

It was argued that, when he so refused, the plaintiff should then have brought her action; but it is to be borne in mind that the parties were husband and wife and living together. For the wife to have instituted an action against her husband in 1899, to recover this fund, would, in all probability, have resulted in separation.

There is no equitable doctrine that in a case like this a married woman is chargeable with laches because during the continuance of marital relations she forbears instituting an action against her husband for the recovery of her moneys in his hands.

Further, the defendant has in no way been prejudiced by his wife's forbearance.

For these reasons, I think that the Chancellor was right in awarding judgment for the plaintiff for \$2,288.

The action for alimony did not call into question this money; and it is, therefore, no bar to the plaintiff's claim; and the defendant's appeal fails and should be dismissed with costs.

As to the plaintiff's cross-appeal, for \$500, I agree with the learned Chancellor's reasons for disallowing that claim.

The plaintiff's claim for interest must also fail. The rule applicable to such a case is thus stated in *Alexander v. Barnhill*, 21 L.R. Ir. at p. 515: "There is a great difference between the receipt of the income of a wife's separate property by her husband and of the corpus. In the latter case, the onus of proof of a gift by the wife to the husband lies upon him, and must be clearly established, or else the husband will be held to be a trustee for his wife. In the former, the onus lies on the wife, save perhaps as to the last year's income, and she must establish clearly and conclusively that her husband received her income by way of a loan."

It is not possible, I think, with certainty, to say that the evidence proves a mere loan of the interest to the husband. Thus the plaintiff's cross-appeal fails.

As to the costs of the cross-appeal, it seems that but for the defendant's appeal there would have been no cross-appeal, the one provoking the other; nevertheless the plaintiff's appeal in no way increased the costs; and I, therefore, think that there should be no costs to either party in respect of the cross-appeal.

RIDDELL, J., agreed in the result.

SUTHERLAND and LEITCH, JJ., agreed with MULOCK, C.J. Ex.

Appeal and cross-appeal dismissed.