 23-37.
p. 45,
ll. 11-29.
p. 88, l. 17 to
p. 90, l. 36.
p. 95, l. 9 to
p. 96, l. 3.

42. After Respondent learned that the Attorney had used her money she received the note from the Bank in April, 1931, placed it in her Deposit Box in the Bank of Montreal, and subsequently took a renewal of the note from McElroy and employed Moyer to endeavour to collect it, and some attempt to get security was made but was immediately repudiated and not accepted.

p. 45, l. 30 to
p. 46, l. 9.
p. 86, ll. 3-16.

43. Respondent, until October, 1932, just before the action was commenced, was quite ignorant of the fact that she might, as a matter of law, have a claim against the Bank in respect of the \$8500.00.

p. 86,
ll. 17-44.
p. 80,
ll. 28-41.
p. 45, l. 39 to
p. 46, l. 9.
p. 22,
ll. 39-41.
p. 25, ll. 8-10.

44. She had no proper advice and is a woman ignorant of business. In September, 1932, becoming dissatisfied with the lack of progress being made by Moyer in his attempts to realise from McElroy, she went to the Manager of the Appellant Bank and he referred her to the Bank's solicitors and she interviewed a member of that firm, who informed her that he could not act for her. She then went to her present solicitor and for the first time was advised that she might have a claim against the Bank with respect to this \$8500.00, and it was then also that the misuse by McElroy of other moneys of hers was discovered ; and demand was made upon the Bank for payment.

45. Thereupon, after spending some weeks in attempting to get settlement from the Bank without litigation, and the Bank having finally denied any liability, this action was brought in December, 1932, and thereby Respondent claimed the \$8500.00 and interest, and \$2500.00 the total of the five other cheques and interest.

pp. 236-308.
p. 4, l. 35.
p. 6, l. 21.

46. The Appellant Bank produced and used in cross-examination and placed in evidence a number of personal letters (Exhibits 24 to 66) written by the Respondent to McElroy, most of which were written subsequently to the time when the \$8500.00 cheque was received by the Bank. McElroy was not called by the Appellant as a witness although, of the defences raised by the Bank, one was an alleged agreement by Mrs. Begley to lend the money to McElroy, and another was an allegation that the amount of the cheque

for \$265.00 was repaid. Another defence, moreover was an allegation setting up a general power of attorney signed by the Plaintiff in favour of McElroy. Record.
p. 4, l. 15.

47. This general power of attorney was never delivered and was held all the time by Moyer. p. 87, l. 21 to
p. 88, l. 4.

48. From the possession by the Bank of these personal letters and from these allegations Respondent infers that the Bank had the friendly co-operation and instructions of McElroy.

49. The Trial took place before the Honourable Mr. Justice Boyle and a Jury at Calgary, on the 23rd, 24th, 25th and 26th days of October, 1933. After the evidence was all in, by agreement of Counsel the Jury was discharged and the Trial Judge rendered the judgment, which was for the Respondent for the full amount of her claim, \$11,000.00 and interest at 5% per annum from the dates when the respective cheques were charged to the Respondent's account in the Bank; judgment was entered accordingly on the 4th November, 1933. pp. 155-158.
p. 159.

50. From the judgment of the Trial Judge the Bank appealed to the Appellate Division of the Supreme Court of Alberta. The appeal was heard on the 29th and 30th days of January, 1934, and judgment in the appeal was delivered on the 24th day of March, 1934, and by the majority of the Court the Appeal was allowed, and the action was dismissed with costs. The Honourable the Chief Justice of Alberta wrote the judgment allowing the Appeal, which judgment was concurred in by Clark, Mitchell and Lunney J.J.A.; McGillivray J.A., dissenting, would have allowed the Appeal only to the extent of dismissing the action as to the \$2500.00, the total of the five cheques issued by McElroy to others than the Appellant, and interest thereon. pp. 191-192.
pp. 165-178.
pp. 178-191.

51. From this judgment the Respondent appealed to the Supreme Court of Canada and that Court (Cannon J. dissenting) restored the judgment of the Trial Judge as to the \$8500.00 item. pp. 195-222.

52. From the judgment of the Supreme Court of Canada the Bank now appeals.

53. The Respondent's *prima facie* right to recover is clear and judgment may be based on any of the alternative causes of action following, namely :

(A) The fiduciary burden of the Attorney transmitted to the Appellant when he paid over the Respondent's money to the Appellant who in receiving it became party to the Attorney's breach of trust or duty.

(B) A loan without security made by the Appellant of Respondent's funds without her authority or consent ;

Record.

(c) Conversion by the Appellant to its own use of the Respondent's money ;

(d) Money had and received by Appellant to the use of the Respondent.

Ex. 4, p. 251.

54. The Power of Attorney under which McElroy wrote the cheque was obviously designed solely to enable McElroy to transact the Respondent's business, not his own, and would not justify the drawing of the cheque (and there was no other authority), and would not justify the Appellant accepting the cheque without inquiry, the result of which would reasonably satisfy a business man that there was express authority. 10

55. The Bank supplied the printed form of Power of Attorney which was used.

56. The Appellant in accepting the cheque from McElroy took the risk as to whether McElroy had in fact actual authority which he did not have.

57. The evidence discloses that no inquiry was made under circumstances where an inquiry was particularly indicated, inasmuch as there was a benefit to the Bank designed and stipulated for. Indeed the Trial Judge held in effect that the inquiry was not made for fear the answer would be unfavourable. Boyle J. says : " It seems to me that he (Chambers) did not want to " make inquiry because he did not make it." 20

58. There was no acquiescence, estoppel, ratification or adoption. The Trial Judge says : " It was strongly urged by Counsel for the " Defence that in view of the circumstances disclosed by the evidence it " should be held that she was estopped from now recovering the money or " in the alternative should be held to have ratified the transaction. I do not " think so." This finding, which is amply supported by the evidence should not be disturbed on appeal.

59. As stated by Sir Lyman Duff C.J. both McElroy, the Attorney, and the Bank gave to the transaction a form in which it consisted of two separable and separate acts : (1) The drawing of the cheque, and (2), the payment 30 over of the cheque by the Attorney to the Appellant. The Appellant knew when receiving the cheque that McElroy was not purporting in that act to do anything for his principal and knew that he was paying his own debt with her money. The Bank's witnesses do not pretend they believed McElroy was acting for her. Therefore, it is submitted, that act was incapable of ratification.

60. The evidence (as Duff C.J. observes) established no act or omission by the Appellant to its prejudice done or made in reliance upon the Respondent's failure to make a claim or upon the fact that the Respondent took a renewal note. It does not appear that the Bank knew 40

that she had taken a renewal note. There was nothing it could do so there was nothing it could omit doing. She took the note from the Bank in April 1931 in good faith believing she had to look to McElroy. When it was not paid she took a renewal of it which at the most was an agreement on her part not to sue during the currency of that note ; and she did those things in ignorance of her legal rights and in ignorance of many material facts. When that note came due she placed it with her solicitor to collect which was more than the Bank had ever done in pressing its own claim against McElroy. It does not appear that it had ever sued McElroy in its long period (over 8 10 years) of pressing. Had that been something with possible productive results no doubt the Bank would have sued.

Record.

61. McElroy had been her friend for years. He was represented by Moyer as his solicitor and through McElroy's instigation Moyer became her solicitor. Respondent consequently had no chance to discover her legal rights.

p. 31, l. 10.
p. 81, ll. 3 to 39.

62. In the circumstances there was no duty on the Respondent to notify the Appellant of McElroy's lack of actual authority. The Appellant took her money, without inquiry, and it does not lie in its mouth to complain that she said nothing to the Bank when it was the Bank's duty to ask her if she had 20 anything to say. Moreover when the Accountant mentioned that he held the note he suppressed the fact that the amount of it had been received by the Bank, he deceived her. He should have said " the money the Bank got from " her account through McElroy." Even then she said " what money ?" which was a sufficient indication to any honest reasoning man that there was no authority.

p. 142, l. 40.

63. By treating the Respondent in the way it did the Bank induced her to believe that all was regular so far as the Bank was concerned ; that McElroy having the Power of Attorney could do what he liked. She had no chance to have independent advice. In the end she went to the Bank for 30 advice as to how she could recover against McElroy, Moyer having failed her. She was then sent not to an independent solicitor but to the Bank's solicitor.

p. 80, l. 28.

64. The learned Chief Justice of Canada, it is true, in preparing his judgment, erroneously referred to a renewal note as having been repudiated and not accepted, quite obviously confusing that with a subsequent attempt at renewal and security which was repudiated. He however, it is submitted would not have changed his conclusion that the Appellant is liable, had he treated this fact correctly. He goes on after referring to the relations of the parties to say " that the Bank has not in my judgment, established that 40 " the Appellant was in possession of that knowledge of the nature of the " transaction and of the material incidents of it, the existence of which " (knowledge) would be an essential condition of a binding ratification. There " is nothing to indicate that she knew the actual form of the transaction. " There is nothing to indicate that she was acquainted with the facts which as " I have explained convince me that by reason of the conduct of its local

p. 208, l. 43
to p. 209, l. 9.

Record. " officials to use the phrase of Mr. Justice McGillivray, the Bank cannot be
 " treated as an ' innocent party '." And he holds that the Bank's conduct
 p. 209, is not immaterial and cannot be disregarded within the meaning of the rule
 ll. 35-37. which makes full knowledge an essential condition. He holds that the
 evidence is sufficient to support the findings of fact necessary to sustain the
 conclusion of the Trial Judge on the issues of estoppel and ratification.

65. The Respondent respectfully submits that the judgment of the Supreme Court of Canada is right and ought to be affirmed, and the appeal dismissed with costs, for the following amongst other

REASONS.

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1. Because the Respondent's money was deposited with the Appellant and the Appellant has not paid it out to the Respondent or with her authority, nor otherwise discharged itself of its liability.
2. Because the Appellant converted the Respondent's money to its own use.
3. Because the Power of Attorney in its true interpretation, did not authorise the Attorney to draw a cheque for his own purpose and was no justification to the Appellant for its act in placing the cheque to McElroy's personal 20 credit to pay his personal debt to the Appellant.
4. Because the Appellant in accepting the cheque from McElroy without inquiry did so at the risk and peril that he had not the actual authority, and the evidence shows and the Trial Judge found there was no actual authority in McElroy.
5. Because the evidence discloses and the Trial Judge in effect found that the Appellant was put on inquiry, that no inquiry was made by Appellant, that an unfavourable answer would have been made to such inquiry and that 30 Appellant deliberately refrained from inquiry in the face of the probability of an unfavourable reply, its design being to permit McElroy to make the mis-application which was made of the Respondent's money for the benefit of the Appellant.
6. Because the evidence establishes that the Appellant received from the Respondent's Attorney, a cheque drawn by him on the Respondent's account in circumstances in which the fiduciary burden on the Attorney to use her funds only in her business was transmitted to the Appellant who 40 thereupon became under an obligation to return it to Respondent.

7. Because the Appellant without authority from Respondent made a loan of her money to a debtor of its own designedly without security to enable that debtor to pay his personal debt to the Appellant with the Respondent's money.
8. Because the Appellant was privy to the Attorney's intent to make the mis-application he did make of Respondent's funds, and therein the Appellant stipulated for and received the benefit to itself of her funds.
9. Because there was no acquiescence estoppel ratification or adoption.
10. Because on the facts of the case and the law applicable, the Respondent is entitled to retain the Judgment.
11. For the reasons given by Sir Lyman Duff C.J. in the Supreme Court, by McGillivray J.A., in the Supreme Court of Alberta and by the Trial Judge.

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D. N. PRITT.

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