

Their Lordships' judgment was delivered by

HON. MR. JUSTICE MEREDITH:—After several attempts to find evidence enough to support the findings of the trial Judge upon all material questions of fact, I am obliged to say, in the fullest appreciation of the advantages of a trial Judge, that the finding upon the question of knowledge, on the part of the plaintiffs, of mental incapacity of the defendant to transact business, when the notes were endorsed by him, cannot be sustained.

The case is not one of obvious, or commonly known, mental affliction; there is a sharp conflict of testimony as to whether there ever was any such incapacity, a conflict in which there is a good deal to be said on each side, so that if the finding upon that question had been the other way it might have been impossible to disturb it. The man was very old, but he was in no way confined, or restrained, as one of unsound mind; indeed he seems to have been frequently, if not constantly, in and about the place of business, and so concerned in the business in which the debt in question was contracted, which was always carried on in his name.

The trial Judge found that the endorsement, by the defendant, of the first of the notes in question was obtained by the plaintiffs' manager—Graham—in person, and that at the time he obtained it he knew of the defendant's mental incapacity. Graham having testified that the endorsement was obtained by the intestate's son—the witness Bradfield; and that he—Graham—had nothing personally to do with obtaining, and that he never had any knowledge of any kind of incapacity of the defendant.

I cannot but say that the finding strikes me very forcibly as unreasonable. In the first place, it must be borne in mind that the note was taken in renewal of a note of the firm of R. H. Bradfield & Co., and so a note upon which the defendant—R. H. Bradfield—was liable; for there is no finding, nor any evidence upon which it could be well found, that the defendant was not a member of the firm thus prominently bearing his name; and it must also be borne in mind that this firm had for years before been indebted to the plaintiff, and that that note was but one of many renewals of notes given for that indebtedness; so that the proposition is that this astute business man, deliberately obtained from a man he knew to be of unsound mind, the note in question