

pp. 63, 64, 65
and 66.

p. 62, l. 33.

p. 103, l. 4.

p. 106, l. 37.
p. 108, l. 33-34.
p. 143, ll. 30-43.
p. 71, ll. 28-34.
p. 72, ll. 34-41.
p. 122, l. 41 to
p. 123, l. 26.

Receiver of the estate of the above-named deceased (being the above-named Receiver) on the 21st September, 1943, concerning the payment of claims made against the estate of the said deceased, and more particularly specified and set out in the accounts filed by the said Receiver on the 21st September, 1943, and concerning the sale of parts of the said estate whereby the said Chief Justice disallowed a number of the said claims and, in particular a number of the said claims made by the above-named Appellants Arthur Balderamos and Hubert Hill Cain as Executors of the estate of the said deceased, and gave to the said Receiver directions concerning the sale of the said estate and concerning his further dealing with the said estate. 10

2. The questions for determination in the Appeal by the Appellants Arthur Balderamos and Hubert Hill Cain as Executors of the estate of the said deceased are:—

p. 128, ll. 11, 12.

(a) Whether the said Appellants are entitled to executors' commission on the gross value of the estate of the said deceased.

p. 128, ll. 14, 15.

(b) Whether the said Appellants are entitled to be credited in their Executors' Accounts with the sum of \$400, being as to \$40 salary alleged to have been paid to a Book-keeper and General Clerk in respect of the period 17th August to 16th October, 1939, for services rendered in connection with the accounts of the estate of the said deceased and as to \$360 salary alleged to have been paid for the like services in respect of the period 17th October, 1939 to 17th October, 1942. 20

p. 128, ll. 16-18.

(c) Whether the said Appellants as such Executors are jointly and severally liable to make good to the estate of the said deceased any and every loss which the said estate has sustained by reason of the occupation by the Appellant Hubert Hill Cain with the concurrence of the Appellant Arthur Balderamos of a property belonging to the said estate and in respect of which no rent has been paid to the said estate during the period commencing shortly before the 28th February, 1935 and ending on the 30th September, 1939, the total of the unpaid rent amounting on the last-mentioned date to \$1,382.75. 30

3. The questions for determination in the Appeal by the Appellants Universal Negro Improvement Association Inc. are:—

p. 124, l. 21.

(a) Whether in the events which have happened the real and personal estate of the said deceased or any and what part thereof should be sold and converted into money.

p. 124, l. 24.

(b) Whether and to what extent, if at all, the said Receiver is entitled further to deal with the said estate of the said deceased. 40

4. The said deceased died on the 7th April, 1924, having duly executed his last will and testament bearing date the 15th February, 1924, whereby he appointed the Appellant Arthur Balderamos and the Appellant Hubert Hill Cain the Executors and Trustees thereof. p. 141, l. 1.
p. 99, l. 23.
p. 149.
5. The said will was prepared for the said deceased by the Appellant Arthur Balderamos who is, and at all material times was, a Barrister-at-Law and a practising Solicitor of the Supreme Court of British Honduras. p. 149, ll. 7-9.
p. 141, l. 2.
6. The said Executors duly proved the said last will and testament of the said deceased on the 8th September, 1924. p. 141, ll. 3, 4.
p. 77, ll. 5, 6.
7. By his said will the said deceased, *inter alia*, declared that the said Arthur Balderamos (being the Appellant Arthur Balderamos) should be entitled to receive all the usual professional charges and emoluments notwithstanding his acting as one of the Executors and Trustees of the said will. p. 141, l. 6.
p. 3, l. 36.
8. The said will was the subject of considerable litigation principally for the purpose of ascertaining the identity of the residuary legatee named therein. The said litigation culminated in an Appeal to His Majesty in Council, being Appeal No. 33 of 1932. p. 150, ll. 5-7.
9. Judgment in the said Appeal was delivered in or about the month of August, 1935, whereby the Appellant Universal Negro Improvement Association Inc. was held to be the residuary legatee named in the said will. p. 99, l. 28.
p. 141, l. 17.
p. 3, l. 41.
10. The said judgment was not filed in the Supreme Court of British Honduras until the 20th June, 1939, when it was so filed by the said Executors, the Appellants Arthur Balderamos and Hubert Hill Cain (hereinafter called "the said Executors"). p. 3, l. 43.
11. Between the date of the delivery of the said judgment and the date of the filing of the same in the Supreme Court of British Honduras as aforesaid the said Executors continued to administer the estate of the said deceased and draw their fees for doing so. p. 99, ll. 31, 40.
p. 141, l. 11.
p. 147, l. 20.
p. 4, l. 11.
12. Being dissatisfied with the administration of the estate of the said deceased by the said Executors the Appellant Universal Negro Improvement Association Inc. (hereinafter called "U.N.I.A. Inc.") on the 21st June, 1939, commenced an action (Action No. 11 of 1939) against the said Executors by filing a Writ of Summons against them in the Supreme Court of British Honduras for an order for and directing:— p. 99, ll. 46, 47.
p. 141, l. 12.
- (1) administration of the real and personal estate of the said deceased, p. 141, l. 21.
p. 1.
- (1) administration of the real and personal estate of the said deceased, p. 2, l. 11.

p. 2, l. 13. (2) conveyance by the said Executors to U.N.I.A. Inc. of the residuary real and personal property of the said estate,

p. 2, l. 15. (3) directions as to costs.

p. 2.
p. 7, l. 39. 13. On the 31st August, 1939, the said Supreme Court made an Order on the said Summons in the terms therein applied for.

p. 8. 14. On the 14th September, 1939, a Decree for the administration of the estate of the said deceased was passed by the said Supreme Court in accordance with the Order in paragraph 13 hereof referred to.

p. 8, l. 41 to
p. 9, l. 5. 15. By the said Decree it was ordered, *inter alia*, that the residue of the real and personal estate and effects of the said deceased then in the hands of the said Executors or either of them or in the hands of any other person or persons by the order or for the use of the said Executors be conveyed and handed over to U.N.I.A. Inc. or to such other person or persons as U.N.I.A. Inc. might direct not later than the 25th September, 1939, U.N.I.A. Inc. undertaking to execute a bond to secure the repayment of the said residue or a due proportion thereof in the event of debts or other prior demands being subsequently discovered including such costs and commissions as might be payable to the said Executors by order of the Court. 10 20

p. 10, l. 24. 16. The said bond was duly executed by U.N.I.A. Inc. and delivered to the said Executors and the said Executors duly conveyed and handed over to U.N.I.A. Inc. the greater part of the residue of the said estate of the said deceased.

p. 15, l. 11.
p. 23, l. 30.

17. The Respondent, Ernest Johnston Hofius, being a creditor of the estate of the said deceased and being unable to obtain payment of the debt owed to him instituted

THE PRESENT SUIT

p. 14, l. 3. on the 2nd October, 1942, by Writ of Summons (Action No. 7 of 1942) in the said Supreme Court against the said Executors claiming as a creditor of the estate of the said deceased an order for the administration of the real and personal estate of the said deceased with all necessary and proper directions. 30

p. 14, l. 11.

p. 14, l. 23. 18. In support of the said Summons the said Respondent, Ernest Johnston Hofius, filed in the said Supreme Court an affidavit sworn by him on the 2nd October, 1942, and in reply thereto the said

Executors, by one of them, to wit, the aforesaid Arthur Balderamos, swore an affidavit on the 15th October, 1942 and filed the same in the said Supreme Court. p. 15, l. 3.

19. The hearing of the said Summons took place before the said Chief Justice on the 16th October, 1942, when the said Chief Justice ordered:— p. 16, l. 12.
pp. 17, 18.

(1) That the estate of the said deceased should be administered by the Court by an administrator to be appointed on the passing of the final order. p. 16, l. 22.
p. 17, ll. 36, 40.

10 (2) That the said Executors should file their final accounts as Executors of the estate of the said deceased. p. 17, l. 42.

(3) That U.N.I.A. Inc., the Respondent Woldrich Harrison Courtenay and one Dr. Lionel Francis be joined as Defendants in the said Action (No. 7 of 1942). p. 16, l. 24.

20. The said Order of the said Chief Justice is embodied in a formal Order of the said Supreme Court dated the 17th October, 1942, and thenceforward the said Action No. 7 of 1942 would appear to have been treated as consolidated with Action No. 11 of 1939. p. 19.

20 21. On the 21st December, 1942, the said Supreme Court passed a final Order appointing this Respondent as Receiver of the estate of the said deceased and decreeing administration thereof. pp. 21, 22, 23.

22. On the 21st September, 1943, the said Receiver, being this Respondent, filed his report and accounts in the matter of the estate of the said deceased in the said Supreme Court and made application to the said Court for directions concerning the same. pp. 62-70.

23. In the said accounts the claims made against the estate of the said deceased by the said Executors are dealt with in the manner following, viz.:—

30 “Estate of I. E. Morter, deceased. p. 65, l. 42.
“Claim #5.

“Balderamos & Cain—Executors.

“Balance in their favour as per account filed

“July 25th 1942, with Registrar \$6,914.33

“My findings are, and for which I desire to have p. 66, l. 1.
“the Court’s ruling regarding items to be allowed
“and not allowed.

“Items which I am querying:

40 “(1) A charge of 5% on the gross value of the
“Estate—\$150,003.01 \$7,500.15 p. 66, l. 4.

“(Executors’ Commission)

p. 66, l. 7.	“(2) A charge in the accounts for a Book-keeper and “General Clerk. This charge has been made “from April 17th, 1924, to August 16th, 1939, at “\$240.00 per annum 3,680.00	
p. 66, l. 10.	“(3) A further charge is made from August 17th, “1939 to October 16th, 1939—2 months at \$20.00 “per month 40.00 “and from October 17th, 1939 to October 17th, “1942—36 months at \$10 360.00	10
	“The management of the Estate was taken “away from Balderamos & Cain in 1939. “The Executors have received 5% on all “cash receipts from 1924 to date of handing over, “also 10% on all rents collected.	
p. 66, l. 19.	“(4) Mr. Hubert Cain, one of the Executors, has “arrears of rent amounting to 1,382.75 “made up as follows:— “Balance rent due 28.2.35 ... \$ 7.75 “Rent from 28.2.35 to 30.9.39 ... 1,375.00	20
	<u>\$1,382.75</u>	
	“This rent is due on a property which has “two buildings, one was destroyed by Hurricane “1931. The property was leasehold land for “which the Executors paid \$25.00 per month.	
	“(5) Mr. Balderamos has in his offices one iron safe “which is the property of the Estate. Value as “per Inventory 1924 75.00	30
p. 66, l. 32.	“Total amount in dispute <u>\$13,037.90</u>	
	“To the above has to be credited two sums which “I took over when appointed Receiver:— “Cash in Bank—Current Account ... \$ 94.77 “ ” ” ” Savings Account ... 165.04	
p. 66, l. 37.	<u>\$259.81”</u>	40

pp. 71, l. 18 to
p. 76.
pp. 78, l. 14 to
p. 80.

24. The said application by this Respondent was heard by the said Chief Justice on, so far as is material for the purpose of these Appeals, the 29th September, and the 11th, the 13th and the 29th October, 1943.

25. At the hearing of the said application on the 29th September, 1943, the said accounts filed by this Respondent as aforesaid were read and the said Chief Justice authorised and directed this Respondent to sell the following properties, part of the estate of the said deceased, within 30 days by private treaty and, if not then so sold, then by public auction and in each case at not less than the respective values set opposite the same and out of the proceeds of such sales to pay, *inter alia*, certain of the debts due and owing by the said estate including the aforesaid debt due and owing to the Respondent, Ernest Johnston Hofius:—

p. 71, l. 27.
 p. 71, l. 28.
 p. 72, l. 31.

 p. 71, l. 35.
 p. 72, l. 20.

 p. 71, l. 37.
 p. 72, l. 20.

Property.	Value.
930 North Front Street	\$4,000
Two houses adjoining Morter House	\$1,500
1056 Borrack Road	\$1,200

At the hearing of the said application on the 29th October, 1943, the aforesaid value of the property 1056 Borrack Road was directed by the said Chief Justice to be varied from the said \$1,200 to “\$800 or better if that can be got.”

p. 80, l. 41.

26. At the subsequent hearings of the said application in the month of October, 1943, the Appellant Arthur Balderamos would appear to have given evidence on behalf of the said Executors to the effect that the value of the estate of the said deceased was \$148,803.51 or thereabouts and produced a valuation dated 4th October, 1924, made by William Pilgrim and William A. Campbell of the real estate of the said deceased in Belize, British Honduras which showed the market value of the said real estate to be \$66,800 and its intrinsic value to be \$92,300. He also apparently gave evidence that the value of the personal estate of the said deceased was \$31,503.51 and that of other properties of the said deceased outside Belize aforesaid was, doubtfully, \$25,000, that the said Executors had not converted the real estate of the said deceased into money, that the said Executors during their administration of the said estate credited themselves with a commission of 10% on all rents collected and of 5% on other receipts; that they employed a Book-keeper and General Clerk, being one Percy Trejo, a clerk in and from 1924 also employed in the office of the said Arthur Balderamos, to keep the books of the estate of the said deceased and charged his salary for so doing, viz., \$20 per month, against the said estate. The said Balderamos also gave evidence to the effect that he had been in a solicitors’ office over 25 years, that he did the whole of the accounts of the estate of the said deceased, that he collected certain of the rents belonging to the said estate himself but did not pay 10% commission on those to the said estate rent collector to whom a salary was paid but no commission.

p. 74, ll. 1-9.
 p. 74, l. 1.

 p. 74, l. 6.
 p. 74, l. 8.

 p. 75, l. 25.

 p. 77, l. 22.
 p. 79, l. 14.

 p. 79, l. 22.

 p. 79, l. 31.

 p. 79, l. 42.

 p. 79, l. 43.

p. 76, l. 29.

Evidence would also appear to have been given by the Appellant Hubert Hill Cain to the effect that he had occupied a property belonging to the estate of the said deceased, that he commenced his occupation thereof in the lifetime of the said deceased and continued his occupation under the said Executors and that in respect thereof he paid \$20 per month, but did not pay after the hurricane of 1931.

p. 79, l. 21.

Evidence was also given by the said Percy Trejo to the effect that he was employed as a clerk in his office by the said Arthur Balderamos at a salary of \$15 per month from 1924 to 1939; that he kept the books and performed all the duties of a solicitor's clerk in the said office, that during the same period he was paid at the rate of \$20 per month by the said Executors for services as a book-keeper and general clerk in and about the affairs of the estate of the said deceased and that in respect of rents collected on behalf of the said estate he was paid a commission of 10% by the said Executors on the amount of rent collected, the said commission amounting to \$40-\$50 from 1924-1931. 10

p. 79, l. 27.

The said Percy Trejo also gave evidence that he had not been paid anything since October, 1939, in respect of the said estate of the said deceased and that respectively on the 31st August, 1938, and the 31st August, 1939, he was paid by cheque Executors account Morter estate the sum of \$240. 20

In addition to the said oral evidence there was also put in evidence on the hearing of the said application, *inter alia*, the following documents, viz.,

(1) The Report and Accounts of this Respondent filed in the said Supreme Court on the 21st September, 1943. p. 71, l. 27.

(2) The aforesaid valuation of the real estate in Belize aforesaid of the said deceased made by the said William Pilgrim and the said William A. Campbell. p. 74, l. 1. 30

(3) An Affidavit sworn by the said Arthur Balderamos on the 12th October, 1943 and filed in the said Supreme Court. p. 77. p. 79, l. 14.

(4) Sixteenth Statement of Account of the said Executors showing cash balances in hand sworn by the said Executors on the 25th November, 1942, and filed in the said Supreme Court. p. 166, et seq.

(5) Probate of the last will and testament bearing date the 15th February, 1924, of the said deceased. p. 149.

27. On the conclusion of the hearing of the said application judgment was reserved. 40

28. On the 18th September, 1944, the said Chief Justice delivered an interim judgment. p. 98.

29. The said Chief Justice after dealing in his said judgment with certain claims against the estate of the said deceased, including, *inter alia*, the claim of the Respondent Ernest Johnston Hofius, which, in the course of the hearing of the said application, he had orally ordered to be paid in full or be otherwise dealt with by this Respondent and confirming the said oral orders went on to deal with a legacy of \$2,000 bequeathed by the said deceased by his said will to Isabella Lawrence and ordered payment of the same with interest from the 30th July, 1935. p. 99, l. 10.
p. 71, l. 35.
p. 72, l. 20.
p. 99, l. 21.
p. 99, l. 15.

In the course of dealing with the said legacy the learned judge construed the said will of the said deceased as imposing on the said Executors a duty to convert into money as soon as might conveniently be after the death of the said deceased the whole of his real and personal property other than such as consisted of money with the exception of certain lands subject to a life interest. p. 100, l. 16.
p. 101, l. 1.

The learned judge then proceeded to deal with the claim of the said Executors, viz., \$6,914.33, against the estate of the said deceased, being the balance in the said Executors' favour shown at the end of their Sixteenth Account filed on the 25th November, 1942, and verified by their joint affidavit as being a true account of their dealings with the said estate from the 1st September, 1939, to the 16th October, 1942. p. 101, l. 10.
p. 166.
p. 171, l. 38.
p. 171, l. 45.

For that purpose the learned judge examined and dealt with in detail the five items in the said Account queried by the Receiver, this Respondent in his Report and Accounts filed as aforesaid on the 21st September, 1943, and more particularly set out in paragraph 23 hereof.

30 Item 1.—A charge of 5% on the gross value of the estate
\$150,003.01 \$7,500.15.

The learned judge disallowed this claim *in toto* and consequently made no inquiry into the accuracy or otherwise of the said sum of \$150,003.01 alleged to be the gross value of the said estate. p. 101, l. 29.

He based his disallowance on the ground that the said alleged gross value had not reached the hands of the said Executors as money, but was merely a figure alleged to be the value of that part of the said estate which had not been converted into money by the said Executors and that under the local practice of the said Supreme p. 101, l. 46.
p. 102, ll. 30, 43.
p. 143, l. 9.

Court, which had been acted on for nearly 100 years, executors were entitled to their commission of 5% on and only on moneys obtained from the sale of property belonging to an estate when such money actually reached their hands; that no part of the said alleged sum of \$150,003.01 had in fact reached the hands of the said Executors as money and that they were, therefore, not entitled to any commission thereon.

Item 2.—A charge in the said Account for a book-keeper and general clerk from April 17th, 1924 to August 16th, 1939 at \$240.00 per annum—in all \$3,680.

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p. 103, l. 37. The learned judge in dealing with this item after discussing the circumstances under which a book-keeper or a rent collector might justifiably be employed by executors expressed the view that, with a paid rent collector, the work involved in accounting for the estate of the said deceased did not justify the employment of a book-keeper.

p. 104, l. 44. He said that the real issue so far as this item was concerned was whether there was sufficient bulk of work connected with the said estate to justify the employment of a clerical staff, that the books produced showed the accounts of the said estate to have been kept in a form in which they could have been kept by any ordinary clerk under the supervision of the said Arthur Balderamos—with his special training in accountancy—at a comparatively modest salary. He expressed the opinion that while it would be reasonable for the said Executors to employ a rent collector on a commission basis he thought that more economical terms should have been arranged for the doing of the said estate work than those in respect of which the said Executors claim to this item was based.

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p. 105, l. 26. The learned Chief Justice also pointed out that the said Executors had credited themselves with 5% commission on the gross rentals of the said estate when paying the said Percy Trejo 10% commission for collecting them and paying him \$20 monthly for keeping the books of the said estate and that the said Arthur Balderamos, one of the said Executors, had said that he collected some of the larger rents himself. Any such rents collected by the said Executor would attract only executors' commission of 5% and not a 10% commission if such were charged.

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p. 105, l. 43. The learned judge concluded his observations concerning this item by directing this Respondent, the said Receiver, to make a full examination and investigation of the said Executors' Accounts for the period 1924 to 1939 with a view to ascertaining the nature and the extent of the work in connection with the said estate carried out

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by and on behalf of the said Executors and the charges made therefor and to report fully to the said Supreme Court on the matter, filing all necessary affidavits, and said that he would record no decision on this item until full reports on the matters aforesaid were before him. p. 106, l. 25.

The learned Chief Justice consequently neither allowed nor disallowed this item. p. 143, l. 29.

10 Item 3.—The charges in the said Accounts in respect of payments alleged to have been made to the said Percy Trejo for keeping books and general clerk (a) 17th August, 1939, to 16th October, 1939, 2 months at \$20 per month—in all \$40.00 (b) 17th October, 1939 to 16th October, 1942 36 months at \$10.00 per month—in all \$360.00.

The learned Chief Justice having pointed out earlier in his judgment that it was the duty of executors to perform any reasonable duty which might arise during the course of their administration of an estate for which they had accepted office found that the services in respect of which the above mentioned \$40.00 were claimed by the said Executors were services in connection with the clearing up of a few matters outstanding after the said estate had by them been handed over in August, 1939 to the Respondent Woldrich Harrison Courtenay for and on behalf and to use of U.N.I.A. Inc., and were services which should have been performed by the said Executors themselves and for the performance of which the special employment of a book-keeper was unjustified. He further held that no part of the said sum had ever been paid by the said Executors to the said Percy Trejo. He accordingly disallowed the said claim. p. 105, l. 19.
p. 106, l. 32.
20 p. 106, l. 37.
p. 143, l. 34.
p. 106, l. 37.

30 The learned Chief Justice also disallowed the claim of the said Executors to the above-mentioned sum of \$360.00 on the ground, apparently, since he accepted the evidence of the said Percy Trejo that he had not been paid anything since October, 1939 in respect of the estate of the said deceased, that no part of the said sum had ever been paid by the said Executors to the said Percy Trejo. p. 143, l. 40.
p. 108, l. 9.
p. 79, l. 27.

Item 4.—Rent Arrears—\$1,382.75 in respect of the occupation by the Appellant Hubert Hill Cain of a property belonging to the estate of the said deceased.

40 The learned Chief Justice after pointing out that the said Cain paid no rent in respect of the said property between the 28th February, 1935—when he was \$7.75 in arrear—and the 30th September, 1939 said that it appeared that the said Executors paid p. 108, l. 50.
p. 109, l. 2.

from the funds of the estate of the said deceased all the outgoings on the said property throughout the said period.

p. 109, l. 12.

p. 109, l. 37.
p. 109, l. 20.

p. 109, l. 28.

p. 109, l. 32.

p. 109, l. 38.
p. 144, l. 5.

p. 109, l. 41.
p. 144, l. 11.

p. 109, l. 43.

p. 110, et seq.

p. 122, l. 41.

p. 140.

He found that the said Cain while living in the said property without paying any rent on it was receiving the 5% commission as executor on moneys during that period paid into the said estate funds, such commission amounting in all to the sum of \$593.75. He further found that it was the duty of the said Executors to see that the said Cain's rent was paid punctually and that if it were in arrear the said Executors were responsible for seeing that such arrears were set off against any payments accruing in respect of executors' commissions due to the said Cain in respect of the said estate. He therefore found that the said Cain was dishonest when he paid himself or accepted payment from his co-executor, the Appellant Arthur Balderamos, of commission moneys due to him from the said estate funds when he well knew that he owed the said estate considerable sums in rent and that the said Balderamos was grossly negligent, if not equally dishonest, in taking part in or approving the said transactions and that the said payments of commission to the said Cain were wrongful as was also the leasing or the continuance of the leasing of the said property to the said Cain under the circumstances aforesaid. 10 20

The learned Chief Justice held, therefore, that the said Executors were jointly and severally responsible for any loss which the said estate had sustained by reason of the occupation by the said Cain of the said property and directed the Receiver this Respondent to prepare in accordance with directions given in this judgment a special report accounting for the whole period of the occupation of the said property by the said Cain from the time that he became an Executor of the said estate so that the net amount of the said loss to the said estate might be ascertained. 30

The learned Chief Justice then went on to deal in his said judgment with various matters not material for the purpose of these Appeals (including item 5 mentioned in paragraph 23 hereof) and concluded his judgment by giving certain directions for the sale of properties belonging to the said estate and indicating the course he proposed to take concerning the giving of further directions for such sales.

30. The respective Appellants being dissatisfied with the said interim judgment have preferred the present Appeals.

31. On the 23rd March, 1945, the learned Chief Justice duly communicated to the Registrar General of the said Supreme Court his reasons for the said interim judgment. 40

32. This Respondent respectfully submits that the Appeal of the Appellants Arthur Balderamos and Hubert Hill Cain should be dismissed with costs for the following among other

REASONS.

- 10 1. BECAUSE the Learned Chief Justice rightly held that an executor's right to commission in the Colony of British Honduras depends on a practice of the Courts of the said Colony—a practice which has been established over 100 years—and extends and applies only to property of his testator actually coming into the hands of the executor as moneys and that the claim of the said Appellants to be paid executors' commission was not made in respect of property of their testator which actually came into their hands as moneys but in respect of property of their testator in a form other than moneys.
- 20 2. BECAUSE in so far as the Courts of the said Colony have any discretion to allow an executor commission on the estate of his testator that discretion is limited and confined to such part or parts of such estate as actually comes into the hands of such executor in the form of moneys.
3. BECAUSE in so far, if at all, as the said Courts have any discretion to allow executors' commission on property of a testator other than such as actually reaches the hands of an executor in the form of moneys the Learned Chief Justice rightly exercised his discretion, if any, in disallowing the claim of the said Appellants to executors' commission.
- 30 4. BECAUSE the Learned Chief Justice found as a fact that no part of either of the respective sums of \$40 and \$360 had ever been paid by the said Appellants to the said Trejo and therefore rightly disallowed their claim in respect thereof.
- 40 5. BECAUSE the Learned Chief Justice rightly held that if the said sum of \$40 was ever paid by the said Appellants to the said Trejo the same was paid in respect of services which could and should have been performed by the said Appellants themselves and did not justify the employment of a book-keeper and therefore rightly disallowed the said Appellants' claim in respect of the said sum.
6. BECAUSE the Learned Chief Justice rightly held that the conduct of the said Appellants in administering the

said estate and in particular in and about the occupation of a property belonging to the said estate by the Appellant Hubert Hill Cain and in and about allowing arrears of rent in respect thereof to accumulate while executors' commission from the said estate was being paid to the said Appellant without any set off thereof against the said arrears of rent was such as rendered them jointly and severally liable to make good to the said estate all and every loss which the said estate might suffer by reason of their said conduct. 10

33. This Respondent respectfully submits that the Appeal of the Appellant, U.N.I.A. Inc., should be dismissed with costs for the following among other

REASONS.

1. BECAUSE in so far as the said Appeal is an Appeal against the direction of the Learned Chief Justice directing this Respondent to sell and convert into money real and personal estate of the said deceased for the purpose of paying debts owed by the said estate and legacies bequeathed by the last Will and Testament of the said deceased the Learned Judge rightly directed such sale and conversion of the said estate of the said deceased. 20
2. BECAUSE in so far as the said Appeal is an Appeal against the direction of the Learned Chief Justice directing this Respondent to deal with the said estate of the said deceased in the manner and for the purpose aforesaid and to pay and discharge the said debts and the said legacies the Learned Judge rightly directed this Respondent to deal further with the said estate of the said deceased. 30

34. In so far as the said last mentioned Appeal is an Appeal against the finding of the Learned Chief Justice that the said last Will and Testament of the said deceased on its true construction imposed on the executors therein named (being the said Executors) a duty to convert into money as soon as conveniently might be after the death of the said deceased the whole of the real and personal estate of the said deceased with the exception of certain lands subject to a life interest this Respondent respectfully submits to such order or judgment concerning the same as to His Majesty in Council may seem fit and proper. 40

FREDERICK WISHART.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF BRITISH
HONDURAS.

IN THE MATTER of the ESTATE of ISAIAH
EMMANUEL MORTER, deceased.

BETWEEN—

ARTHUR BALDERAMOS and **Hubert Hill Cain**
as Executors of Isaiah Emmanuel Morter, deceased
Appellants

— AND —

JOHN CLAUDE THOMSON (Receiver), **Woldrich
Harrison Courtenay, Universal Negro Improvement
Association Inc.** and **Ernest Johnston Hofius**,
original Plaintiff now *pro forma* Respondent
Respondents

(Action No. 7 of 1942)

AND BETWEEN—

**UNIVERSAL NEGRO IMPROVEMENT
ASSOCIATION, INC.** - - - - *Appellant*

— AND —

JOHN CLAUDE THOMSON (Receiver), **Woldrich
Harrison Courtenay, Arthur Balderamos, Hubert
Hill Cain** and **Ernest Johnston Hofius** (*pro forma*)
Respondents

(Action No. 11 of 1939).

CASE FOR THE RESPONDENT
JOHN CLAUDE THOMSON (Receiver).

WITHALL & WITHALL,
18, Jockey's Fields,
Bedford Row,
London, W.C.1.
Solicitors for the Receiver.