Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Healey (appealing in formâ pauperis) v. The Bank of New South Wales, from the Supreme Court of the Colony of Victoria, delivered 28th November, 1900.

Present:

THE LORD CHANCELLOR.
LORD HOBHOUSE.
LORD ROBERTSON.
LORD LINDLEY.
SIR FORD NORTH.

[*Delivered by the Lord Chancellor.*]

IN this Appeal their Lordships do not think it necessary to call upon the Respondents to answer the case which has been set up. Some of their Lordships have expressed, and all of them have felt, a certain amount of sympathy with Mr. Geoghegan as regards the position in which he finds himself as Counsel for an Appellant, when the whole foundation of his case is destroyed by the fact that the person on whose behalf he is appealing, and upon whose evidence the whole of this case rests, is not believed. Their Lordships have no hesitation whatever in saying that they do not believe the Appellant's own evidence. There are a great many reasons which might be given for disbelieving him, but there is the concurrent view of both of the Courts below; first of the learned Judge who heard the Appellant himself, and considered all the evidence; and, secondly, of the Appeal Court, which, for six days, listened to the arguments, and expressed an opinion that they would not differ from the learned Judge below; and that, looking at the

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evidence, they would have taken the same view that he took of the credibility of the witness. The whole case turns upon the credibility of that witness, and it would be a very extraordinary thing, where it is a question of the credit to be given to a witness by the Judge who heard and saw the witness, and the demeanour of that witness, as contrasted with another witness by whom he was contradicted, when that learned Judge, upon the demeanour and view of both the witnesses, came to a conclusion as to which he should believe, that an Appeal Court should, without that advantage, take upon itself to believe the witness whom the original Judge had disbelieved by reason of having seen the witness and having heard what he had to say.

Their Lordships believe that that would be a sufficient reason of itself for dismissing the Appeal, but after what has been said about taking, as a matter of course, what has been held by another tribunal, their Lordships think it right to say that, looking at the evidence for themselves, they are of opinion that that evidence does show that this man was not to be believed; that he was a fraudulent knave; that he did cheat the Bank; and that he adopted a variety of means for cheating the Bank, in which he was detected, and for which he has been justly punished. Probably, a more audacious thing than that a man, who has undergone punishment for his crime, should bring an action to recover the monies which were the proceeds of the offence for which he has been punished cannot be conceived. It is not immaterial to observe that some of the plausible suggestions, rather than arguments, which have been made by his ingenious and learned Counsel are afterthoughts, the original transactions being in 1892, the trial being in 1893, and these suggestions being made in 1898,

at the last minute, as explanations of what unexplained, could not be doubted to be very strong evidence of his guilt. The Appellant to establish his case was bound to show where he got the money from, but for the first time an account is given in 1898. The account itself is not a very probable one, but which, if true, could have been materially corroborated by his father and mother, who were alive, and the father is found to have been actually present at the criminal trial, and yet neither of them were then called. Again, when an incriminating document is found in his possession, upon which evidence was given at the trial, and which, no doubt, had its operation towards convicting him, namely an account of several sums, showing that the knave had knowledge of the place of the withdrawal, the time of the withdrawal, and the amounts which fraudulently had been entered in those names, it is not until five or six years afterwards, for the first time, a suggestion is made of how that incriminating document came to be written by him. That it is written by him is admitted and proved. That is an accumulation of evidence against him, which, apart from any previous judgment formed by other persons, in their Lordships' minds would be ample evidence to convict him, and the result is that not only must their Lordships advise Her Majesty that this Appeal be dismissed, but that their Lordships are clearly of opinion that the evidence against the Appellant was such that it was properly and justly found that this money was part of the proceeds of the fraudulent offence, for which he has been convicted and punished.

Their Lordships will therefore humbly advise Her Majesty to dismiss this Appeal. As the Appellant appeals *in formâ pauperis* there will be no costs.