Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Williams v. *Stevens, from the Royal Court of the Island of Jersey; delivered 9th November*, 1866.

Present:

LORD WESTBURY.
SIR JAMES W. COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.

IN this case their Lordships are clearly of opinion that it would be subversive of the established doctrine of Courts of Equity if the Decree of the Court in Jersey were affirmed. Nothing can be better settled or more in conformity with the dictates of justice, than the rule that persons standing in the situation of trustees or agents must account to their principals or *cestuis que trusts* for all the benefits which they themselves obtain by virtue of that character or relation.

And it is no answer to say that, in the course of acquiring the benefit which has been derived by the trustee or agent, he incurred a possibility of loss. That may well be; but if the transaction has resulted in gain, and is one in which the trustee or agent was in reality enabled to accomplish what he has done by virtue of his trusteeship or his agency, the consequence results that the whole benefit of the transaction belongs to the person whom he must be considered to have represented throughout.

In this case, Mr. Stevens, the Respondent, was the general attorney of the Appellant, Mrs. Bond. There was a proceeding in bankruptcy against a person named Gray, of whom the husband and testator of the Appellant had purchased a house. By the law of bankruptcy in Jersey, the creditors, or parties interested, stand in a certain order in a

schedule which is made out, and that law entitles them successively, beginning from the most recent claimant at the bottom of the list, to take the whole of the estate of the bankrupt, with all its liabilities, becoming in point of fact the assignee.

Now that may or may not be a profitable proceeding. It may in many cases be *damnosa hereditas;* in other cases it may happen that the estate of the bankrupt yields a considerable surplus beyond the amount of the liabilities. Here the Appellant, Mrs. Bond, was legally in the list of Gray's creditors; and when it came to her turn, Mr. Stevens, as her attorney, claimed to be tenant or assignee of the whole of the estate. An objection was taken by another creditor, on the ground of insolvency or insufficiency of means on the part of Mrs. Bond; and that objection, or demand for security, was met by her attorney in this way. Availing himself of the law of Jersey, he subrogated another person as tenant in her place. Accordingly, the tenancy of the estate was made out in the name of that other person, one George Snell.

It is quite plain what was the real nature of the transaction. Snell had entered into an engagement that he would become the surrogate of Stevens, and stand in the shoes of that person in respect of the whole of Gray's estate, on the terms that the estate should be divided into moieties; one moiety to belong to himself, the other moiety to belong to Stevens the attorney. All this is expressed in an agreement of the 23rd of September.

A provision was added to that agreement to the effect that the house which the Appellant's husband had purchased of Gray should be secured to her.

The agreement was worded in such a manner as to make it appear that this benefit to the Appellant was the whole of the consideration for the subrogation of the tenancy made by Stevens to Snell. Any one, on reading that agreement, would infer that the only benefit which was to be obtained, or could be obtained, as the consideration for the transfer of the bankrupt's estate to Snell, was the house secured to the Appellant. This agreement was produced to the Appellant by Mr. Stevens, her attorney. At that time, the relation

of principal and agent subsisted between the Appellant and Mr. Stevens. The truth, however, was, that this subrogation or transfer was worth a great deal more, because the moiety, which was so obtained by Stevens, he being then the agent of the Appellant, was a moiety which was immediately sold by Stevens back again to Snell, in consideration of a sum of £578. The whole thing was plainly one transaction; the whole of the instruments were in reality for one object.

There was an agreement or contract of sale between Snell and Stevens, which is to be found numbered 9 in the Record; and by that it was agreed that Stevens should resign to Snell the moiety of the "tenemre" of Gray, as it is called,—that is, the moiety of the bankrupt's estate which he was to receive; so that Snell should become the sole owner thereof, in consideration of an annuity which was to be granted to Stevens,—"a sum of thirty-four quarters of wheat rent annually,"—which may be taken to represent the sum at which the moiety would be estimated in Jersey.

This was followed by another instrument of the 19th of November, 1859, which was in conformity with the agreement I have just referred to between Snell and Stevens, by which Snell purported to grant to Stevens an annuity charged upon a part of Gray's estate, the consideration for which was stated to be paid, being £578 sterling.

As we have already stated, the whole of this was plainly one and the same transaction between these parties. It is plain that at the time when the bankrupt's estate was transferred to Snell there must have existed an agreement that he was to give a moiety of it to the attorney Stevens, and then, as soon as that agreement was made, an instrument was prepared by which the Appellant was made to believe (for that is the plain meaning of the document) that the whole consideration for this subrogation was nothing more than she then received; while her attorney, or rather her agent, was at that very moment putting into his pocket a sum of £578, which he had received from the person to whom he had subrogated the tenancy of the estate, which tenancy was, in fact, the property of the Appellant. It is the Appellant's right which has been acted upon throughout. It was in

respect of the Appellant's right that the Respondent, being then her agent, obtained a moiety of the tenancy of the estate, and he still retained that character when he sold that moiety for this sum of money to Mr. Snell. There is no liability in Stevens against which the Appellant is bound to provide. Snell has taken the whole estate or tenancy with all its liabilities. He has in fact paid Stevens the sum of £578 for one moiety, which must be taken as its clear value notwithstanding any liability. This sum was in law received by the Respondent on account of the Appellant, and, as the Appellant does not claim the annuity that was bought with it, she must have this sum, with interest, paid to her by Stevens, the Respondent.

We shall, therefore, advise her Majesty to order that the judgment of the Court below be reversed, and that the sum of £578, with interest at 5 per cent. from the 19th November, 1859, be paid to the Appellant by the Respondent, Stevens, together with her costs in the Court below and of this Appeal.