

No. 32 of 1970

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N

WILLOUGHBY ARTHUR VICKERS DAVIS Appellant

AND

THE ADMINISTRATOR GENERAL Respondent

CASE FOR THE RESPONDENT

RECORD

- 10 1. This is an Appeal from the Judgment and Order of the Court of Appeal of Jamaica dated 7th March, 1969 dismissing the Appellant's appeal against the Judgment of Mr. Justice Douglas dated the 29th July, 1965 and is brought pursuant to the Order of that Court dated 11th March, 1969 granting the Appellant final leave to appeal to Her Majesty in Council
- 20 2. This action was commenced by the Appellant by Writ of Summons in the Supreme Court of Jamaica against the Respondent on the 1st December, 1964 for the following relief:-
- (a) An account of the property subject to the Trusts of the Will of the above-mentioned Charles Benjamin Vickers deceased possessed and received by the Respondent as the Trustee of the said Will or by any other person or persons by the order of or for the use of the Respondent and of the dealings of the Respondent therewith.
- 30 (b) An account of the rents, profits, interest and income received by the Respondent or by any other persons or person by the order of

P.13.Vol.I  
1.26.  
P.14.Vol.I  
1.42  
P.110, Vol.I  
1.10  
  
P.1, Vol.I  
1.12  
P.2. Vol.I  
1.40

RECORD

or for the use of the Respondent of the property for the time being subject to the Trusts of the Will of the abovementioned Charles Benjamin Vickers, deceased and of the dealings of the Respondent therewith.

- (c) An inquiry under what circumstances the Respondent negotiated a sale of the property known as the Mount Edgecombe Estate and to whom.
- (d) An inquiry whether any and what property subject to the Trusts of the Will of the abovenamed Charles Benjamin Vickers, deceased has been lost or misappropriated and when and by whom and under what circumstances and what has become of it. 10
- (e) An account of the property subject to the trusts of the Will of the abovenamed Charles Benjamin Vickers deceased and of the rents, profits, interest and income thereof which might but for the wilful neglect or default of the Respondent have been possessed and received by the Respondent or by any persons or person by the order of or to the use of the Respondent 20
- (f) An injunction restraining the Respondent from completing the sale negotiated by him in or about the month of August, 1964 of the property known as the Mount Edgecombe Estate aforesaid
- (g) An order directing the Respondent to dispose of the property known as the Mount Edgecombe Estate in accordance with the directions to be given to him by the beneficiaries under the aforesaid Will 30
- (h) An order for the Appellant to be paid such sums as shall properly be found to be due to him on the aforementioned accounts and inquiries.
- (i) Damages
- (j) Costs 40
- (k) Such further and other relief as may be just.

The Appellant succeeded in the Supreme Court at first instance (Douglas J.) and the Respondent was ordered to restore to the Trust fund a total sum of £2,900.12.8 to wind up the trust and to pay to the beneficiaries the sum to which each is entitled and to personally pay the Appellant's costs on a party and party basis. The Appellant's appeal to the Court of Appeal of Jamaica was dismissed with costs.

10 3. The principal facts of the case appear from the oral and documentary evidence given and tendered at the trial of the action and the Judgment of Mr. Justice Douglas and the Judgments of the Court of Appeal. So far as material they may be summarised as follows:-

- (a) The Respondent is the Trustee under the Trusts created by the Will of Charles Benjamin Vickers of Mount Edgecombe in the Parish of Westmorland. The said Charles Benjamin Vickers died on the 14th January, 1923 and his Will was proved in the Supreme Court of Jamaica on the 6th February, 1923. P.15.Vol.I  
1.16
- 20
- (b) By this Will he devised and bequeathed his property Mount Edgecombe to his children Alfred Vickers and Catherine Vickers for their respective lives and upon the death of the survivor of them to the Administrator General of Jamaica upon Trust to sell the same and divide the proceeds of sale between the members of a named class of beneficiaries. P.15,Vol.I  
1.22-31
- 30
- (c) Catherine Vickers who was the surviving life tenant died on or about the 9th August, 1960. Upon the death of Catherine Vickers the persons beneficially and absolutely entitled to the proceeds of sale of Mount Edgecombe were Miss Alice Maud Vickers of Sydney New South Wales Australia and Mrs. Hilda Margaret Davis. Mrs. Hilda Margaret Davis the mother of the Appellant died in England on the 19th November, 1962 having mortgaged her interest in the said property to the Appellant and having assigned a two third's P.15,Vol.I  
1.32  
P.16,Vol.I  
1.11
- 40

RECORD

undivided share in the said interest to the Appellant. The Appellant was the sole Executor proving the Will of his late mother

- P.16.Vol.I  
1.22 (d) In accordance with the provisions of the Testator's Will, the Respondent entered into possession of the Trust property and obtained administration on or about the 8th September, 1960. On the 7th October, 1960 the Respondent's agent reported that the condition of the whole property was deplorable and would take thousands of pounds to restore it as a grazing property 10
- P.18.Vol.I  
1.23-39
- P.24.Vol.I  
1.12 The Respondent on the 31st October, 1961 requested a valuation of the Trust property which was supplied on the 5th January, 1962 valuing the property at £50,370 on the basis of its user for agricultural purposes
- P.24.Vol.I  
1.26 (e) The Respondent first advertised the property for sale in the issue of the Daily Gleaner, a local newspaper, on the 21st July, 1962. In response to this advertisement offers were received and apart from one for £90,000 which was later withdrawn after the offeror had inspected the property, the only substantial offer was one of £50,000. The Appellant was then placing a valuation on the property of £70,000 but subsequently on the 25th January, 1963 was willing to accept £50,000 if the offer was still open and was informed that it was not. 20
- P.25.Vol.I  
1.31
- P.74.Vol.I  
1.8 The Appellant was then placing a valuation on the property of £70,000 but subsequently on the 25th January, 1963 was willing to accept £50,000 if the offer was still open and was informed that it was not. 30
- P.75.Vol.I  
1.24
- P.26.Vol.I  
1.10 (f) The Appellant retained a real estate agent, Messrs. Hampton and Sons, London, who through their local agents, Lord Ronald Graham, received a valuation that a local buyer would not pay more than £45,000 - £50,000 but an overseas buyer with a long term view or who could offset development costs against a tax situation might pay as high as £70,000 - £75,000. 40
- P.77.Vol.I  
1.29 (g) On 16th and 20th November, 1963 the Respondent again advertised the Trust property for sale in the issue of the Daily Gleaner, a local newspaper. The Respondent

RECORD

at no time acceded to the Appellant's request to advertise on the foreign market.

10 (h) Messrs. Hampton and Sons received an offer of £60,000, the terms of payment being £30,000 immediately and the remaining balance of £30,000 after five years with interest at the rate of 5% per annum. This offer was acceptable to the Appellant but not acceptable to the aged Australian beneficiary who desired a cash sale for £50,000 or better. P.77.Vol.I  
1.33-38

(i) Hampton and Sons subsequently received an offer from the Carlyle-Clarke Syndicate for £57,000 subject to certain conditions, namely: P.77.Vol.I  
1.39  
P.78.Vol.I  
1.10

(i) The Respondent would be required to give a Registered Title;

(ii) Vacant possession;

20 (iii) The Purchaser to enter into possession on signing the Contract of Sale and payment of 10% of the purchase price;

(iv) The balance of the purchase price to be paid when the Registered Title was issued.

30 (j) The Appellant wished the Respondent to accept this offer; so too did the Australian beneficiary at the time as she had no knowledge of the terms and conditions of the offer.

The Respondent did not consider this offer an acceptable one because it would require two to three years to obtain a registered title and would involve considerable expense to the beneficiaries. The requirement as to a warranty for vacant possession might also have involved the Respondent in protracted and expensive litigation. P.78.Vol.I  
1.31-38

40 Further, the Australian beneficiary who was of advanced years desired a speedy cash transaction.

RECORD

P.78.Vol.I  
1.39  
P.79.Vol.I  
1.8

- (k) On the 27th July, 1964 the Respondent entered into a Contract of Sale for the Trust property for a purchase price of £57,200 on terms and conditions which, inter alia, required the acceptance by the Purchaser of a Common Law Title without any warranty as to vacant possession. Payment of the purchase price was to be an immediate deposit of £14,300; a further instalment of £14,300 on or before 31st August, 1964 and the balance £28,600 on or before 31st December, 1964. 10

Possession was to be given to the Purchaser on payment of the second instalment.

P.79.Vol.I  
1.24  
P.80.Vol.I  
1.5

- (l) The Australian beneficiary, having learnt of the conditions of the Carlyle-Clarke Syndicate offer, on the 11th August, 1964 endorsed the Respondent's action in refusing to sell to the Carlyle-Clarke Syndicate and on the 13th August, 1964 the Respondent informed the Appellant's Solicitors of the advantage of the agreement for sale entered into by the Respondent. 20

P.1.Vol.I  
1.1  
P.2.Vol.I  
1.30

- (m) On the 1st December, 1964 the Appellant instituted legal proceedings against the Respondent seeking, inter alia, an injunction restraining the Respondent from completing the sale negotiated by him and for an Order directing the Respondent to dispose of the Trust property in accordance with the directions to be given to him by the Appellant. 30

4. The substantial issues arising for decision in this Appeal are:-

First, did the Trust Fund sustain a capital loss when the Trust property was sold.

Secondly, did the beneficiaries sustain a loss on income due to the neglect or default of the Respondent in the management and maintenance of the Trust Property prior to its being sold. 40

Thirdly, whether or not the Respondent ought to have been deprived of remuneration as a trustee.

Fourthly, whether any interest payable by the Respondent ought to be by way of compound interest and not simple interest

Fifthly, whether exemplary damages ought to have been awarded against the Respondent.

Sixthly, whether the Appellant's costs should have been ordered to be taxed on a Solicitor and client basis and not on a party and party basis.

- 10 5. The First Issue - The Appellant contended that the Trust sustained a capital loss when the Trust property was ultimately sold for, inter alia, the following reasons:
- (a) That price obtained was not the best price as it did not represent the full value of the Trust property
  - (b) That the property was sold under depreciatory conditions as no registered title was obtained for the property
  - 20 (c) That due to delay in selling and failure to maintain and preserve the property a lower sum was paid for the property than that which would have been obtained if the property had been sold earlier or properly and efficiently maintained.
  - (d) That the sale of the property was inadequately advertised as the Respondent failed and/or neglected to advertise same on the foreign market and as a consequence thereof the sale did not attract the best possible offer.
- 30

6. The Learned Trial Judge Douglas J. in considering these issues stated in his Judgment:

"I think that on this aspect of the case, the only question which arises is whether the Administrator General tried to sell at the best possible price or whether this was a sale at a gross undervalue. On the issue whether the price of £57,200 was the best price obtainable for the beneficiaries, it must be recalled that

P.38.Vol.I  
1.47 - P.39  
Vol.I.1.15

40

RECORD

Mr. Kirkham placed the 1962 value of Mount Edgecombe at £50,370 and Mr. Williams said the amount he offered contained a considerable element for development potential. My own view is that the price paid by Mr. Williams is a very good one, having regard to the condition of the property. In my judgment, therefore, the sale to Mr. Williams cannot be impeached on the evidence before me."

10

P.42.Vol.I.  
1.21-42

"In regard to loss to the Trust Fund, how does the matter stand? I accept that even if some element be added to Mr. Kirkham's valuation for development potential, the resultant figure for the 1962 value would be less than £57,200. I further accept that the 1960 value was also less than £57,200. In accepting this position I reject the figures given by Mr. Calder - £85,000 - £90,000 - as the value of Mount Edgecombe in 1960 and 1962. The fact is that when at last the Administrator General sold, he did so at a price which represents full value for the property and more, and which is much in excess of anything he could have received earlier when the property market was depressed. The figure which he would have obtained in 1962, together with interest thereon, would still be less than £57,200 and moreover my view is that the price of £57,200 is very good indeed and there is nothing before me which would lead me to conclude that the price would have been enhanced in any measure had the Administrator General maintained the property in the condition it was when he took it over."

20

30

In dealing with the issue in respect of the Respondent obtaining a registered title to the property the Learned Trial Judge had this to say: 40

P.40.Vol.I.  
34-47

"As regards title, the Administrator General has taken the stand that he could give such title as he got. In support of this, Mr. DaCosta cites Goodson vs. Ellisson (1827) 3 Russ 583 in which Lord Eldon L.C. equates the position of a Trustee



10 with that of a mortgagee who can only be called on to convey by the words and descriptions by which the Conveyance was made to him. I need not express any opinion as to the applicability of Goodson's case to the facts before me, for I accept that in regard to Mount Edgecombe, the Administrator General was reasonable in his refusal to agree to a stipulation for registered title and vacant possession."

7. The Court of Appeal unanimously dismissed the Appellant's appeal against the Judgment and Order of Douglas J. and rejected the Appellant's contention that the Trust Fund suffered a capital loss when the Respondent sold the Trust property for £57,200. In dismissing the appeal Shelley, J.A. held that

20 "For my part I am unable to say that the learned Trial Judge applied any wrong principles or that he came to a wrong conclusion. I am not convinced that there is merit in the much pressed argument that the Trustee should have advertised the property in the foreign press in order to obtain the best possible price. One must not lose sight of the fact that local advertisements are as likely to attract the attention of local agents of foreign companies or persons concerned in real estate business (e.g. Hamptons) who may act for their clients as well as those with purely local interest. As it transpired Mr. Williams appears to have been acting for himself and a person or persons abroad."

P.98.Vol.I  
1.1-18

30  
40 Shelley J.A. accepted the finding of fact by Douglas J. that the Trust Fund suffered no loss as regards price and income. Then applying the principle enunciated in Earl of Gainsborough vs. Watcombe Terra Cotta Clay Company 53 L.T.R. 116 he held that if the Trust property had been sold for less than what might have been obtained at the time when the duty to sell arose then the Respondent would have been liable for the difference.

P.100.Vol.I  
1.1-29

RECORD

P.90.Vol.I.  
1.3-9

Luckhoo J.A. after correctly stating that:  
"In order to see whether any loss has resulted from the Respondent's breach of trust in failing to effect a sale of the property at the proper time it is necessary to ascertain whether the notional net proceeds of sale at the proper date (the 8th September, 1961) would be in excess of the net proceeds of sale effected in or about August, 1964."

10

Proceeded to analyse the evidence and rightly concluded that the notional net proceeds of sale at the material date when set off against the net proceeds of sale actually obtained indicated that no capital loss had been occasioned the Trust by reason of the Respondent's breach of trust.

P.89 Vol.I  
1.20- P.90.  
Vol.I 1.2

8. Luckhoo J.A. then, it is submitted erroneously, applied the principle applicable to the distribution of pecuniary legacies by an Executor and held that the Appellant would be entitled to interest at the rate of 5 per cent. per annum from one year after the Respondent entered upon the administration of the Trust until such amounts were fully paid to the beneficiaries. He erred in law when he incorrectly concluded that because there was a conversion in equity from realty to personalty when the Respondent's power of sale arose under the Trust and the beneficiaries thereby became entitled to the proceeds of sale that the principle known as the "executor's year" and applicable to the distribution of pecuniary legacies automatically applied to the instant case. Further, he failed to appreciate that it was not mandatory that interest was payable one year after the Executor commenced administration of the estate; but usually interest is payable on pecuniary legacies one year after the date stipulated for payment out or the date at which the Fund becomes available until the sale of the Trust property was effected and not from the date of the notional conversion in equity.

20

30

40

9. It is therefore submitted that Douglas J. and the Court of Appeal correctly concluded that the Appellant failed to establish that the Trust sustained any capital loss. The question as to whether or not the Trust sustained a

capital loss is clearly a question of fact. The Appellant having failed to show that Douglas J. did not properly evaluate the evidence or that his findings of fact are unreasonable or cannot be supported by the evidence the Court of Appeal rightly affirmed his Judgment and their decision ought to be upheld.

10     10. The Second Issue - The Appellant contended that the Learned Trial Judge, Douglas J. should have come to the conclusion that the beneficiaries sustained a loss of income due to the Respondent's neglect and failure to maintain the Trust property prior to the sale thereof. The Learned Trial Judge, Douglas J. in dealing with this aspect of the case came to the conclusion that:-

20     "As regards income, it is problematical what further income might have been received had more and better agents been employed, and more money spent on maintenance. For one thing, it would have been necessary to raise capital to do these things, and the main sources of loss being theft and plant disease. I am not convinced that the increased maintenance costs and interest would not have swallowed up any additional income that might have accrued to the property.

P.42.Vol.I.  
1 43 - P.43  
Vol.I 1.12

30     I am not for a moment saying that the Administrator General was justified in neglecting to take proper steps to sell the property or in refusing to address his mind to its preservation - all that I am saying is that as things turned out, the Trust Fund was no worse off as regards price and current income."

Further in dismissing the Appellant's appeal Mr. Justice Shelley held that:

40     "It is contended on behalf of the Appellant that there is abundance of evidence to show that the estate could and should have produced income in excess of the sums required annually to maintain the property as it was when Catherine Vickers died; the Trustee, it is agreed, is liable for loss

P.98.Vol.I  
1.41 - P.99  
Vol.I.1.8

RECORD

suffered by the estate including loss of income which flows from his breach of trust. The measure of liability is to compensate the Trust Fund for loss. If there is a loss neither of income or capital although the Trustee has committed a breach he will not be held liable (see Vyse v Foster (1872) 8 Ch. Appeal cases 309 affirmed by the House of Lords L.R. 7 H.L. 380)."

and further:

10

P.100.Vol.I  
1.8-29

"But what of the income? Mr. DaCosta submits and Mr. Davis concedes that the loss to the Trust Fund must be real and demonstrable, not something conjectural or problematical. Lewin on Trusts 16th edition 671 under sub-heading 'Measure of Compensation Recoverable' says 'A defaulting Trustee will not be charged with imaginary values' (Palmer v. Jones (1682) 1 Vern. 144) Douglas J. found it 'problematical'. I venture the comment that much has been said about income in this case that is imaginary. There was evidence that plant disease had diminished lime production, pimento was precarious, fences were dilapidated and possible income from other sources e.g. timber was minimal. Any attempt to maintain the property in shape would have required fairly substantial capital and the resulting income would nevertheless have been uncertain. It seems clear that the game was not worth the candle. I think Douglas J.'s approach was realistic and on the evidence his conclusion is justified."

20

30

11. It is submitted that the Judgment of Douglas J. and Shelley J.A. in the Court of Appeal is correct and ought to be affirmed on this aspect of the case. The Appellant failed to advance any positive or cogent evidence to satisfy the Court of first instance that there was any real loss of income to the Trust; nor was there any substantial evidence adduced by the Appellant from which a Court could reasonably draw the inference that there was any loss of income to the Trust. The evidence tendered on the Appellant's behalf was of such a nature that a Court would have to speculate and conjecture in

40

deciding whether or not there was any real loss of income to the Trust. The Court of first instance and the Court of Appeal came to the correct conclusion when they held that on the evidence the Appellant had failed to establish that the Trust Fund sustained any loss of income.

10 12. Third Issue - The Appellant submitted to the Court of Appeal that the Learned Trial Judge (Douglas J.) having found that the Respondent had been guilty of breaches of trust ought to have ordered that the Respondent be deprived of the entirety of his remuneration for acting as a Trustee.

In rejecting the Appellant's arguments on this aspect of the case in the Court of Appeal (Shelley J.A.) advanced the following reasons:

20 "The Administrator General has been found to have committed breaches of trust which breaches caused no loss to the estate, he has been found to have acted wisely in the sale of the property - he sold 'at a price which represents full value for the property and more and which is much in excess of anything he could have received earlier when the property market was depressed."

P.101.Vol.I  
1.12-27

30 "To deprive the Administrator General of his remuneration in respect of the sale in which he acted wisely and well would be in my view, to visit punishment upon him for breaches of trust from which no loss flowed. The object of compensation is to replenish trust funds not to punish the Trustee. I think the Learned Trial Judge was right in refraining from depriving the Administrator General of this remuneration."

Luckoo J.A. also held that:

40 "Counsel for the Appellant has submitted that entitlement to commission follows only upon time and responsibility being expended by the Administrator General and contends that in respect of the sale of the property the Administrator General expended neither time nor responsibility.

P.93.Vol.I  
1.3-18

RECORD

I do not agree. While his administration of the Trust might be criticised in many respects there can be no doubt that the Administrator General did expend time and responsibility in making the sale of the property to Williams even though it may be said that the stimulus for Williams' offer came from Carlyle-Clarke through Hamptons. There is no sliding scale of remuneration and no account is therefore to be taken of the amount of time taken or degree of responsibility displayed." 10

13. The Respondent respectfully submits that a Trustee is entitled to remuneration for responsibility assumed time spent and work done in the administration of the Trust. The question of whether or not the Respondent acted responsibly, spent time or did work is purely a question of fact. In this case the Trust had only one asset, the property Mount Edgecombe. The beneficiaries having elected not to have the property vested in them as they could have done in accordance with the provision of the testator's Will, the Trust thereafter subsisted for the purpose of the Respondent selling the property and distributing the proceeds thereof to the beneficiaries. 20

It is submitted that there was ample evidence to support the Judgments of the Court of Appeal that the Respondent acted responsibly, devoted time and did work in the sale of the trust property, and therefore the Judgment of the Court of Appeal ought to be upheld. 30

14. Fourth Issue - In the Court of Appeal Counsel for the Appellant argued that by reason of the conduct of the Respondent any interest allowed should be at compound rate and not simple interest.

15. It is submitted that the Appellant's submissions on this issue were correctly rejected by the Court of Appeal. As a general rule compound interest is only ordered in cases where a Trustee has acted fraudulently or is guilty of wilful default. Shelley J.A. after referring to the authorities on this issue held that: 40

RECORD

P.105.Vol.I  
1.22-32

"In my view the instant case is not one in which compound interest could properly be ordered. Here there is no obligation to accumulate; as in Emmett's case, and there is no fraud or other wilful default. I think the breaches fall squarely within the category of cases in which money belonging to the beneficiary was improperly paid i.e. without any sinister intent. I would order that the Respondent should pay interest on the sums ordered to be refunded at the rate of 5% from the date each was paid out."

10

Luckhoo J.A. also held that compound interest should not be ordered having regard to the circumstances of this case and to the principles under which compound interest is ordered.

P.89Vol.I.  
1.48.  
P.90.Vol.I.  
1.2

16. Fifth Issue - In the Court of first instance Counsel for the Appellant urged that an award of general damages ought to be made against the Respondent. This submission was correctly rejected by Douglas J. In the Court of Appeal the Appellant's Counsel submitted that exemplary damages ought to be awarded in the Appellant's favour against the Respondent in accordance with the principle enunciated by Lord Devlin in Rookes v. Barnard (1964) A.C. 1129. It is submitted that the Court of Appeal rightly rejected the Appellant's arguments with respect to exemplary damages, as a breach of trust does not give rise to a remedy in damages. The remedy for a breach of trust is to compensate the Trust Fund for the loss sustained and not to punish the Trustee by an award of damages.

20

P.42.Vol.I  
1.12-20

30

P.86.Vol.I.  
1.42- P.87.  
Vol.I.1.17

17. Sixth Issue - It was contended in the Court of Appeal on the Appellant's behalf that Douglas J. erred in not awarding the Appellant costs on a Solicitor and client basis. It is submitted that the order for costs made by Douglas J. in the Appellant's favour on a party and party basis was a very generous one, having regard to the fact that the gravamen of the Appellant's action was for the purpose of restraining the Respondent from completing the sale and for obtaining an order directing the

40

P.106.Vol.I  
1.1-25.

RECORD

Respondent to dispose of the property in accordance with the directions of the beneficiaries. The Appellant also contended that the property was sold at an undervalue. The Appellant failed on all these issues in a trial which lasted 14 days and the Learned Trial Judge could have properly exercised his discretion and ordered the Appellant to pay the Respondent's costs in respect of these issues.

P.92.Vol.I  
1.9-17

It is submitted that costs are undoubtedly a matter of discretion and the usual order for costs is that as between party and party. 10

The Learned Trial Judge exercised his discretion in the Appellant's favour and granted costs on a party and party basis; there was nothing on the record to show that the Learned Trial Judge's discretion was wrongly exercised and therefore it is submitted that the award of costs on a party and party basis should be affirmed. 20

18. The Respondent therefore humbly submits that the decision of the Court of Appeal is right and should be affirmed and that this Appeal should be dismissed with costs both here and below for the following amongst other reasons:

R E A S O N S

1. BECAUSE the evidence failed to establish that there was any capital loss to the Trust Fund.
2. BECAUSE the Appellant failed to establish that there was any real or demonstrable loss of income to the Trust Fund 30
3. BECAUSE there is ample evidence that the Respondent acted responsibly and devoted time to and did work in connection with the sale of the trust property and as a consequence thereof was entitled to the statutory remuneration.
4. BECAUSE the Appellant failed to establish that the Respondent acted fraudulently or was guilty of any wilful default and was 40



therefore not entitled to compound interest, but only to simple interest

5. BECAUSE as a matter of Law the Appellant was not entitled to have an award of damages but was only entitled to have the Respondent restore to the Trust Fund the loss sustained (if any).
- 10 6. BECAUSE the Appellant failed to establish that the Learned Trial Judge exercised his judicial discretion improperly or on wrong principles in awarding costs on a party and party basis.
7. BECAUSE the judgments of Mr. Justice Douglas at first instance and the Court of Appeal are right and ought to be affirmed.

H. L. DACOSTA

R. N. A. HENRIQUES

No. 32 of 1970

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN  
WILLOUGHBY ARTHUR VICKERS DAVIS  
Appellant  
AND  
THE ADMINISTRATOR GENERAL Respondent

CASE FOR THE RESPONDENT

DRUCES & ATTLEE  
115 Moorgate  
London EC2M 6YA

Solicitors for the Respondent.