

**Willoughby Arthur Vickers-Davis**        -        -        -        -        *Appellant*

v.

**The Administrator General**        -        -        -        -        -        -        *Respondent*

FROM

**THE COURT OF APPEAL OF JAMAICA**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 17TH JULY 1972

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*Present at the Hearing :*

LORD WILBERFORCE

VISCOUNT DILHORNE

LORD CROSS OF CHELSEA

[*Delivered by* VISCOUNT DILHORNE]

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By his will dated the 22nd July 1910 Charles Benjamin Vickers left his property "Mount Edgecombe" in the parish of Westmoreland, Jamaica, to his two natural children, Alfred Vickers and Catherine Vickers, for their lives. On the death of the survivor of them the property was to pass to the Administrator General of Jamaica who was by the will appointed a trustee upon trust to sell the property and to divide the proceeds equally between all the lawful children of his three brothers alive at the death of the survivor.

Charles Benjamin Vickers died on the 14th January 1923. The surviving life tenant, Catherine Vickers, died on the 9th August 1960. On her death the appellant's mother, Mrs. Davis, and a Miss Vickers who lived in Australia became beneficially entitled to the proceeds of the sale of Mount Edgecombe. Mrs. Davis died on the 19th November 1962 having, prior to her death, mortgaged her share in Mount Edgecombe to the appellant and having conveyed to him a two-thirds undivided share in it. The appellant was the sole executor proving Mrs. Davis' will.

On the 8th September 1960 the Administrator General entered into possession of the property. However, he did not dispose of it until, on the 27th July 1964, he entered into a contract to sell it for £57,200 to a Mr. Williams, and on the 1st December 1964 the appellant commenced these proceedings. Thirteen breaches of trust by the Administrator General were alleged in the Statement of Claim which was amended to include an allegation of equitable fraud in relation to the payment of a

commission on the sale of the property amounting to £2,860 paid by the Administrator General. The most substantial claims were:

- (i) that the trust fund sustained a capital loss through the property being sold at an undervalue;
- (ii) that the beneficiaries sustained a loss of income due to the neglect of the Administrator General in the management and maintenance of the property.

After a trial which lasted fourteen days, at which a great deal of evidence was called as to the value of the property and the income which it might have produced, Douglas J. held that the appellant had partially succeeded. He found that the Administrator General had committed a number of breaches of trust, *inter alia*, in failing to provide adequate information to the beneficiaries, in failing to supply adequate accounts and in failing to take adequate steps for the care, maintenance, preservation and management of the property. He held that other allegations of breaches of trust were not proved, in particular, failure to sell the property at the best price or to obtain a better income from it.

Douglas J. said that the price paid by the purchaser of the property was "very good indeed" and held that the sale by the Administrator General could not be impeached on the evidence before him. He said "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" 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".

With regard to loss of income from the estate he said "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" and "that as things turned out, the trust fund was no worse off as regards price and current income".

He ordered that the commission of £2,860 paid by the Administrator General should, less £50, be restored to the trust fund and also the sum of £90.12.8 charged by the Administrator General on receipts for pasturage, produce, etc.

He also made an order that the Administrator General should wind up the trust and pay to the beneficiaries the sum to which each was entitled, and that the Administrator General should pay the appellant's costs.

The appellant obtained leave to appeal against the order made in his favour as to costs, contending that he should have been given costs on a solicitor and client and not a party and party basis. In his notice of appeal he sought to get the judgment in his favour—that only the sums of £2,810 (the commission less £50) and £90.12.8 should be restored to the fund—set aside and asked that the Administrator General should be ordered to restore to the trust fund such sum in excess of those sums as might be found to have been lost to the trust fund by the acts and omissions of the Administrator General.

The Court of Appeal dismissed the appeal. Luckhoo J. A. in his judgment dealt at length with the question whether the breaches of trust had caused a loss to the trust. He came to the conclusion that even if

the Administrator General had not taken all reasonable and proper measures to preserve and secure the property from loss by theft "it had not been shown that any loss was occasioned thereby to the trust—any diminution by reason thereof in the price paid by Williams". He also held that no capital loss had been suffered by the trust as a result of the Administrator General's delay in selling it.

Shelley J. A. cited that part of Douglas J.'s judgment dealing with the price obtained for the property and said "The matter of the adequacy of the price obtained for the property in my view calls for no further comment" and with regard to the alleged loss of income from the estate that "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 was justified."

Moody J. A. said that he agreed with the judgments of Luckhoo J. A. and Shelley J. A.

All members of the Court of Appeal thus agreed with Douglas J. that the breaches of trust committed by the Administrator General had not resulted in a loss of capital or of income to the trust. Whether or not there was such a loss is a question of fact on which there were concurrent and unanimous findings of the trial judge and the Court of Appeal.

Nevertheless strenuous and prolonged efforts were made to induce their Lordships to come to a different conclusion. The long established practice of the Board is to decline to examine the evidence for a third time where there are concurrent judgments of two courts on a pure question of fact and their Lordships see no reason to depart from that practice in the present case (See *Devi v. Roy* [1946] A. C. 508).

The appellant therefore fails on the main ground of his appeal.

In the Court of Appeal he claimed to be entitled to exemplary damages on account of the Administrator General's breaches of trust. No such claim had been advanced before Douglas J. It was based on certain observations of Lord Devlin in *Rookes v. Barnard* [1964] A. C. 1129 at p. 1226. It was contended that the status and conduct of the Administrator General brought him within the first of Lord Devlin's three categories of persons (servants of the government) against whom awards of exemplary damages might be given. In that speech Lord Devlin sought to define and limit the cases in which such damages could be given, not to create any new right of action for such damages. In their Lordships' view this claim for exemplary damages on account of breaches of trust was entirely misconceived and must be rejected.

The appellant also contended that the Administrator General should be deprived of all remuneration in connection with the administration of the estate on account of his breaches of trust. In relation to his remuneration in connection with the sale, Shelley J. A. said:

"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'.

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.”

Assuming that the Court has jurisdiction in an appropriate case to deprive a trustee of his remuneration (a matter which was not fully argued before their Lordships), their Lordships agree with the Court of Appeal that this was not such a case.

The Court of Appeal decided, in this respect differing from Douglas J., that the Administrator General was entitled to the sum of £90.12.8 charged as commission on receipts. The appellant contended that the Court of Appeal were wrong to do so. Their Lordships see no reason to interfere with the Court of Appeal's decision on this. As Luckhoo J. A. pointed out, provision is made by s. 48 of the Administrator General's Law, Cap. 1, for the payment of commission on such receipts.

The appellant also contended that interest at the rate of 7½% on a compound basis should be paid on the sums due to the beneficiaries. It was conceded before their Lordships that interest was payable on sums due to the beneficiaries at the rate applicable to judgment debts which, their Lordships were informed, was 6% per annum. Their Lordships agree with the Court of Appeal that this was not a case in which compound interest ought to have been given and no case was made out for a higher rate than 6%.

The appellant further claimed that he should have been awarded costs on a solicitor and client basis. Although no formal claim to this effect was made in the pleadings, it appears that the point was raised at the end of the trial, since Douglas J., while ordering costs on a party and party basis, gave leave to the appellant to appeal against that order. Their Lordships have no doubt that the Court has jurisdiction, in a proper case, to order a trustee to pay costs on a solicitor and client basis (cf. *Andrews v. Barnes* (1888) 39 Ch.D.133) but they agree with the Court of Appeal that, the trial judge having in this case exercised his discretion otherwise, his order should not be disturbed. It is to be observed that, although the Administrator General succeeded on a number of issues at his trial, he was ordered to pay the appellant's costs generally. It is evident that the judge fully took into account the Administrator General's conduct of the trust in making this order.

Finally it was said by the appellant that the Administrator General had not complied with the order of the Court that the trust should be wound up, and that there were further adjustments to be made in the accounts. The appellant requested that an account should be taken by the Registrar. Their Lordships are not of opinion to accede to this request. If it be the case that money still remains in the hands of the Administrator General which ought to be distributed, or that some adjustments, in respect of interest or otherwise, still require to be made, these matters ought to be pursued before the Supreme Court of Jamaica.

In the circumstances their Lordships will humbly advise Her Majesty that this appeal should be dismissed with costs.



In the Privy Council

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WILLOUGHBY ARTHUR  
VICKERS-DAVIS

v.

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THE ADMINISTRATOR GENERAL

DELIVERED BY  
VISCOUNT DILHORNE