

Judgment 15, 1972.

15

IN THE PRIVY COUNCIL

No. 32 of 1970

---

ON APPEAL  
FROM THE COURT OF APPEAL OF JAMAICA

---

B E T W E E N :

WILLOUGHBY ARTHUR VICKERS-DAVIS Appellant

- and -

THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of Charles  
Benjamin Vickers deceased) Respondent

---

RECORD OF PROCEEDINGS

---

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
10 MAY 1973  
25 RUSSELL SQUARE  
LONDON W.C.1

CHARLES RUSSELL & CO.,  
Hale Court,  
Lincoln's Inn,  
London WC2A 3UL

DRUCES & ATTLEE,  
115 Moorgate,  
London  
EC2M 6YA

Solicitors for the Appellant

Solicitors for the  
Respondent

(i)

IN THE PRIVY COUNCIL

No. 32 of 1970

ON APPEAL  
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

WILLOUGHBY ARTHUR VICKERS-DAVIS Appellant

- and -

THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of Charles  
Benjamin Vickers deceased) Respondent

RECORD OF PROCEEDINGS

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ON APPEAL  
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

WILLOUGHBY ARTHUR VICKERS-DAVIS Appellant

- and -

THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of Charles  
Benjamin Vickers deceased) Respondent

10

RECORD OF PROCEEDINGS

No. 1

ENDORSEMENT ON WRIT OF SUMMONS

BETWEEN: WILLOUGHBY ARTHUR VICKERS DAVIS Plaintiff

AND THE ADMINISTRATOR GENERAL  
TRUSTEE OF THE ESTATE OF CHARLES  
BENJAMIN VICKERS DECEASED Defendant

In the  
Supreme Court  
of Judicature  
of Jamaica

No. 1

Endorsement  
on Writ of  
Summons

1st December  
1964.

The Plaintiff's claim is for:

20

1. 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 Defendant as the Trustee of the said Will or by any other persons or person by the order of or for the use of the Defendant and of the dealings of the Defendant therewith.

30

2. An account of the rents profits interest and income received by the Defendant or by any other persons or person by the order or for the use of the Defendant of the property for the time being subject to the trusts of the Will of the above mentioned Charles Benjamin Vickers deceased and of the dealings of the Defendant therewith.

3. An inquiry under what circumstances the Defendant negotiated a sale of the property known

In the  
Supreme Court  
of Judicature  
of Jamaica

          
No. 1

Endorsement  
on Writ of  
Summons

1st December  
1964

(continued)

as the Mount Edgecombe estate and to whom.

4. An inquiry whether any and what property subject to the trusts of the Will of the above named Charles Benjamin Vickers deceased has been lost or misappropriated and when and by whom and under what circumstances and what has become of it.

5. 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 Defendant have been possessed and received by the Defendant or by any persons or person by the order of or to the use of the Defendant. 10

6. An injunction restraining the Defendant 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.

7. An order directing the Defendant 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. 20

8. An order for the Plaintiff to be paid such sums as shall properly be found to be due to him on the aforementioned accounts and inquiries.

9. Damages.

10. Costs.

11. Such further and other relief as may be just.

DATED the 1st day of December 1964. 30

MYERS, FLETCHER & GORDON  
Plaintiff's Solicitors.

THIS WRIT was issued by Myers, Fletcher & Gordon of No. 36 Duke Street, Kingston, whose address for service is at No. 36 Duke Street aforesaid, Solicitors for the said Plaintiff who resides at Rose Cottage, Swarraton, Alresford, Hampshire, England.

No. 2

STATEMENT OF CLAIM

In the  
Supreme Court  
of Judicature  
of Jamaica

No. 2

Statement of  
Claim

1st December  
1964

BETWEEN: WILLOUGHBY ARTHUR VICKERS DAVIS Plaintiff

AND THE ADMINISTRATOR GENERAL  
TRUSTEE OF THE ESTATE OF CHARLES  
BENJAMIN VICKERS DECEASED Defendant

IN THE MATTER of the Estate of CHARLES BENJAMIN  
VICKERS DECEASED, late of Mount  
Edgecombe in the Parish of  
Westmoreland

10

AND

IN THE MATTER of THE ADMINISTRATOR GENERAL'S LAW  
Section 1 and Section 41

1. The Plaintiff is a beneficiary of the trust  
next herein mentioned and the Defendant is the  
trustee thereof.

20

2. Charles Benjamin Vickers of Mount Edgecombe in  
the Parish of Westmoreland died on the 14th January  
1923 leaving a Will which was proved in the Supreme  
Court of Jamaica on the 6th February 1923 by which  
he devised and bequeathed his property Mount  
Edgecombe aforesaid 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 upon trust to sell the same  
and divide the proceeds of sale between the members  
of a named class of beneficiaries.

30

3. Catherine Vickers who was the surviving life  
tenant died on or about the 9th August 1960 and  
thereupon the Administrator General entered into  
possession of the said property Mount Edgecombe.

40

4. 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 Neutral Bay, Sydney, New South Wales,  
Australia, and Mrs. Hilda Margaret Davis. Mrs. Hilda  
Margaret Davis who was the mother of the Plaintiff  
died in England on the 19th November 1962 having  
mortgaged her interest in the said property to the  
Plaintiff and having assigned a two-thirds undivided



In the  
Supreme Court  
of Judicature  
of Jamaica

          
No. 2

Statement of  
Claim

1st December  
1964

(continued)

share in the said interest to the Plaintiff. The Plaintiff was the sole executor proving the Will of his late mother. Miss Alice Maud Vickers and the Plaintiff are each of them of full age and not under disability.

5. In or about the month of August 1964 the Defendant entered into a contract to sell the said property to a person whose name the Defendant refused to disclose to the Plaintiff (but who is believed by the Plaintiff, as a result of information subsequently obtained, to be one James Williams) for the sum of £57,200. 0. 0. It was a term of the said contract, inter alia, that the purchaser should accept a common law title effective from the date of the appointment of the Defendant as trustee and should not require the Defendant to bring title under the Registration of Titles Law. 10

6. The Defendant has committed numerous breaches of trust in the administration of the estate. 20

PARTICULARS

- (1) Failed to provide the Plaintiff with any alternatively any adequate information concerning the administration of the estate notwithstanding requests to do so;
- (2) Failed to account to the beneficiaries for the income from the said estate;
- (3) Failed to supply the beneficiaries with any alternatively any adequate accounts relative to the estate; notwithstanding requests to do so; 30
- (4) Failed to keep adequate or proper records and accounts of his administration;
- (5) Failed to perfect his title to the said property, alternatively failed to obtain a registered title to the said property (as he ought in the premises to have done), alternatively failed to consult the beneficiaries as to the title to be offered upon sale (as he ought in the premises to have done); 40

In the  
Supreme Court  
of Judicature  
of Jamaica

          
No. 2

Statement of  
Claim

1st December  
1964

(continued)

- (6) Failed to take any or any adequate steps for the care maintenance preservation or management of the estate;
- (7) Failed to accept and act upon directions given to him by the beneficiaries as to the sale of the property;
- (8) Failed to take proper and adequate steps to advertise the sale of the property Mount Edgecombe;
- 10 (9) Entered into a contract for the sale of the property without testing the market for the same adequately or at all;
- (10) Entered into a contract for the sale of the property subject to depreciatory conditions thereby failing to obtain an adequate price for the same;
- (11) Entered into a contract for the sale of the property at a price lower than he ought reasonably to have obtained for the same and lower than the price he would have obtained had he not committed the above-mentioned breaches of trust and any of them;
- 20 (12) Failed to act as a prudent trustee remunerated for the performance of his duties, ought to have acted.

6. By reason of the facts and matters aforesaid the Plaintiff has suffered damage and loss.

AND THE PLAINTIFF CLAIMS:

- 30 (i) 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 Defendant as the trustee of the said Will or by any other persons or person by the order or for the use of the Defendant and of the dealings of the Defendant therewith.
- 40 (ii) An account of the rents profits interest and income received by the Defendant or by any other persons or person by the order of for the use of the Defendant of the property for the time being subject to the trusts of the Will

In the  
Supreme Court  
of Judicature  
of Jamaica

          
No. 2

Statement of  
Claim

1st December  
1964

(continued)

above-mentioned Charles Benjamin Vickers  
deceased and of the dealings of the Defendant  
therewith.

- (iii) An inquiry under what circumstances the Defendant negotiated the sale of the property known as the Mount Edgecombe Estate and to whom.
- (iv) 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
- (v) 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 Defendant have been possessed and received by the Defendant or by any persons or person by the order of or to the use of the Defendant. 20
- (vi) An injunction restraining the Defendant 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.
- (vii) An order directing the Defendant 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
- (viii) An Order for the Plaintiff to be paid such sums as shall properly be found to be due to him on the aforementioned accounts and inquiries.
- (ix) Damages
- (x) Costs
- (xi) Such further and other relief as may be just.

Settled.

Sgd. R.A. MAHFOOD  
27th November 1964

40

FILED AND DELIVERED on the 1st day of December 1964  
by Myers, Fletcher & Gordon of 36 Duke Street,  
Kingston, Solicitors for and on behalf of the  
abovenamed Plaintiff.

In the  
Supreme Court  
of Judicature  
of Jamaica

Copy received.

No. 2

(Sgd) S.L. Beckett for Administrator General for  
Jamaica 1/12/64

Statement of  
Claim

1st December  
1964

(continued)

No. 3

No. 3

AMENDMENT OF STATEMENT OF CLAIM

Amendment of  
Statement of  
Claim

10 BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS Plaintiff  
AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of Charles  
Benjamin Vickers deceased) Defendant

IN THE MATTER of the Estate of Charles  
Benjamin Vickers deceased late of Mount  
Edgecombe in the Parish of Westmoreland

AND

IN THE MATTER of The Administrator General's  
Law, Chapter 1 Section 41

20 5A. On or about the 26th August 1964 the Defendant  
paid to one Andrew Abrahams an Auctioneer and  
valuator the sum of £2,860.0.0. being a purported  
commission at the rate of 5 per centum upon the price  
of £57,200.0.0. on the sale referred to in  
Paragraph 5 hereof. The said commission was there-  
after treated by the Defendant as a charge against  
the trust funds.

30 5B. On the 18th March 1963 the Defendant, in  
reply to an enquiry from a firm of real estate  
agents named Richard James Associates Ltd. wrote  
in the following terms to the said firm :-

" I am in receipt of your letter of 6th instant  
enquiring whether I would be prepared to pay to  
you commission at the rate of £5 per centum if  
you were to introduce a purchaser for the

In the  
Supreme Court  
of Judicature  
of Jamaica

No. 3

Amendment of  
Statement of  
Claim

abovementioned holding at a price acceptable by me.

I regret to state that I would not be prepared to pay to you, or any auctioneer, commission at the rate of £5 per centum except in the event that you were in a position to introduce a purchaser at a price which would be very much in excess of the sum that I would be prepared to accept.

The reason for this is, as you know, that this Department does not employ auctioneers to dispose of holdings under its control. 10

The scale in use by this Department where purchasers are introduced by auctioneers is as follows :-

First £500	: 2½% (£2.10/- per centum)
Each succeeding £100:	1¼% (£1.5/- " " )

However, I may in my discretion negotiate commissions with auctioneers to any extent which may be warranted by the peculiar circumstances of each case and, if you do have a purchaser, perhaps you would care to come in and discuss the matter with me." 20

On the 3rd June 1963 the Defendant wrote to Lord Ronald Graham & Company Limited in similar terms.

5C. The said payment of £2,860.0.0. alternatively any payment to Andrew Abrahams in excess of £721.5/- (being £500.0.0. at 2½% plus £56,700.0.0. at 1¼ per centum) was wrongful and a fraud upon the beneficiaries in that - 30

- (1) The said Andrew Abrahams did not introduce the purchaser to the Defendant; alternatively
- (2) There were no peculiar circumstances of the sale to the purchaser such as would warrant the payment of commission in excess of the Defendant's stated scale to Andrew Abrahams or any other auctioneer or agent.

Sgd. Gerald Davies

Filed by Messrs. Myers, Fletcher & Gordon of  
Number 36 Duke Street, Kingston, Solicitors for and  
on behalf of the abovenamed Plaintiff. 40

No. 4  
AMENDED DEFENCE

In the  
Supreme Court  
of Judicature  
of Jamaica

BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS Plaintiff

AND THE ADMINISTRATOR GENERAL  
Trustee of the Estate of  
CHARLES BENJAMIN VICKERS  
deceased

Defendant

No. 4

Amended  
Defence

3rd June 1965

AND

IN THE MATTER OF THE ADMINISTRATOR  
GENERAL'S LAW SECTIONS 1 & 41

10

1. The Defendant admits paragraph 2 of the Statement of Claim but does not admit that the Plaintiff is a Beneficiary of the trust mentioned in the said paragraph as alleged in paragraph 1 of the Statement of Claim or at all. The Defendant admits that he is the Trustee under the said Trust.

2. The Defendant admits paragraph 3 of the Statement of Claim.

20

3. The Defendant admits that upon the death of Catherine Vickers the persons beneficially and absolutely entitled to the proceeds of sale of Mount Edgecombe were Alice Maud Vickers of Sydney, New South Wales, Australia and Hilda Margaret Davis of Winchester, Hampshire, England, and that the said Hilda Margaret Davis died in England on the 19th November 1962. Save as aforesaid, the Defendant makes no admission as to any of the matters alleged in paragraph 4 of the Statement of Claim.

30

4. Save that the Defendant denies that he refused to disclose to the Plaintiff the name of the person with whom he contracted for the sale of Mount Edgecombe, the Defendant admits paragraph 5 of the Statement of Claim.

40

5. The terms of the said Contract of Sale were set out in a letter dated 27th July, 1964 from the Defendant to the Purchaser, James Williams of Kew Park, Bethel Town, Jamaica. The said James Williams was at all material times a resident of Jamaica. The Defendant will at the trial refer to

In the  
Supreme Court  
of Judicature  
of Jamaica

          
No. 4

Amended  
Defence

3rd June 1965

(continued)

the letter aforesaid for the full terms and true effect of the said Contract for sale.

5A. The Defendant admits that he made the payment referred to in paragraph 5A of the Statement of Claim.

5B. The Defendant admits he wrote the letters referred to in paragraph 5B of the Statement of Claim.

5C. The Defendant denies that the payment of £2,860 was wrongful or a fraud upon the beneficiaries as alleged or at all.

10

5D. The Defendant says that the Plaintiff through his Solicitor by letter dated 8th July, 1963 authorised the payment of commission of 5%.

6. The Defendant denies that he has committed any breach of trust in the administration of the estate of Charles Benjamin Vickers, deceased, and specifically denies each and every allegation contained in paragraph 6 of the Statement of Claim. In relation to item (7) of the particulars to paragraph 6 of the Statement of Claim the Defendant also denies that he was given any directions by the beneficiaries under the trust as to the sale of Mount Edgecombe or, alternatively, that he was given any such directions as were sufficient in law to impose on him any obligation to comply therewith.

20

7. If, which is not admitted, the Plaintiff has suffered any damage as alleged or at all the said damage was due to the action of the Plaintiff in instituting these proceedings to restrain the sale of Mount Edgecombe by the Defendant.

30

8. In the circumstances the Defendant acted honestly and reasonably in the discharge of his duties as Trustee and if, which is not admitted, the Defendant has committed any breach of trust in relation to the aforementioned estate he ought fairly to be excused and relieved of personal liability.

SETTLED

40

H. L. DaCOSTA, Q.C.  
2nd June 1965

A. E. BRANDON & CO.

of No. 45 Duke Street, Kingston,  
Solicitors for the Defendant

In the  
Supreme Court  
of Judicature  
of Jamaica

                      
No. 4

FILED AND DELIVERED the 3rd day of June 1965  
by A.E. BRANDON & CO. of 45 Duke Street, Kingston,  
Solicitors for the Defendant herein.

Amended  
Defence

3rd June 1965  
(continued)

No. 5

NOTICE OF MOTION.

No. 5

Notice of  
Motion

BETWEEN WILLOUGHBY ARTHUR DAVIS Plaintiff

10th December  
1964

10 AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of  
Charles Benjamin Vickers  
deceased). Defendant

IN THE MATTER of the Estate of Charles  
Benjamin Vickers deceased late of Mount  
Edgecombe in the Parish of Westmoreland

AND

IN THE MATTER of The Administrator  
General's Law, Chapter 1 Section 41

20 TAKE NOTICE that this Honourable Court will be  
moved on Thursday the 17th day of December 1964 at  
10.00 o'clock in the forenoon or as soon thereafter  
as Counsel can be heard by Counsel on behalf of  
the abovenamed Plaintiff that the Defendant, his  
servants and agents may be restrained by injunction  
until the trial of this action or until further  
order 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 AND  
30 FURTHER that there be an Order for a speedy trial  
of this action.

DATED this 10th day of December, 1964.

MYERS, FLETCHER & GORDON  
Solicitors for the Plaintiff.



In the  
Supreme Court  
of Judicature  
of Jamaica

            
No. 5

Notice of  
Motion

10th December  
1964

(continued)

To:-

The abovenamed Defendant

OR

To:-

His Solicitor,  
Messrs. A.E. Brandon & Company,  
45 Duke Street,  
Kingston.

Filed by Messrs. Myers, Fletcher & Gordon of  
Number 36 Duke Street, Kingston, Solicitors for the 10  
abovenamed Plaintiff.

No. 6

Order for  
Interlocutory  
Injunction

17th December  
1964.

            
No. 6

ORDER FOR INTERLOCUTORY INJUNCTION

In the Supreme Court of Judicature of Jamaica  
In the High Court of Justice  
IN EQUITY.

BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS Plaintiff

AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of  
Charles Benjamin Vickers  
deceased) Defendant 20

IN THE MATTER of the Estate of  
CHARLES BENJAMIN VICKERS deceased  
late of Mount Edgecombe in the Parish  
of Westmoreland

AND

IN THE MATTER of The Administrator  
General's Law, Chapter 1 Section 41

On the Notice of Motion dated the 10th day  
of December, 1964, filed by the Plaintiff for an 30  
Interlocutory Injunction coming on for hearing  
before Mr. Justice Edun (Acting) and after hearing  
Mr. Richard Mahfood of Counsel for the Plaintiff  
and Mr. Harvey DaCosta, Q.C. and Mr.S.Ramphael

for the Defendant, AND on the Defendant giving an undertaking not to complete the sale negotiated by him on or about the month of August, 1964, of the property known as the Mount Edgecombe Estate until the trial of this action, AND the Plaintiff undertaking to abide by any Order this Court may make as to damages limited to the extent of his beneficial interest in the said property in case this Court shall hereafter be of opinion that the Defendant shall have suffered any by reason of this Order which the Plaintiff ought to pay AND on the Plaintiff and Defendant applying for a speedy trial of this action

In the  
Supreme Court  
of Judicature  
of Jamaica

No. 6

Order for  
Interlocutory  
Injunction

17th December  
1964

(continued)

10

IT IS HEREBY ORDERED by and with the consent of the parties :

- (1) That there be a speedy trial of this action
- (2) That the costs of this Motion be costs in the Cause.

DATED the 17th day of December 1964.

20

MYERS FLETCHER & GORDON  
Solicitors for Plaintiff

A.E. BRANDON & CO.  
Solicitors for Defendant

Filed by Messrs. Myers, Fletcher & Gordon of Number 36 Duke Street, Kingston, Solicitors for the abovenamed Plaintiff.

No. 7

J U D G M E N T

No. 7

Final Judgment  
29th July 1965

BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS Plaintiff

AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of Charles Benjamin Vickers deceased) Defendant

30

IN THE MATTER of the Estate of CHARLES BENJAMIN VICKERS deceased late of Mount Edgecombe in the Parish of Westmoreland

AND

IN THE MATTER of The Administrator General's Law, Chapter 1 Section 41

In the  
Supreme Court  
of Judicature  
of Jamaica

No. 7  
Final Judgment  
29th July 1965  
(continued)

Before the Honourable Mr. Justice Douglas

The 29th day of July 1965.

This action having been tried on the 25th, 26th 27th 28th 31st days of May 1965, 1st 2nd 3rd, 4th, 7th, 8th, 9th, 10th and 11th days of June 1965, before Mr. Justice Douglas and UPON hearing Mr. Gerald Davies and Mr. Richard Mahfood instructed by Mr. A.A. Rattray of Myers, Fletcher & Gordon for the Plaintiff and Mr. Harvey DaCosta, Q.C. and Mr. Roald Henriques instructed by Mr. Douglas Brandon of A.E. Brandon & Company for the Defendant and having heard the witnesses and examined the documentary evidence produced by the Plaintiff and by the Defendant and the said Mr. Justice Douglas having delivered a written Judgment on the 29th day of July, 1965, and clarified the Order therein in respect of costs in Chambers on the 4th day of August 1965 IT IS HEREBY ORDERED AND ADJUDGED that :-

- (1) The Defendant restore to the Trust Fund out of his own pocket the following sums :-
  - (i) £90.12.8d. charged as commission on receipts pasturage, procedure, salvaged material and rental
  - (ii) £2,810.0.0. overpaid to Mr. Andrew Abrahams as commission.
- (2) The Defendant wind up the Trust and pay to the beneficiaries the sum to which each is entitled.
- (3) The Defendant personally pay the Plaintiff's costs which are to be taxed on a party and party basis.

DATED the                      day of                      1965.

(Sgd) Myers, Fletcher & Gordon  
PLAINTIFF'S SOLICITORS

Approved  
H.V.T. Chambers  
Registrar  
23/8/65

FILED by Myers, Fletcher & Gordon of Number 36 Duke Street, Kingston, Solicitors for and on behalf of the abovenamed Plaintiff.

No. 8WRITTEN JUDGMENTIn the  
Supreme Court  
of Judicature  
of JamaicaNo. 8

BETWEEN WILLLOUGHBY ARTHUR VICKERS DAVIS Plaintiff  
AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of Charles  
Benjamin Vickers, deceased) Defendant

Written  
Judgment

29th July 1965

Mr. Gerald Davies and Mr. Mahfood appeared for the  
Plaintiff

10 Mr. H.L. DaCosta, Q.C. and Mr. R.N. Henriques  
appeared for Defendant.

In these proceedings, the Plaintiff seeks relief in respect of equitable fraud and breach of trust on the part of the Defendant, the Administrator General, in connection with the estate of Charles Benjamin Vickers, deceased.

20 Charles Benjamin Vickers (hereinafter referred to as "the Testator"), died on the 14th January, 1923, possessed of real and personal property situate in this Island, including an estate known as Mount Edgecombe in the parish of Westmoreland, containing some one thousand seven hundred and sixty acres, more or less. By his Will, the testator devised and bequeathed his property Mount Edgecombe to his natural children Alfred Vickers and Catherine Vickers during their respective lives with remainder over to the Administrator General upon trust to sell the same and apply the proceeds of sale equally between "all the lawful children alive at their decease of my late brother William Vickers and of my brothers the said Edward Vickers and Aubrey James Vickers as joint tenants."

30

40 On the 9th August, 1960, the surviving life tenant, Catherine Vickers, died. Thereupon the Plaintiff's mother, Hilda Margaret Davis (hereinafter referred to as "Mrs. Davis"), widow of Winchester, Hampshire, England, the sole surviving daughter of the abovementioned Edward Vickers, deceased, and Alice Maud Vickers, (hereinafter referred to as "Miss Vickers") spinster of Sydney, New South Wales, Australia, sole surviving daughter of the abovenamed Aubrey James Vickers, deceased, became beneficially entitled to the proceeds of the sale of Mount Edgecombe.

In the  
Supreme Court  
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On the 19th November, 1962, Mrs. Davis died in England, having on the 25th October 1960 mortgaged her share in Mount Edgecombe to the Plaintiff, and having on the 9th November 1960 conveyed to the Plaintiff in consideration of her natural love and affection for him, a two thirds undivided share in her share in Mount Edgecombe. On the 18th March, 1963, her Will was admitted to Probate in the High Court of Justice in England and subsequently that grant of Probate was resealed in this Court. 10

In accordance with the provisions of the testator's Will, the Administrator General entered into possession of Mount Edgecombe on the 8th September, 1960, and sold the property in the month of August, 1964. It is in relation to the Administrator General's possession and sale of this property that these proceedings are brought.

The Plaintiff filed his Writ on the 1st December, 1964 and on the 17th December, 1964, obtained a consent order for speedy trial, on the undertaking inter alia of the Defendant not to complete the sale. By his pleadings, the Plaintiff complains that the payment of commission to Andrew Abrahams on the sale of Mount Edgecombe was wrongful and a fraud upon the beneficiaries. He also complains of numerous breaches of trust on the part of the Administrator General, namely :- 20

- (i) Failure to provide any or any adequate information; 30
- (ii) Failure to account for income;
- (iii) Failure to supply any or any adequate accounts;
- (iv) Failure to keep adequate or proper records and accounts;
- (v) Failure to perfect his title or alternatively, to obtain a registered title;
- (vi) Failure to take any or any adequate steps for the care, maintenance, preservation or management of the estate;
- (vii) Failure to act upon the beneficiaries' directions as to the sale of the property; 40

- (viii) Failure to advertise adequately the sale;
- (ix) Failure to test the market;
- (x) Failure to obtain an adequate price by selling subject to depreciatory conditions;
- (xi) Failure to sell at the best price;
- (xii) Failure to act as a prudent trustee remunerated for the performance of his duties, ought to have acted.

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10 The relief sought is by way of account, inquiry, injunction, order, damages and costs.

20 The Administrator General in his pleadings does not admit that the Plaintiff is a beneficiary and denies that the payment of commission on his part was wrongful or a fraud upon the beneficiaries. He further denies commission of the breaches of trust alleged or any breach and pleads if he did commit any breach, he acted honestly and reasonably in the discharge of his duties as trustee and ought fairly to be excused and relieved of personal liability.

30 There is dispute between the parties as to the condition of the Mount Edgecombe estate when the Administrator General took it over. William Vickers, a son of the male life tenant, giving evidence on behalf of the Plaintiff, describes the property as being kept in fairly good condition during the tenure of his Aunt, in contradistinction to the excellent condition in which the property was kept during his father's lifetime. The witness testifies that after his aunt died, there being no full-time resident overseer, the condition of the property worsened and as he put it, "people came in and did as they liked."

40 Another witness for the Plaintiff who speaks as to the condition of Mount Edgecombe when it was taken over by the Administrator General is Archibald Lister Calder. He lives nearby at Sheftston, a property of some One thousand (1,000) acres, and he says he was familiar with Mount Edgecombe from his childhood days and he knew the testator, and the life tenants. The witness' evidence is that at the Testator's death, the estate was in good farming condition, at that time the

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estate supported 350-400 head of cattle. On Alfred's death in 1945, Catherine Vickers took charge and up to her death in 1960 at the age of 80, the estate, according to Mr. Calder, suffered no deterioration in its condition.

On the other hand, witnesses for the Administrator General testify that the decline of Mount Edgecombe commenced before 1960. Sandhurst Spence, the headman on the property, who had worked all his days on Mount Edgecombe from the age of 12, says that during the lifetime of Alfred Vickers the property was "kept fine", as he puts it. He goes on to say that from the time Catherine Vickers took over, "the property start diminishing down". He says that disease took hold of the pimento trees and the lime trees, and by the time the Administrator General took possession, the fences were in disrepair, and the pimento crop fell to five bags from a maximum of fifty bags during Catherine's lifetime. This, according to the witness was the result of heavy losses by theft.

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The other witness who speaks of the condition of the estate in 1960 is Herman Berkett Smith, a retired Inspector of Poor of Petersfield, Westmoreland, who was appointed by the Administrator General to oversee Mount Edgecombe.

On the 7th October, 1960, he sent the Administrator General what he describes as a true and concise report on the property, which includes the following -

" Further to conversation with your Mr. Grant in your office, I have traversed the property and I am to report that the condition of the whole property is deplorable, which will take thousands of pounds to restore it as a grazing property. Boundaries are all in order, but the line fences are in poor condition."

Whatever the condition of the estate was in 1960, there can be no doubt that there was a steady decline in its condition between 1960 and 1962. There had been wholesale theft from the property, and on the 9th January, 1962, Mr. Smith in writing to the Administrator General reminded him of the

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bad condition of the pastures and suggested the clearing of a portion of the property along the main road with the object of making the estate more attractive to prospective purchasers.

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In speaking of the state of Mount Edgecombe in 1962, Mr. Calder testifies that the estate roads were in bad condition and that the fences were in poor condition and cattle used to stray on to the public road and wander from one pasture to another.

10 Lord Ronald Graham, a witness for the Plaintiff visited the estate in early 1963. He found, he says, the roads overgrown and the bush extremely thick. He further says that the boundaries were not well defined, and the general condition of the fencing was poor. Richard Allan Pensent, also giving evidence for the Plaintiff, describes his visit to the property in November or December, 1963, and gives the opinion based on his training in agriculture that the growth on Mount Edgecombe  
20 was between four and five years old. Indeed Lord Ronald Graham, though he points out that he is no agriculturist, gives a similar estimate of the age of the growth on the property.

It is not without significance that just prior to the Administrator General taking over, Mr. W.J. Tomlinson, a Solicitor of Savanna-la-mar, was urging that possession be obtained promptly "as the value of the property is being depleted."  
30 I doubt that Mr. Smith, in reporting the condition of the property as deplorable, could have foreseen that legal proceedings would arise involving an issue as to the condition of the property in 1960. I cannot accept the evidence of Mr. Calder on this point and I think that there was a falling-off in the standard of husbandry at Mount Edgecombe during the regime of the last life tenant, which was accompanied or caused, by a reduction in the number of cows on the estate. It may be, as William  
40 Vickers says, that "women are not good managers," but I prefer to think that approaching the age of 80, Catherine Vickers was quite unable, physically, to deal with the problems involved in running a large property. This falling-off in standards manifested itself in the appearance of the property and in my view, by 1960, the estate was in decline.

Mr. Smith was put in charge of Mount Edgecombe and armed with a document of authority quite

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inappropriate to his position. It was not until February, 1961 - five months later - that he was appointed agent for the collection of rents on the property and provided with receipt books and rent return forms. There never was any agreement between the Administrator General and Mr. Smith about the latter's remuneration, and up to now, he has not been paid. Moreover, neither Burgess, the Overseer's assistant, nor Spence, the headman, have received remuneration.

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The accounts kept by Mr. Smith as exhibited in the evidence are, to say the least, rather sparse. The estate receipts are contained in two pages of an account book, the outgoings are set out on a few lines of a single page.

Contrary to instructions, amounts are set out in gross, e.g.  $\frac{1}{2}$  Sale of pimento - £85.2.0. - or Wood - £50. Thus it is impossible to say how much was paid out for labour, or the rates at which labour was paid. As regards goods sold, Mr. Smith says he did not issue receipts - he felt they might be used against him if thefts were committed.

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Mr. Smith depastured his own cattle on Mount Edgecombe for a short time without payment and it is a sad commentary on his stewardship that he took the view that this was his privilege.

One of the complaints levelled against the Administrator General is that he either failed or refused to give information to persons who were entitled to information. The Administrator General has quite frankly admitted that there was delay, and sometime complete failure, in replying to letters.

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By letter dated the 30th August, 1962, Mr. Stewart Green, the Plaintiff's English Solicitor, wrote to the Administrator General asking him to confirm that Mrs. Davis and Miss Vickers were beneficiaries of the trust and seeking a copy of the income accounts from the death of the life tenant. On the 21st September, 1962, Mr. Green again wrote complaining that he had no reply from the Administrator General and threatening that if he did not receive the information requested within fourteen days, he would place the matter before the Law Society in London.

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The Administrator General replied by letter

dated the 9th October, 1962, confirming that Mrs. Davis and Miss Vickers were entitled, and noting that the plaintiff was claiming an interest in the share of the former. In reply to a query in regard to the offers received arising out of the advertisement of the property on the 24th July and 11th August 1962, it was stated that a further communication would be sent about them.

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10 Mr. Green again wrote on the 16th October, 1962, asking whether a satisfactory offer had been received, and if so, in what amount. Again Mr. Green asked for "some confirmation as to the basic facts relative to the Estate especially as to the Estate Accounts."

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20 This letter having produced no result, Mr. Green again wrote on the 7th November, 1962, stating that the Administrator General's failure to impart information was causing concern and again requesting some basic information. On the 9th November, 1962, a letter was sent to the Governor General expressing the view that the Administrator General's office was "notoriously inefficient" and similar sentiments.

30 The Administrator General answered on the 21st November, 1962, and referred to his letter of the 9th October, which according to him gave the information sought. He went on to state that no satisfactory offer had been received and that there was a slump in real estate transactions at that time. In fact, the information sought had not been given. It must be recalled that Mrs. Davis died on the 19th November, 1962. This information was passed on to the Administrator General. In a letter dated the 15th February, 1963, Mr. Green said inter alia -

40 " You will recollect that in my letter to you of the 25th ultimo, I did request information as to the possibility of the original offer of £50,000, being open, and perhaps you would kindly let me have your reply to this point in the course of post.

I am also instructed to enquire of you, the present financial position of the running of the estate. My client has no recollection of any annual accounts herein and it would appear therefore that little or no income is being

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derived from the property. If this is so, there would appear to be some further pertinent questions to be asked but before doing so, perhaps you would let me know the full present position."

The reply came by letter dated the 4th April 1963, but the information sought was still not forthcoming. On the 27th May, 1963, Mr. Green wrote again saying -

" I am very surprised that I have had no recent communication from you, especially as the points raised in my letters to you of the 8th and 18th April last require your comments. Further, other questions which have been put to you in earlier correspondence still remain unanswered. In order therefore to clarify the position, I shall be obliged if you will kindly have the courtesy to let me have, within one month of the date of this letter, your replies and comments to the following points :- 10 20

1. Who at present is responsible for the running and maintenance of this Estate?
2. By whom was this person appointed, when and under what terms of employment?
3. Are there any squatters on the land? If so, are steps in hand to eject them?
4. Has the dwelling house been maintained, including any out buildings?
5. Are the Estate Roads in full repair? 30
6. What has happened to the crops on the land? Have the citrus and Pimento been marketed?
7. Why have no accounts for capital and income been delivered to the Beneficiaries?
8. Please state what income has accumulated in the last few years from the Estate, and also the anticipated date when a distribution will be made. 40

9. What advertising has originated from your office in an effort to sell the estate?
10. Please forward copies of any offers received in your office in connection with such sale."

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These questions were never answered. Mr. Green's letter of the 16th April, 1964 contains this statement -

- 10 " I am somewhat surprised that I have not yet received any replies to my three letters written on the 4th December, 23rd December and the 18th February last, and I must therefore request that without further delay you supply the information which I have already requested, as my client is completely in the dark as to any developments which are occurring in your office relative to the sale of the above property."
- 20 On the 1st May, 1964, the Administrator General acknowledged the receipt of Mr. Green's letters of the 23rd December, 1963, the 18th February, 1964 and the 16th April, 1964 and informed Mr. Green of an offer through Lord Ronald Graham & Co. for £60,000 (£30,000 in cash, the balance in instalments over five years at 5% interest) and an offer from Mr. Harold Braham to lease for a year at £1,000 subject to the lease containing an option to purchase for £65,000.
- 30 Before Mr. Green received this letter, he wrote on the 9th May, 1964, instructing the Administrator General that the Plaintiff wished that he accept an offer in the sum of £57,000 from Mr. R.J. Carlyle-Clarke and his associates who include Mr. Pinsent, made to Hampton & Sons, London. His letter reads in part -
- 40 " The offer is subject to two conditions, the first being that the present squatters are removed from the property, and I understand that there will be very little difficulty in achieving this object, and the second condition however that the Title to the property is registered. My client in his acceptance addressed to you, has accepted both

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these conditions and perhaps therefore you will kindly accept this letter as my authority on behalf of my client for the necessary survey to be carried out forthwith to achieve registration of the Title."

When the Administrator General's letter of the 1st May, came to hand, Mr. Green replied saying that his client preferred to accept the offer of £57,000 "rather than on a prolematical option of a greater figure which is not certain." 10

On the question of the price asked for the estate, I must retrace my steps somewhat. On the 31st October, 1961, the Administrator General wrote Mr. Raymond Kirkham of Whitehouse, Westmoreland, requesting him to do a valuation of Mount Edgecombe. On the 5th January, 1962, Mr. Kirkham forwarded his valuation, his agricultural valuation was in the sum of £50,370.0.0. Unfortunately, Mr. Kirkham's letter of valuation was mislaid in the Administrator General's office and Mr. Kirkham had to supply a copy in September, 1962. 20

By means of a conveyance dated the 12th July, 1962, from the executor of the personal representative of the testator, the Administrator General got a title to Mount Edgecombe.

On the 16th July, 1962, the Administrator General arranged for the insertion in three specified issues of the Daily Gleaner of the following advertisement -

For Sale

30

Offers in writing in sealed envelopes marked "Offer Estate Charles Benjamin Vickers, deceased" will be received by the Administrator General for Jamaica up to Saturday, September 1, 1962, 12.00 noon for the purchase of property known as Mount Edgecombe situate in the Parish of Westmoreland containing Seventeen Hundred acres more or less. For further particulars and for permission to inspect, apply to the Administrator General, Public Buildings, East Block, King Street, Kingston." 40

After the appearance of this advertisement,

Messrs. Livingston Alexander & Levy wrote -

10 " On behalf of Mrs. Davis, we really must protest at the advertisement of Mount Edgecombe which appeared in last Saturday's Gleaner. This advertisement appears to us to be wholly inadequate having regard to the size, nature and value of the property. We really must ask that proper advertisements be inserted both in the Jamaica and foreign press and also that it be put into the hands of some international agents such as Messrs. Hampton of London."

As a result of this protest, the Administrator General again wrote the Gleaner Company asking that the advertisement be increased in size and given more prominent display.

The response to the advertisement can hardly be described as enthusiastic. The following offers were received :-

20 H.H. Hastings £90,000 (withdrawn 6th Sept. 1962)  
 H.H. Hastings £50,000  
 A.H. Lawrence £40,000  
 V.L. Cover £40,000  
 M.J. Mullings £35,000  
 C. Vickers et al £30,000  
 L. Hew £20,000

30 The Administrator General says that he opened the offers on the 3rd September, 1962. He didn't immediately accept the offer of £90,000, and it lay in his office for at least three days before it was withdrawn. At that stage, the Administrator General did not tell Mr. Green what the offers were, although it would have put the latter in a position to assess the probability of an early sale and the price which could be expected.

On behalf of Mrs. Davis, Messrs. Livingston, Alexander & Levy from an early stage pressed the Administrator General to advertise the sale of

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Mount Edgecombe, abroad. Mr. Green, when he came into the picture, urged the Administrator General to employ agents abroad and to advertise in Great Britain and in North America. In his evidence the Administrator General says simply that he does not agree with Mr. Green about Overseas advertisement. He says that he had no money to advertise abroad, and in any event, if he had the money, he is not sure that he would have done so.

On the 8th April, 1963, Mr. Green wrote informing the Administrator General that his client had instructed Messrs. Hampton & Sons of London to endeavour to find a buyer for the property, and on the 20th June, 1963, again impressed on the Administrator General that he should take all steps to effect an early sale. 10

On the 9th May, 1963, Mr. Smith the Solicitor for Miss Vickers in Australia wrote -

" I refer to my letter of the 22nd February last, to which I do not appear to have received a reply. 20

My client, who is rather elderly, is getting quite upset over the continued delay, and any information that you can give me as to the present position of the matter, would be much appreciated.

My client has apparently never received any detailed information as to the nature of the Mount Edgecombe property, and, if you should have a Valuer's Report describing the property and its improvements, it would be of interest to her if a copy could be made available. 30

Would you also please indicate if the property is leased, or whether it is otherwise income-producing, and if so, you might be good enough to let me have a statement of income and expenditure."

The information sought by Mr. Smith was not given but Mr. Smith continued to press the Administrator General for an early sale. On the 13th August, 1963, Mr. Smith writes - 40

" I refer to your letter of the 3rd ultimo,

and now enclose Form of Authority signed by my client in keeping with your attitude to the question of the payment of Agent's commission.

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As regards a minimum purchase price acceptable, my client is of the opinion that too much time has already elapsed while searching for a purchaser in the vicinity of £60,000 to £70,000 and while she naturally desires you to obtain the best price possible, she would be quite agreeable for you to accept an offer as low as £50,000 and this has been included in the enclosed Authority.

20

My client hopes that her action will assist in the speedy settlement of the matter. She is rather elderly and is somewhat anxious that the matter may drag on to the point when she obtains no benefit from her interest in the Estate and anything you can do to expedite the matter will be much appreciated."

The reference above to Agent's commission relates to the employment by the Plaintiff of Messrs. Hampton & Sons on terms that a commission on sale would be paid whether or not the purchaser was introduced by them. The Administrator General rejected this arrangement and the Australian beneficiary agreed with him.

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During the latter part of 1963, Messrs. Hampton & Sons and Lord Ronald Graham were working to dispose of the property, having carried out in May and June, 1963, an advertising campaign in the British, American and Canadian press. On his part the Administrator General again advertised the property in the Daily Gleaner on the 16th and 20th November, 1963, fixing 11th December, 1963, as the day up to which offers would be received for Mount Edgecombe.

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It was at this stage that the offer of £60,000 payable over five years and the offer to lease with an option to purchase for £65,000 were made. It was around this period, too, that a prospective purchaser discovered that there was a large holding within the perimeter of Mount Edgecombe which was subject to registered title. This is, in fact, Mr. William Vickers' holding of 45 acres, about which the Administrator General,



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up to the trial, knew nothing.

In May, 1964 came the offer mentioned above from the Carlyle-Clarke syndicate to purchase for £57,000. On the 19th June, 1964, Mr Green wrote the Administrator General stating in part -

" I have recently received a copy of the letter written by Mr. Paul de Lisser, of the 9th inst., to you relative to the sale of the above property, and I understand he is acting for the prospective purchasers who have made an offer of £57,000 to you for this property. 10

The letter itself quite clearly sets out the prospective purchasers' view on the property and it occurs to me, subject to any comments or observations, you yourself may have on this letter, that there are no apparent difficulties which prevent this matter proceeding. The only point on which there might be any difficulty is that of Title, and as you have already been informed, my client is quite ready to fall in with the suggestion that the Title to the property is registered it being understood that the expense of this would fall upon my client and his Co-Beneficiary in Australia, who also concurs. 20

You will, I know, appreciate that my client is more than anxious that this matter should be concluded at the earliest possible date, and I should be glad if you will kindly let me have your views on the proposed sale generally and also whether you would consider implementing part of the Will, whereby it states that you could at the request of the Beneficiaries convey and transfer the property to them." 30

On the 23rd June, 1964, the Administrator General wrote Mr. Green saying that he rejected the offer made by the Carlyle-Clarke syndicate for the reason that he does not normally agree to give a registered title in respect of unregistered land (which would require two to three years to accomplish) nor would he undertake to give vacant possession. 40

By the 4th July, 1964, another prospective purchaser, Mr. James Williams of Kew Park, Westmoreland, came into the picture. He cabled from England on that date asking whether Mount Edgecombe had been sold. On receiving an answer in the negative, he cabled on the 7th July, 1964 an offer of £50,000 and said he would attend on the Administrator General on his return to Jamaica about the 20th July, 1964. He did attend on that date and on being told that there was an offer of £57,000 and that if he was prepared to better it, his offer would be considered, he offered £57,200.

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Mr. Williams' offer was subject to inspection and subject to contract. On the 26th July, 1964, he inspected and on the same day asked for a contract of sale for signature. On the 27th July, the Administrator General addressed this letter to Mr. Williams -

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"Dear Sir,

Estate Charles B. Vickers, deceased  
re Mt. Edgecombe property - Westmoreland

With reference to your letter dated 20th July, 1964, offering the sum of £57,200 for the purchase of the above property and your subsequent letter dated 26th July, requesting that the Contract of Sale be forwarded for your signature, I have to advise that your offer has been accepted subject to the following terms and conditions :-

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- (a) that you pay to me immediately the sum of £14,300 as deposit and a further instalment of £14,300 on or before 31st August 1964; the balance of £28,600 to be paid on or before 31st December 1964;
- (b) the holding is sold subject to all existing tenancies, contracts, easements, covenants, (restrictive or otherwise);
- (c) you to be entitled to possession on payment of the second instalment of Purchase Money;

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- (d) you to pay all taxes, rates and other outgoings, if any, due from date of possession and to be entitled to income accruing and due as from that date;
- (e) should survey of the holding be required, the costs of such survey to be borne by you alone;
- (f) that you agree to accept title at Common Law effective from the date of my appointment as Trustee of the Estate under the Will of the Late Charles B. Vickers, which was probated in the Supreme Court of Judicature of Jamaica on the 17th day of October, 1945, and you do not require me to bring Title under the Registration of Titles Law. Such Conveyance to be prepared by my Solicitors and the full costs thereof to be borne equally by you and me; 10
- (g) time to be the essence of the Contract; 20
- (h) failure on your part to carry out the terms of the agreement shall entitle me to re-sell the holding without previously executing Conveyance to you and you will be liable for any deficiency in price on such re-sale and for all costs and expenses occasioned by such default. Any increase in price shall however be retained by me.

If you agree to the foregoing terms, kindly sign the enclosed copy, and return it to me immediately, together with your deposit of (£14,300), Fourteen Thousand Three Hundred Pounds."

Mr. Williams agreed.

On the 5th August, 1964, Mr. Green who, obviously had heard rumours, cabled for details of the sale including price and conditions. By letter of the 13th August, 1964, the Administrator General set out for Mr. Green the terms of the agreement above and went on to say - 40

" It will be observed that under this agreement -

- (a) the estate is relieved of having -
- (i) to give any warranty as to squatters;
  - (ii) to share in the costs of carrying out any survey or giving a registered title which as already pointed out to you, would take a long time and would be expensive; and
- 10 (b) the Purchasers would have to pay the full Purchase Money within five months. The commission would be the same as that already approved by you, namely 5%, and so would be apparent that the net result means considerable savings for the beneficiaries."

20 This last statement left out of account, the question of commission for Messrs. Hampton, a fact which must have been painfully obvious to Mr. Green, who sought to identify the purchaser and to prevent completion of the sale.

In the meantime, the Administrator General was dealing with the question of commission, and on the 26th August, 1964, paid Andrew Thompson Abrahams the sum of £2,860 by way of commission on this sale at the rate of 5%.

30 Mr. James Williams in giving his evidence says that he had no business dealings with Mr. Abrahams, but says that there was a general conversation at a fishing tournament in Port Antonio and the subject of Mount Edgecombe came up. This was in October, 1963. He testifies -

" I was not inquiring of him in a professional capacity. We were talking farms and lands and derelict land. I mentioned Mount Edgecombe and Hodges. I think I said I would be interested in getting hold of one of these. That is full extent of dealings with Mr. Abrahams at the time."

40 In regard to this matter, Mr. Abrahams giving evidence on behalf of the Administrator General says -

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" I have been trained in rearing of cattle. I was brought up on a farm and served with United Fruit Co. for 7 years. That was interest Williams and I had in common."

There was no further contact between Mr. Abrahams and Mr. Williams until the 26th July, 1964, when Mr. Abrahams showed Mr. Williams over Mount Edgecombe, a contract resulting from action taken by the Administrator General on the 20th July, 1964. As regards the work done by Mr. Abrahams, the Administrator General says -

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" I knew him to be an Auctioneer... He (Mr. Abrahams) was not appointed by me. He turned out to be my agent but he was not appointed as an agent by me. He wasn't qualified. I didn't select him."

In giving his evidence, Mr. Abrahams swears that he is an Auctioneer by occupation, that he is required to hold a licence and that he holds a general licence for the Island. He states that he has held a licence continuously through the last three years, though he goes on to say "I may have been in arrears but I am a licensed auctioneer." He denies that he only held a licence from April to June, 1963 and from September, 1964. On being required to bring into Court his licence and receipts, it turned out that the licence he had in 1963 was a parish licence, not a general one, and that from the end of June, 1963 until early September, 1964, he paid nothing by way of licence fees; that in September, 1964 he acquired another parish licence; and the first time the witness ever held an Island licence was on the 31st May, 1965 after the present trial had commenced.

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As I have stated above, the Administrator General wrote Mr. Green on the 13th August 1964 stating the conditions on which he agreed to sell the property. Thereafter in a letter dated the 26th September, 1964, Mr. Green informed the Administrator General that he was seeking an interim injunction restraining him from completing the sale. The writer goes on to catalogue a number of alleged breaches of trust. The Plaintiff, after considerable and quite unnecessary difficulty, obtained the name and

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address of the prospective purchaser and on the 1st December, 1964 filed his writ.

The office of Administrator General was created pursuant to the Administrator General's Law of 1873, the object being as expressed in the Preamble "that a public officer should be appointed who shall in certain cases administer the estates of deceased persons, and shall have besides other duties...." Under the statute, the Administrator General is deemed to be an officer of, and an accounting party to the Supreme Court. He is required to keep a full, complete and accurate account of all transactions in respect of estates and trusts vested in or administered by him, and the manner of his keeping his accounts, books and documents is prescribed in Rules of Court. He has a duty to apply for letters of administration to the estates of persons who die intestate in certain circumstances, and he may be appointed trustee of any real or personal property, guardian of any infant or committee of any lunatic. Under Section 30, subject to the provisions of the statute, the Administrator General acting as trustee has all the rights, duties, powers and liabilities of any other trustee. Quite apart from these liabilities, Section 41 makes him answerable, on the application of any person interested, to the Court should he act improperly, or omit to act in respect of any estate or trust vested in or administered by him.

The duties of a trustee have been declared in many cases. Put shortly, a trustee is bound to execute the trust with honesty, integrity and fairness. He must get in the trust estate, preserve it and conduct the trust with reasonable diligence and proper prudence. In particular, a trustee under a trust for sale has of course, an over-riding duty to obtain the best price which he can for the property in the interests of the beneficiaries.

The first issue arising on the pleadings is whether the Plaintiff is a beneficiary of the trust raised in the testator's Will. It is not disputed that the Plaintiff is the executor of the estate of Mrs. Davis and Mr. DaCosta concedes that the Plaintiff could sue as executor of his mother's estate, or as mortgagee entitled to be paid to the extent of his charge for £100, or as assignee of

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two-thirds of his late mother's one-half interest. Further it is not denied that the Plaintiff can bring his suit, as a person interested, under Section 41 of the Administrator General's Law. But says Mr. DaCosta, the Plaintiff has sued neither as executor nor as assignee but has chosen to "remain precariously perched on a beneficiary's pedestal."

Reference to Mrs. Davis' Will discloses that the one-third portion retained by her of her original half interest in the proceeds of Mount Edgecombe falls into residue and under the provisions of the Will, the Plaintiff is entitled to a life interest in one half of his late mother's residuary estate. 10

Mr. DaCosta contends that the Plaintiff is the assignee of a part only of the beneficial interest. His submission is that a beneficiary is a person who is designated as such by the settlor, either by his doing so specifically or by his empowering someone to do so on his behalf, and that the Plaintiff herein is not a beneficiary. 20

Learned Counsel cites Re Bell (1896) 1 Ch.1 in which a person entitled to a one-eighth share amounting to £1,000 in a trust fund mortgaged his share. The question arose as to whether the mortgagee was entitled to recover from the trustees the whole of the share, or the lesser sum of about £400, the sum due on the mortgage. The Court of Appeal held, reversing the decision of Kekewich J. that the trustees were not bound to pay out to the mortgagee the whole share, and thereby rejected the argument that the mortgagee was a sort of derivative trustee who could receive the whole share and administer what remained after paying off his own security. Thus, says Mr. DaCosta, a mortgagee can only sue to recover on his mortgage to the extent of the principal and interest due, and nothing more. Further, contends Mr. DaCosta, if there is an assignment, an assignee, of part of a debt is merely an equitable assignee, and must join the assignor in order to recover. This is the position stated by Green L.J. in Williams vs Atlantic Assurance Co. (1933) 1 K.B. 81 certainly where the equitable assignment is not accompanied by a power to give a discharge. 30 40

In Davis vs Hutchings (1907) 1 Ch. 356,

Kekewich J. said -

"..... I entirely concur in the proposition that the trustees occupy a fiduciary position only to their cestui que trusts, that is to say to these original cestuis que trust, and to those who are brought within that description by assignment, devolution, operation of law, and so forth."

10 In Hill vs Boyle L.R. 4 Eq. 260 the plaintiff sought to bring suit as assignee of a right to sue the trustee to recover interest on profits of part of the trust funds which were for a certain period in his hands. In holding that such an interest was not assignable, Sir John Stuart, V.C. described the assignors, the mortgagee and his purchaser, quite simply as "Cestuis que trust."

20 In the case of Smith vs Bolden 33 Beav.262 a trustee of a fund belonging to a deceased person refused to pay it over to his legal personal representative, on the ground that there was a question, under the will of the deceased, whether it was not specifically bequeathed and requiring the assent of the alleged specific legatees. Sir John Romilly, M.R. said -

30 " This is one of those unfortunate cases which occasionally come before me, when trustees for one purpose think it their duty to act as trustees for other persons who are not their cestuis que trust...The trustee pays six-sevenths to the person entitled, and he refuses to pay the remaining one-seventh, because he says that when in her hands questions will arise under the will of Henry Hall, with which he has nothing to do... I must direct the defendant to pay the one-seventh to the legal personal representative of Henry Hall."

40 Finally on this point, there is the case of O'Rourke vs. Darbishire (1920) A.C. 581. The Plaintiff sued as the administrator of the heiress at Law and one of the next of kin of a testator, claiming that the executors were trustees for those he represented of part of the testator's estate on the footing of an intestacy. It was never suggested that the plaintiff in his representative capacity was incapable of being a cestui que trust. What the House of Lords there held was that the

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plaintiff was not entitled to the production of the trust documents as cestui que trust on the ground of proprietary right because the question of whether there was an intestacy, was the very issue to be tried in the action.

I hold that the term beneficiary is wide enough to include the personal representative of the estate of a deceased beneficiary where the estate is entitled to receive the deceased beneficiary share of the trust funds. The vital point in this case, as indeed it was in Anson vs Potter (1880) 13 Ch. D. 141 is that nobody is in existence, or ever can come into existence, who can quarrel with the payment to him which the Plaintiff desires in respect of the share to which the estate of Mrs. Davis is entitled, and there is no doubt in my mind that the Plaintiff can give a good discharge for that share.

As I have pointed out above, the only practical importance of this point is in relation to the right claimed by the Plaintiff to give directions as to what offer should be accepted by the Administrator General. On this point, Mr. DaCosta has two submissions. First, he contends that if the Plaintiff is only an assignee of part of the beneficial interest, any claim on his part to give directions must fail in limine. Further he argues that even if the Plaintiff is a beneficiary, and acts with all the other beneficiaries, all that the beneficiaries together can do is to end the trust.

The rule is that where the beneficiaries are all sui juris and entitled to the whole of the corpus and are unanimous, they may terminate the trust. But as Lord Langdale M.R. held in Holford v. Phipps (1841) 3 Beav. 439 where parties call on trustees to part with the trust estate on the ground that their trusts have terminated, they are bound clearly and satisfactorily to show the fact to the trustees. In the instant case there is no direction by the beneficiaries that the trust should be terminated and thus the trust subsists. In other words, the rule in Saunders vs Vautier (1841) 4 Beav. 115, does not operate.

What then was the duty of the Administrator General on the sale of Mount Edgecombe? On the 20th July 1964 the Administrator General had

notice of an offer through Messrs. Hampton in the amount of £57,000. On that day he told Mr. Williams that if he bettered the offer of £57,000, it would be considered. In those circumstances, Mr. Williams offered £57,200 and that offer was accepted.

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10 The rule is that a trustee for sale is bound to sell the property under every possible advantage to his beneficiaries, and he must give fair and impartial attention to the interests of all the parties concerned. Mr. DaCosta contends that the Administrator General was under no duty to promote competition between bidders once he was satisfied that he was obtaining the best price for the property at the time of the sale.

20 In Selby vs. Bowie (1863) 4 Giff 300, the testatrix, who up to her death carried on business as an outfitter at Portsmouth, left her real and personal estate upon trust for sale. The Plaintiff therein and the trustees disagreed as to the persons to whom the business should be sold. The Vice-Chancellor held that -

30 ".....the conduct of the (trustees) cannot be impeached. It appears that they acted bona fide and in a careful and proper way. There was, in fact, no great disparity between the two offers made. The difference between them was not considerable, and on the question of which of the two was the most advantageous, there might be an honest difference of opinion.... I am not aware of any authority which establishes the proposition that where there are two offers equally advantageous, one of which is preferred by the cestui que trust, that it is the duty of the trustees, against their own opinion, to accept that offer....."

[Sic]

40 And so also, if a trustee has contracted bona fide to sell, the sale will not be invalidated because somebody offers a higher price: See Harper vs. Hayes 2 De Gex F. & J. 542.

In Buttle vs Saunders (1950) 2 All E.R. 193, it fell to Wynn-Parry, J. to determine the duties of trustees for sale where they refused a subsequent higher offer. At page 195 of the report, he states -

" It is true that persons who are not in the

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position of trustees are entitled, if they so desire, to accept a lesser price than that which they might obtain on the sale of property, and not infrequently a vendor, who has gone some lengths in negotiating with a prospective purchaser, decides to close the deal with that purchaser, notwithstanding that he is presented with a higher offer. It redounds to the credit of a man who acts like that in such circumstances. Trustees, however, are not vested with such complete freedom. They have an over-riding duty to obtain the best price which they can for their beneficiaries. It would, however, be an unfortunate simplification of the problem if one were to take the view that the mere production of an increased offer at any stage, however late in the negotiations, should throw on the trustees a duty to accept the higher offer and resile from the existing offer. For myself, I think that trustees have such a discretion in the matter as will allow them to act with proper prudence." 10 20

Mr. Davies' complaint is that the Administrator General closed his mind to the Carlyle-Clarke offer, and that this offer should have been probed to see whether the syndicate would raise the price offered and withdraw their stipulations as to vacant possession and registered title. Of course there is no suggestion of fraud or collusion between the Administrator General and Mr. Williams, the purchaser. The Administrator General has always maintained that he would not normally agree to give registered title or vacant possession in the circumstances of this sale. It may well be that another trustee would adopt a less inflexible approach to these matters, but that is not the point. The Administrator General says that he acted honestly and reasonably in regard to registered title and vacant possession. Having heard his explanation, I hold that he has. 30 40

Quite apart from the above, I have seen no case in which a trustee was required to probe a lower offer. I do not consider that Buttle's case really helps the Plaintiff. 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.

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10 On the issue whether the price of £57,200 was the best price obtainable for the beneficiaries, it must be recalled that 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.

20 Turning now to the payment of commission to Mr. Abrahams, I hold that the conversation in October, 1963, at the Port Antonio fishing tournament was a casual one between two persons sharing a common interest in farming. The absence of further contact between Mr. Abrahams and Mr. Williams bears out the casual nature of their talk and leads me to conclude that Mr. Abrahams did not introduce Mr. Williams as a purchaser. On these issues in which Mr. Abrahams is involved, I regret to say that his own evidence is unreliable and unworthy of belief. Regarding his showing Mr. Williams over Mount Edgecombe, it cannot be held that Mr. Abrahams was employed for the purpose of persuading Mr. Williams to confirm his offer. I hold that Mr. Abrahams is not entitled to the commission he received, although he is entitled to reasonable remuneration for such duties as he was engaged to perform, namely, to show Mr. Williams over Mount Edgecombe. The sum of Fifty Pounds is, in my view, ample remuneration for those duties, and that is all the Administrator General should have paid.

40 Referring to the complaints in paragraph 6 of the Statement of Claim, I find that the Administrator General was in clear breach of his duty to give information to the beneficiaries. That duty has been laid down in many cases, including Hawkesley vs. May (1956) 1 Q.B. 304 and Re Londonderry's Settlement (1964) 3 W.L.R. 246. The Administrator General told the beneficiaries nothing about the condition of the land, nor its value. He did not inform them of the amounts of offers to purchase in response to the advertisements,

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nor did he inform them about the income of the property, nor who were running it. It is appalling to find that as late as May 1963, Miss Vickers' solicitor was writing to the Administrator General to the effect that his client had never had any detailed information about the property. It is bad enough that the complaint had to be made, it is far worse, as appears from the evidence, that even after that letter, the information sought was still not forthcoming. 10

In Law, a trustee is under a duty to account. When Mr. Green first wrote on the 30th August 1962, he called on the Administrator General for a copy of the accounts for the period in which the Administrator General was in occupation. On the 11th September, 1963 the Administrator General provided a set of figures so sketchy as to almost worthless. Amounts were recorded in gross, without dates, and no beneficiary interested in discovering the annual income of the property could derive any enlightenment from them. 20

A review of Mr. Smith's evidence is sufficient to show that he kept no proper records. It is worth remarking that long after his stewardship had come to an end, Mr. Smith's account books were still in his possession instead of being with the Administrator General. Having considered the manner in which Mr. Smith performed his duties, it would serve no useful purpose in this case to order the taking of an account. I cannot think that any further information could be gained beyond the figures which are now known relating to the transactions entered into by Mr. Smith. 30

As regards title, the Administrator General has taken the stand that he could only 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 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. 40

It is in regard to his duty to maintain, preserve and manage the property that there was such lamentable failure on the part of the Administrator General. He says he had a cattle property without cattle and no money to spend on its upkeep. What did he do about it? He had no scheme for exploiting the income bearing resources of the property. He failed to ensure that his agents were sufficient in number and quality to protect the trust estate. He took no advice from experts, nor did he apply to the Court, a course which should have been obvious to him.

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Lastly, Mr. DaCosta urges that if there has been any breach of trust, the Administrator General acted honestly and reasonably and ought fairly to be excused.

Section 44 of the Trustee Law, Chapter 393 provides -

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" If it appears to the Court that a trustee whether appointed by the Court or not, is or may be personally liable for any breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the Court in the matter in which he committed such breach then the Court may relieve the trustee either wholly or partly from personal liability for the same."

30

In National Trustees Company of Australia vs. General Finance Co. of Australia (1905) A.C. 373, it was pointed out that it is a very material circumstance that the trustee is a trustee for remuneration. As Harman J. said in Re Waterman's Will Trusts (1952) 2 All E.R. 1054 -

".....a paid trustee is expected to exercise a higher standard of diligence and knowledge than an unpaid trustee."

40

What are the circumstances in which the Administrator General asks the Court to hold that he ought fairly to be excused? He entered on this straightforward trust in 1960. He waited fourteen months before seeking a valuation and two years before advertising, in an inadequate way, the sale of this large property. Throughout his stewardship, he failed to deal in any businesslike way

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with enquiries from interested persons. He failed to see that proper estate accounts were kept, and did nothing to supervise the work of his overseer, and he allowed the property to continue its decline. In my view, he seems to have adopted an attitude of indifference as to whether frustration or loss was occasioned to aged and impecunious beneficiaries. In any trustee, so many failings would be deplorable - in a public trustee for remuneration, they constitute unreasonable conduct and are inexcusable.

10

It is urged that in Equity there is no such thing as General Damages against a trustee and I am referred to the precedents of pleading in the Atkins Court Forms. In my view, the object of equitable relief is the restoration of the trust fund to what it would have been, had there been no breach of trust, and Section 41 of the Administrator General's Law, apart from anything else, is wide enough to permit this to be done.

20

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 to £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.

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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.

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10 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.

It cannot be said that the Plaintiff acted precipitately in filing his Writ. Indeed the conduct of the Administrator General left him no choice but to sue and the accounts and inquiries he asked the Court to take are proper accounts and inquiries, in that the Administrator General neglected to give him the information he sought.

20 As the Administrator General's commission is charged as remuneration for his time and responsibility, he should restore to the trust fund the sum he deducted for commission on receipts other than proceeds of the sale of the property and bank interest, on the ground that on these items he applied neither time nor responsibility.

30 Further the Administrator General must restore to the beneficiaries the commission paid to Mr. Abrahams less the sum of £50 to which the latter is entitled for the services he rendered.

The Order will be that the Defendant restore to the trust fund out of his own pocket the following sums :

- (i) £90.12.8. charged as commission on receipts for pasturage, produce, salvaged material and rental;
- (ii) £2,810.0.0. overpaid to Mr. Andrew Abrahams as commission.

40 There will also be an Order that the Defendant wind up the trust and pay to the beneficiaries the sum to which each is entitled.



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Lastly, on the ground of his misconduct, the Defendant must personally pay the Plaintiff's costs.

DATED this 29th day of July, 1965.

/S/ W. R. DOUGLAS

JUDGE.

No. 9

Order for  
Leave to Appeal  
against Order  
for Costs on  
a party and  
party basis  
18th August  
1965.

No. 9

O R D E R

BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS Plaintiff

AND THE ADMINISTRATOR GENERAL (Trustee of the Estate of Charles Benjamin Vickers deceased) Defendant 10

IN THE MATTER of the Estate of CHARLES BENJAMIN VICKERS deceased late of Mount Edgecombe in the Parish of Westmoreland

AND

IN THE MATTER of the Administrator General's Law, Chapter 1 Section 41

Before the Honourable Mr. Justice Douglas

In Chambers 20

On the 18th day of August 1965

UPON the application of the Plaintiff for leave to appeal against the Order for costs on a party and party basis and UPON hearing Mr. Richard Mahfood instructed by Mr. A.A. Rattray of Myers, Fletcher & Gordon for the Plaintiff and Mr. Roald Henriques instructed by Mr. Douglas Brandon of A.E. Brandon & Company for the Defendant IT IS HEREBY ORDERED that the Plaintiff is given leave to appeal against the Order for costs on a party and party basis.

REGISTRAR.

E N T E R E D by Myers, Fletcher & Gordon of  
Number 36 Duke Street, Kingston, Solicitors for  
and on behalf of the abovenamed Plaintiff.

In the  
Supreme Court  
of Judicature  
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No. 9

Order for  
Leave to Appeal  
against Order  
for Costs on  
a party and  
party basis  
18th August  
1965

(continued)

            
No. 10

O R D E R

BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS Plaintiff  
AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of  
Charles Benjamin Vickers  
deceased) Defendant

No. 10  
Order for  
Stay of  
Execution of  
Judgment  
18th August  
1965

10

IN THE MATTER of the Estate of  
CHARLES BENJAMIN VICKERS deceased  
late of Mount Edgecombe in the Parish  
of Westmoreland

AND

IN THE MATTER of the Administrator  
General's Law, Chapter 1 Section 41

Before Mr. Justice Douglas

In Chambers

20 The 4th and 18th days of August 1965

UPON the Application of the Defendant and  
UPON hearing Mr. Harvey DaCosta, Q.C. and Mr. Roald  
Henriques instructed by Mr. Douglas Brandon of  
A.E. Brandon & Company for the Defendant and

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No. 10

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Stay of  
Execution of  
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(continued)

Mr. Richard Mahfood instructed by Mr. A.A.Rattray  
of Myers, Fletcher & Gordon for the Plaintiff  
IT IS HEREBY ORDERED :-

That execution of the judgment herein be  
stayed for six weeks from the date when the  
judgment herein is entered on the Defendant paying  
out of the Trust fund £20,000.0.0. (Twenty  
Thousand Pounds) to the Australian beneficiary  
and £18,000.0.0. (Eighteen Thousand Pounds) to the  
Plaintiff upon the Plaintiff's Solicitors under-  
taking not to appeal against the refusal to make  
an Order setting aside the sale to Mr. Williams

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REGISTRAR

Entered by A. E. BRANDON & CO., of 45 Duke Street,  
Kingston, Solicitors for the Defendant herein.

In the  
Court of Appeal

No. 11

Notice and  
Grounds of  
Appeal

1st October  
1965

No. 11

NOTICE AND GROUNDS OF APPEAL

BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS  
Plaintiff-Appellant

AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of  
Charles Benjamin Vickers,  
deceased) Defendant-Respondent

20

IN THE MATTER of the Estate of  
CHARLES BENJAMIN VICKERS deceased late  
of Mount Edgecombe in the Parish of  
Westmoreland

AND

IN THE MATTER of the Administrator  
General's Law, Chapter 1 Section 41

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TAKE NOTICE that the Court of Appeal will  
be moved so soon as Counsel can be heard on behalf  
of the abovenamed Plaintiff-Appellant on appeal  
from so much of the Judgment and Order herein of  
the Honourable Mr. Justice Douglas given at the  
trial of this action on the 29th day of July 1965

whereby it was adjudged that the Defendant was not bound to restore to the trust fund any sums in excess of the £2,810.0.0. overpaid to Mr. Andrew Abraham as commission and £90.12.8d. charged by the Defendant as commission on receipt for pasturage produce salvaged material and rental and that the costs to be paid by the Defendant should be assessed on a party and party basis, FOR AN ORDER that the said part of the said Judgment may be set aside and the order for costs be varied and that the Defendant be ordered to restore to the Trust Fund such sum in excess of the above-mentioned sums as may be found to have been lost to the Trust Fund by the acts and omissions of the Defendant and that the Defendant may be adjudged to pay to the Plaintiff the costs of the action and of this appeal be taxed upon a Solicitor and client basis.

In the  
Court of Appeal

No. 11

Notice and  
Grounds of  
Appeal

1st October  
1965

(continued)

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AND FURTHER TAKE NOTICE that the grounds of this appeal are :-

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1. That the learned Judge, having directed himself correctly that the Defendant was under a duty to obtain the best price he could for the trust property upon sale, failed to consider whether the price obtained by the Defendant for the trust property was the best price that could have been obtained for it,
2. That the learned Judge ought to have held that the price obtained upon the sale of the trust property represented neither the full value for the property nor the best price he could have obtained for the property;
3. The learned Judge ought to have found that the Defendant acted unreasonably in failing to obtain a registered title to the trust property and in failing to offer the property with vacant possession;
4. That the learned Judge hereby found that the Defendant neglected to take proper steps to sell the trust property, having delayed the sale, having refused to address his mind to the preservation of the trust property to decline, ought to have found that the trust suffered loss upon the ultimate sale;
5. That the learned Judge having found that the Defendant advertised the trust property for sale

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Court of Appeal

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Grounds of  
Appeal

1st October  
1965

(continued)

in an inadequate way, ought to have held that a sale in the best interest of the beneficiaries was thereby prejudiced and that the trust thereby suffered loss;

6. That the learned Judge having held that the care and maintenance of the estate prior to sale was neglected, ought to have held that there was a loss of income to the trust thereby and to have ordered that such lost income ought to be restored to the trust;

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7. That the learned Judge having refused to set aside the sale to the Purchaser, James Williams, ought to have ordered the Defendant to indemnify the Plaintiff against the risk of action brought against the Plaintiff in respect of the trust property;

8. That in the premises the learned Judge ought to have ordered that the Defendant be deprived of his remuneration for acting as a trustee and that such remuneration be restored to the trust;

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9. That those parts of the Judgment of which the Plaintiff complains were against the weight of the evidence and/or cannot be supported on the evidence;

10. That the learned Judge, having held the Defendant denied information to the Plaintiff concerning the trust and that the Plaintiff was left with no choice but to sue the Defendant, ought to have awarded costs to the Plaintiff on a Solicitor and client basis.

DATED the 1st day of October 1965

30

MYERS, FLETCHER & GORDON

SOLICITORS FOR THE PLAINTIFF\*APPELLANT

SETTLED BY:

Mr. Gerald Davies

Mr. Richard Mahfood

TO:

The abovenamed Defendant-Respondent  
The Administrator General

OR

To:

His Solicitor,  
A.E. Brandon & Company, 45 Duke Street, Kingston.

40

Filed by Myers, Fletcher & Gordon of Number 36 Duke Street, Kingston, Solicitors for and on behalf of the Plaintiff-Appellant herein whose address for service is that of his said Solicitors.

In the Court of Appeal

No. 11

Notice and Grounds of Appeal

1st October 1965

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No. 12

NOTICE BY RESPONDENT TO VARY JUDGMENT

BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS  
Plaintiff-Appellant

No. 12

Notice by Respondent to Vary Judgment

12th October 1965

AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of Charles Benjamin Vickers, deceased)  
Defendant-Respondent

10

IN THE MATTER of the Estate of CHARLES BENJAMIN VICKERS deceased late of Mount Edgecombe in the Parish of Westmoreland

AND

IN THE MATTER of the Administrator General's Law, Chapter 1 Section 41

20

TAKE NOTICE that upon the hearing of the above appeal the Respondent herein intends to contend that the decision of the Court below dated the 29th day of July 1965 should be varied as follows:-

That Judgment be entered for the Defendant/Respondent with costs.

AND FURTHER TAKE NOTICE that the Grounds on which the Respondent intends to rely are as follows:-

1. THAT the Learned Trial Judge misdirected himself in law when he held that the Plaintiff/Appellant was a beneficiary as pleaded.

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In the  
Court of Appeal

No. 12

Notice by  
Respondent to  
Vary Judgment

12th October  
1965

(continued)

2. The finding of the learned trial Judge that the sum of £2,810 was overpaid to Mr. Andrew Abrahams as commission is misconceived both in fact and at law; alternatively, the said finding is manifestly unreasonable and cannot be supported by the evidence.

3. The decision of the learned Trial Judge that (sic) the Defendant/Appellant was guilty of misconduct is misconceived and based upon findings of fact which are inconsistent and erroneous. 10

4. The learned Trial Judge misdirected himself in law when he came to the conclusion that the defendant-Respondent was guilty of misconduct as a Trustee and ought to pay the Plaintiff's costs personally and disgorge his commission on the intakings of the property.

5. The learned Trial Judge misdirected himself in law when he found that the Defendant/Respondent was guilty of misconduct as a trustee although he found as a fact that the Trust Fund had suffered no 20 loss as regards capital and current income

6. The Learned trial Judge has misconceived what were the issues of fact he had to adjudicate on and has, therefore, based his decision on erroneous findings of fact.

DATED this 12th day of October, 1965.

A.E. Brandon & Co.  
SOLICITORS FOR THE DEFENDANT-RESPONDENT

SETTLED: H.L. DaCOSTA, Q.C.  
AND R.N.A. HENRIQUES 30

To: THE PLAINTIFF APPELLANT or to his Solicitors,  
Myers, Fletcher & Gordon, Kingston, and to  
the Registrar.

FILED by A.E. BRANDON & CO., of 45 Duke Street,  
Kingston, Solicitors for the Defendant-Respondent,  
whose address for service is that of his said  
Solicitors.

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No. 13JUDGMENTIN THE COURT OF APPEAL

BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS  
 Plaintiff/Appellant

AND THE ADMINISTRATOR GENERAL  
 Defendant/Respondent

In the  
Court of AppealNo. 13Judgment of  
Henriques P.  
on Preliminary  
question.1st March  
1968HENRIQUES, P.

10 Upon this appeal coming on for hearing, the  
 Court intimated to counsel that it had come to  
 its notice that Mr. Eric Tomlinson, the holder  
 of the office of Administrator General at the time  
 of hearing of the action in the court below, had  
 died since the appeal had been filed, and that  
 the Court desired to be satisfied that all  
 necessary parties were before the Court in view of  
 the order made by the learned trial judge  
 requiring the Administrator General to restore  
 to the Trust Fund out of his own pockets certain  
 20 sums of money specified in the order.

Learned counsel for the appellant submitted  
 that any order made against the defendant/respondent  
 was an order made against the office of  
 Administrator General, and not against the holder  
 of the office personally. In this submission he  
 was supported by learned counsel for the respondent.  
 To substantiate this proposition counsel embarked  
 on a close examination and analysis of the  
 provisions of the Administrator General's Law,  
 30 Cap. 1, as well as making reference to their  
 historical background. Learned counsel also  
 referred the Court to its powers as contained in  
 Orders 15 and 59 of the Rules of the Supreme  
 Court.

The Court has given careful consideration to  
 the submissions of counsel and has come to the  
 conclusion that it should proceed to hear the  
 appeal in its present form.

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In the  
Court of Appeal

No. 14

JUDGMENT

No. 14  
Judgment of  
Luckhoo J. on  
Preliminary  
Question  
1st March 1969

IN THE COURT OF APPEAL  
OF THE SUPREME COURT OF JUDICATURE, JAMAICA

BETWEEN WILLOUGHBY ARTHUR VICKERS DAVIS  
Plaintiff-Appellant

AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of  
Charles Benjamin Vickers,  
deceased)

Defendant-Respondent <sup>10</sup>

IN THE MATTER of the Estate of  
CHARLES BENJAMIN VICKERS deceased late  
of Mount Edgecombe in the Parish of  
Westmoreland

AND

IN THE MATTER of the Administrator  
General's Law, Chapter 1 Section 41

LUCKHOO, J.A.

Upon this appeal being called on for hearing, 20  
the Court intimated to counsel that it had come  
to its notice that Mr. Tomlinson, the holder of  
the office of Administrator General at the time  
of the institution, hearing and determination  
of the proceedings in the court below, had died  
subsequent to the date this appeal was filed and  
that the Court wished to be satisfied that all  
necessary parties to the appeal were before the  
Court having regard to the Order made by the  
learned trial judge - requiring the  
Administrator General to restore to the Trust  
Fund out of his own pocket certain sums of money  
specified in that Order. 30

Counsel for the appellant, while contending  
that all necessary parties were before the Court,  
conceded that it was right and proper for the  
Court in the existing circumstances to be  
satisfied that this was so. He stated that both  
counsel for the respondent and himself were in

agreement that the order requiring the Administrator General to make restoration to the Trust Fund out of his own pocket did not have the effect of requiring payment of the specified sums of money to be made personally by the incumbent of the office of Administrator General - that is to say, personally by Mr. Tomlinson - hence there was no necessity for the personal representatives of the estate of Tomlinson, deceased, to be joined as parties to the appeal.

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1st March 1969

(continued)

In order to appreciate the point in issue, it is necessary to refer briefly to the course the proceedings took in the court below. The appellant had instituted an action in his capacity as a beneficiary of a trust for sale of real property referred to as Mount Edgecombe in the parish of Westmoreland. The trust for sale had been created under the last Will and Testament of Charles Benjamin Vickers who died on the 14th January, 1923. Under the deceased's Will, Mount Edgecombe was devised to Alfred Vickers and Catherine Vickers, children of the testator, for their respective lives and upon the death of the survivor of them to the Administrator General upon trust to sell the same and to divide the proceeds of sale between the members of a named class of beneficiaries. The surviving life tenant died on or about 9th August, 1960, and thereupon the Administrator General entered into possession of the aforesaid property. On or about the 1st December, 1964, the appellant claiming to be one of the beneficiaries of the trust instituted an action against the respondent (the Administrator General) for certain orders specified in the writ of summons including orders for accounts and inquiries. In his Statement of Claim intituled -

"IN THE MATTER OF THE ADMINISTRATOR GENERAL'S LAW  
Section 1 and Section 41"

the appellant alleged the commission of numerous breaches of trust by the respondent in the administration of the trust. During the course of the hearing, the statement of claim was amended to include an allegation that a payment of £2,860 made by the Administrator General to one Andrew Abrahams was wrongful and a fraud upon the beneficiaries.

The Statement of Defence as amended denied the

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allegations of breaches of trust pleading that in the circumstances the respondent acted honestly and reasonably in the discharge of his duties as Trustee and if, which was not admitted, the respondent committed any breach of trust, he ought fairly to be excused and relieved of personal responsibility. The respondent denied that the payment made to Abrahams was wrongful or a fraud upon the beneficiaries.

The learned trial judge found that a number of the breaches of trust alleged had been proved; that the conduct of the respondent left the appellant no choice but to sue and that the accounts and inquiries the appellant had asked the court to take were proper accounts and enquiries. The trial judge made the following Order - 10

"IT IS HEREBY ORDERED AND ADJUDGED that :-

- (1) The Defendant restore to the Trust Fund out of his own pocket the following sums:
  - (i) £90.12.8d charged as commission on receipts, pasturage, procedure, salvaged material and rental. 20
  - (ii) £2,810 overpaid to Mr. Andrew Abrahams as commission.
- (2) The Defendant wind up the Trust and pay to the beneficiaries the sum to which each is entitled.
- (3) The Defendant personally pay the Plaintiff's costs which are to be taxed on a party and party basis." 30

It is not disputed that the learned trial judge purported to make the Order for restoration to the Trust Fund under and by virtue of the authority of section 41 of the Administrator General Ordinance, Cap. 1. That section empowers the bringing of proceedings by a beneficiary of a trust against the Administrator General on the ground, inter alia, that the Administrator General has improperly acted or is improperly acting or omitting to act in the management of any trust vested in or administered by him. The court on such an application is empowered to make such order as the court thinks fit and it is further provided that - 40

"Such order may direct that the Administrator General shall pay out of his own pocket any sum of money required to compensate any person estate or trust for the consequences of any wrongful act or omission of the Administrator General."

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(continued)

10 In construing the expression "out of his own pocket" appearing in section 41 of the Law, it is necessary to examine the scheme of the Law as it relates to the administration by the Administrator General of deceased persons' estates and trusts. Counsel for the appellant has submitted that an examination of the provisions of the Law leads to the conclusion that the expression "out of his own pocket" means out of the pocket of the Administrator General in his office as Administrator General, such pocket being public funds in the form of the Consolidated Fund or General Revenue. It is in respect of counsel's submission that I now proceed to refer to certain provisions contained in the Administrator General Law, Cap. 1.

20

The Administrator General is a public officer appointed by and holding office during the pleasure of the Governor General (s.3). His salary and the salaries of the staff of his office and his office expenses are paid from public funds (ss.49 and 51). He is required to keep accounts of all transactions with respect to all estates and trusts vested in or administered by him (s.9). He is an accounting party to the Supreme Court and is deemed to be an officer of the Supreme Court (ss. 8 and 10). All moneys coming into his hands as Administrator General are required to be paid into the Government Savings Bank to the credit of an account entitled the "Administrator General's Account". He may draw out of the Savings Bank any money standing to the credit of that account for the purposes of any estate or trust (s.11). No administration, bond or oath of office is necessary to be taken by him in the administration of deceased persons' estates (s.18). Generally speaking, his rights, duties, powers, and liabilities in applying for and obtaining letters of administration or letters testamentary, and in acting as administrator or executor are the same in all respects as under similar circumstances the rights, duties, powers, and liabilities of private persons applying for and obtaining letters of administration or letters testamentary, or acting as administrators or

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(continued)

executors would have been if the Administrator General Law (Cap. 1) had not been passed (s.21).

Subject to this Law (Cap. 1) the rights, duties, powers, and liabilities of the Administrator General acting as trustee, guardian or committee ad litem or for any other similar temporary purpose of an infant, idiot or lunatic, or receiver are the same in all respects as the rights, duties, powers, and liabilities of any other trustee, guardian, committee or receiver (s.30). 10

"In all legal proceedings in respect of any estate or trust vested in the Administrator General, or in respect of any act or omission of the Administrator General with respect of such estate or trust, he shall sue or be sued as 'The Administrator General' ", with the addition of a reference to his capacity in relation to the estate or trust (s.33). Personal service on him is not necessary (s.34). It is provided by s.35 that "all judgments, decrees, or orders, recovered or made in any legal proceedings by or against the Administrator General, shall be in the same form and subject to this Law, shall have the same effect as such judgments, decrees, or orders would have had under similar circumstances, if this Law had not been passed, against a private person occupying, in relation to such proceedings, a position similar to that of the Administrator General. 20 30

By s.36, no execution shall issue without leave of the Supreme Court in respect of any judgment, decree or order against the Administrator General. However, unless the Supreme Court, upon application by the Administrator General makes an order authorising him to refuse to pay (s.37) it shall be his duty to pay forthwith the amount of such judgment, decree, or order, and costs (if any)-

"in the same way, to the same extent and out of the same funds" 40

(unless the Court upon his application directs out of what funds he shall pay or that he shall not pay), that a private person, under similar circumstances, would be bound to pay the amount of such a judgment, decree, or order and costs. The

first proviso to s.36, however, permits him, in circumstances where if a private person would be personally liable on such judgment, decree or order, and would be entitled to recoup himself out of the estate or trust, to pay in the first instance the amount of the judgment, decree, or order and costs out of the estate or trust, to the extent that such private person would be so entitled to be recouped. The second proviso to s. 36 empowers the Supreme Court, if it thinks that the justice of the case requires it, to order that the amount for which judgment, decree or order is obtained, or any part thereof as the Court thinks fit, be paid by the Administrator General personally, and not out of any trust or estate." It has been canvassed during the course of the argument whether such an order envisages payment by the incumbent of the office of Administrator General.

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Section 39 relates to the power of the Administrator General to apply to the Supreme Court for its opinion or direction with regard (inter alia) to any trust vested in or administered by him under the Law, or with regard to any matters arising out of the management or conduct of any trust. Section 40 provides for relief from responsibility of the Administrator General where the opinion or direction of the court is bona fide sought under and obtained by him under s.39.

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The provisions of section 41 have already been noted.

Section 45 enacts that no change in the person holding the office of Administrator General shall affect any estate or trust vested in or administered by the Administrator General in so far as vesting and in so far as the continuation of pending proceedings, legal or otherwise, are concerned.

Section 52 provides as follows -

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" When, in the performance of the duties of his office, the Administrator General has incurred any expense, or made himself liable to any claim or demand, and there is no fund out of which he may or can lawfully recoup or reimburse himself in respect of the same, then, on any Judge of the High Court certifying that such expense was properly and reasonably incurred,

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or that such liability was properly and reasonably undertaken as aforesaid, it shall be lawful for the Governor General to order that such expense shall be reimbursed out of, or such liability be assumed by, the General Revenue and Assets of the Island, and to sign warrants on the Treasury accordingly. The provisions of this section shall apply to the Deputy Administrator General in the same manner as they apply to the Administrator 10 General."

That section envisages a situation in which an expense has been incurred or a liability assumed by the Administrator General in the performance of the duties of his office and where the General Revenue will not be made available for reimbursement of the expenses or to assume the liability. Counsel for the appellant has urged that in such circumstances the reimbursement or the assumption of the liability must be from or by the Consolidated 20 Fund. He argues that as all commission, fees and remuneration payable to and receivable by the Administrator General under or in pursuance of the provisions of this Law are by s.49 required to be paid into the Treasury and form part of the General Revenue, the Consolidated Fund must be the fund for reimbursement of the expense or assumption of liability where the General Revenue is not available for this purpose. In effect, counsel contends that under the Administrator General Law 30 the State guarantees that it will make good any losses which an ordinary trustee would be liable to make good and does not in any circumstances place the incumbent of the office of Administrator General in the same position as a private trustee in respect of liability to make good such losses. This argument appears to me to be quite untenable having regard to the provisions of section 52 of the Law. In rejecting this argument, I have not 40 overlooked the fact that in successful proceedings brought under a Petition of Right arising out of a breach of trust, that is, a violation of an equitable obligation, recovery by the successful suppliant eventually came from the Consolidated Fund.

Counsel for the respondent during his examination of the Administrator General Law from its original enactment in 1873 through the stages of its various amendments to the present provisions

was at first inclined to the view that the words "out of his own pocket" in s.41 connote the pocket of the individual rather than that of the office and that the word "personally" appearing in the second proviso to s.36 connotes the office. However, counsel for the respondent upon reconsideration supported the view taken by counsel for the appellant as to the meaning to be put upon the words "out of his own pocket". As counsel for the respondent pointed out, under the 1873 Law, the Administrator General was an individual who was entitled to retain the commissions and fees he collected in the course of his duties as Administrator General and out of which he was required to pay himself, his staff (which he himself could select, engage and dismiss) and his office and other expenses in the course of his duties as Administrator General. He was required to enter into a substantial bond for the due performance of his duties and provisions similar to those now appearing as ss.36 and 41 were contained in the Law whereby, subject to the provisions of the Law, the Administrator General had as an individual to make payment in similar circumstances to those now contained in ss.36 and 41 of the Law. Subsequent to 1873, the Administrator General Law was amended whereby the Administrator General was not paid a salary and he no longer could select, engage or dismiss his office staff. He no longer paid his office expenses these being met out of public funds. All commissions, fees, and remuneration chargeable and paid to the Administrator General were now required to be paid into the Treasury. In such circumstances counsel for the respondent argued it would be expected that the State would now assume responsibility for the wrongful acts, omissions or defaults of its servant in the performance of his duties in relation to a trust vested in him and being administered by him.

It was also pointed out that in 1964 the requirement of the Law for a bond to be given by the Administrator General for the due performance of his duties was repealed. The reason for the repeal of this provision is not readily apparent. The repeal was made by way of an Order made under the authority of paragraph 5(a) of section 4 of the Jamaica (Constitution) Order in Council, 1962 (S.I. 1962 No.1550) whereby the Governor General was empowered by Order made at any time within a

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specified period "to make such adaptations and modifications in any Law which continues in force in Jamaica on or after the 6th August, 1962) or which having been made before that day, is brought into force after that day, as appears to him to be necessary or expedient by reason of anything contained in this Order."

The position of the Administrator General is in many respects similar to that of the Public Trustee in England under the Public Trustee Act, 1906. The Public Trustee under that Act is a public official constituted as a corporation sole. The Act not only provides for the Public Trustee to act as a trustee in relation to a trust but also (inter alia) to administer estates of small value. He is placed in exactly the same position as a private trustee with regard to the beneficiaries. By section 7 of that Act the Consolidated Fund of the United Kingdom is specifically made "liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee would be liable to discharge, except where the liability is one to which neither the public trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in that case the Public Trustee shall not, nor shall the Consolidated Fund be subject to any liability." 10 20 30

The State guarantee of losses which an ordinary trustee would be liable to make good is in addition to the liability of the Public Trustee as if he were a private trustee. This personal liability nonetheless exists although the Public Trustee is a corporation sole and although he is a public official appointed during pleasure. He may be paid a salary out of moneys provided by Parliament (s.8). It is to be noted that provision is made by s.14 of the Act for the making of rules for (inter alia) the security (if any) to be given by the Public Trustee and his officers. Provision is also made by the Act for the keeping of accounts, the investigation and audit of trust accounts. As in the case of the Public Trustee in England, proceedings by or against the Administrator General are expressly excluded from the provisions of that Part of the 40

Crown Proceedings Law 1958 (No. 68 of 1958), which relate to jurisdiction and procedure. (See s.19(3) of that Law.)

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No. 14

Judgment of  
Luckhoo J. on  
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Question

1st March 1969

(continued)

10 It will be observed firstly, that the Administrator General Law does not contain a specific provision similar to section 7 of the Public Trustee Act, 1906; that is a provision relating to a State guarantee. Secondly, that section places the Public Trustee in exactly the same position as a private trustee with regard to the beneficiaries as does s.30 of the Law in respect of the Administrator General with certain exceptions which are specified in the Law. In my opinion the concluding sentence of s.41 of the Law provides for a direction in the appropriate circumstances to be given by the court in its order for the Administrator General as an individual to pay a sum of money required to compensate any person, estate or trust for the consequences of any wrongful act or omission of the individual acting in his office as Administrator General. The circumstances occasioning the exercise of this power do not for the moment concern us. Suffice it to say that the learned trial judge in this case purported to give a direction as part of an Order made under the provisions of section 41. The individual against whom this direction was given has died since the appeal was brought. Can his estate be eventually made liable to pay the amounts directed to be paid? The answer to this question lies, I think, in the provisions of the Crown Proceedings Law, 1958 (No. 68 of 1958).

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40 By virtue of section 25 of the English Crown Proceedings Act, 1947, where in any civil proceedings against the Crown [which include civil proceedings to which any officer of the Crown as such is a party (s.38(4) of the Act)] any order is made by any Court in favour of any person against an officer of the Crown as such, a certificate in the prescribed form containing particulars of the order shall upon application of the successful party be issued by the proper officer of the Court. If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable and the appropriate Government Department is required to pay the person entitled or to his solicitor the amount appearing in the certificate to be due to him together with the interest, if any, lawfully due

In the  
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Judgment of  
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(continued)

thereon. By s.25(4) of the Act, no person is individually liable under any order for the payment by any officer of the Crown as such of any money or costs. A similar provision appears at section 21 of the Crown Proceedings Law, 1958. By section 40(2)(b) of the English Crown Proceedings Act, 1947, nothing in that Act, except as otherwise expressly provided, is to affect any liability imposed on the Public Trustee or on the Consolidated Fund by the Public Trustee Act, 1906. This preserves the liability of the Public Trustee individually as if he were a private trustee. There is no comparable provision in the Crown Proceedings Law, 1958. This is significant. The Crown Proceedings Law, 1958, is obviously modelled upon the English Crown Proceedings Act, 1947. The omission of a provision from s.34 of the Law, a provision similar to s.40(2)(b) of the English Act, must have been deliberate. The only conclusion to which I can come, having regard to what I consider is a deliberate omission in this regard, is that the Crown by reason of s.38(5) of the Law is liable to pay any money by way of damages or otherwise and any costs awarded against the Administrator General (who in any event is required by s.41 of Cap. 1 to be sued as such) and the individual liability under s.41 of the Administrator General Law, Cap. 1, to make payment is not saved.

Since the enactment of the Crown Proceedings Law in 1958, the Administrator General is not, despite the provisions of s.41 of Cap. 1, liable as an individual under any order for the payment by him as Administrator General of any money or costs made in any civil proceedings against the Administrator General as such.

That being so, the question whether the personal representatives of the deceased Mr. Tomlinson should be made party to this appeal does not arise. The appeal is therefore in my opinion properly constituted.

During the course of the argument, counsel for the appellant referred to the direction contemplated by s.41 of the Law (if that direction be construed as one affecting the individual) as a penal one and contended that it was not competent for the learned trial judge to make an order

containing such a direction without giving the Administrator General an opportunity of meeting the case against him with a view to the making of such an order. Counsel also contended that separate proceedings against the Administrator General in his position of an officer of the court might be more appropriate where the relief contemplated includes a direction of a penal nature. It may be pointed out, however, that a suit against a trustee for breach of trust is one for an equitable debt or liability in the nature of debt and not for damages or a penalty. The remedy is by way of account and is not in the nature of a penal remedy. See A.-G. v. Alford (1855) 4 De G.M.& G., 843 at p.851; Re Barclay, Barclay v. Andrew (1899) 1 Ch. 674 at p.683. It is a remedy by making the trustee restore the property with which he is chargeable. Re Collie, Ex p. Adamson (1878) 8 Ch. D. 807 C.A. at p.819.

Once the Administrator General is given the opportunity of meeting the complaint made under the provisions of s. 41 of the Law, it is competent for a direction as to compensation to be included in the court's order and no separate or special proceedings or procedure is necessary or contemplated by the provisions of that section.

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In the  
Court of Appeal

No. 15

Judgment of  
Luckhoo J.A.

7th March 1969

No. 15

JUDGMENT

IN THE COURT OF APPEAL

OF THE SUPREME COURT OF JUDICATURE, JAMAICA.

BETWEEN WILLOUGHBY ARTHUR  
VICKERS DAVIS Plaintiff-Appellant

AND THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of  
Charles Benjamin Vickers,  
deceased) Defendant-Respondent 10

IN THE MATTER of the Estate of  
CHARLES BENJAMIN VICKERS deceased late  
of Mount Edgecombe in the Parish of  
Westmoreland

AND

IN THE MATTER of the Administrator  
General's Law, Chapter 1 Section 41

In an action brought by the plaintiff  
Willoughby Arthur Vickers Davis claiming to be a  
beneficiary under a trust by the will of the late 20  
Charles Benjamin Vickers against the defendant  
the Administrator General of Jamaica as sole  
trustee at all material times under the said will,  
Mr. Justice Douglas found that the defendant had  
committed breaches of trust in the administration  
of the trust and ordered that the defendant restore  
to the trust fund out of his own pocket the  
following sums -

- (i) £90.12.8d charged as commission on  
receipts for pasturage, produce, 30  
salvaged material and rental;
- (ii) £2,810 overpaid to Mr. Andrew Abrahams  
as commission.

The defendant was also ordered to wind up the  
trust and pay to the beneficiaries the sum to  
which each is entitled and to personally pay the  
plaintiff's costs of the action to be taxed on

a party and party basis.

In the  
Court of Appeal

            
No.15

Judgment of  
Luckhoo J.A.

7th March 1969

(continued)

10 The plaintiff now appeals against the order of the learned trial judge in so far as he did not order a larger amount to be restored to the trust fund and did not order the plaintiff's costs to be taxed on a solicitor and client basis. The plaintiff also asks for certain ancillary orders to be made. The defendant has asked that the decision of the learned trial judge be set aside and that judgment be entered for him with costs.

20 At the time of the institution of the proceedings in the court below the office of Administrator General was held by Mr. E.C. Tomlinson. Mr. Tomlinson had been appointed to the office of Administrator General with effect from 22nd May, 1961. Subsequent to this appeal being brought but before the appeal came on for hearing on the 6th November, 1967, Mr. Tomlinson died. The Court desired to be satisfied that the appeal could properly proceed without joinder of the personal representatives of the estate of the late Mr. Tomlinson in view of the order made by the learned trial judge that certain specified sums be restored to the trust fund by the defendant "out of his own pocket". After considering the submissions made by counsel on both sides to the effect that there was no necessity for a joinder of the personal representatives of the deceased's estate to be made the Court came to the conclusion that the hearing of the appeal (and cross-appeal) could properly continue without joinder. I would like to mention that my own view after a careful examination of the matter is that since the enactment of the Crown Proceedings Law, 1958, the Administrator General is not, despite the provisions of section 41 of the Administrator General's Law, Cap. 1, liable as an individual under any order for the payment by him as Administrator General of any money or costs made in  
30  
40 any civil proceedings against the Administrator General as such. As an appendix to this judgment I have set out fully my views of this preliminary question.

Charles Benjamin Vickers, the testator died on the 14th January, 1923. During his lifetime he owned an agricultural estate known as Mount Edgecombe in the parish of Westmoreland. The estate contained

In the  
Court of Appeal

No. 15

Judgment of  
Luckhoo J.A.

7th March 1969

(continued)

some 1760 acres more or less and was held under a common law title. By his will dated 22nd July, 1910 the testator devised his property Mount Edgecombe to his children Alfred Vickers and Catherine Vickers during their respective lives with remainder over to the Administrator General upon trust to sell the same and divide the proceeds of sale equally between "all the lawful children alive at their decease of my late brother William Vickers and of my brothers the said Edward Vickers and Aubrey James Vickers as joint tenants." The testator then went on to make a devise of the proceeds of sale of the property to the lawful grandchildren of his brothers in the event of there being no children of his brothers alive at the date of the death of the survivor of Alfred and Catherine Vickers. The testator desired "that the said property Mount Edgecombe should if possible be retained in the family therefore I direct that the said property shall not be sold by the said Administrator General until at least six months after the decease of the survivor of them the said Alfred and Catherine Vickers unless he is requested to do so then by all the devisees and my brothers children or grandchildren as the case may be aforesaid and should the said Divisees decide to retain the said property without selling same I direct the said Administrator General to convey and transfer the same to them or as they shall instruct him to do in writing." No direction, authority or power was given the Administrator General under the will to postpone sale of the property other than for the purpose of the exercise of the option given the devisees to retain the property nor to continue any business carried on by the survivor of the life tenants on the property at the time of the latter's death. 10 20 30

During his lifetime the testator carried on the businesses of grazing cattle and producing lime juice, lime oil, pimento and logwood on the property. On the testator's death Alfred Vickers proved the will and entered into occupation of the property carrying on the same businesses as his father did. Alfred Vickers died on the 19th April 1945. His will was proved by his executor who died on the 17th December, 1958. The latter's executor to whom the legal estate passed was one Whitelocke, The surviving life tenant Catherine Vickers entered into occupation of the property upon the death of Alfred 40

10 Vickers and she carried on the businesses of grazing cattle and of producing some of the commodities already mentioned. She died on the 9th August, 1960. On the 18th August, 1960, Mr. W.J. Tomlinson, a solicitor, wrote informing the Administrator General of Catherine Vickers' death and in his letter enclosed a copy of the will of the late Charles Benjamin Vickers. Consequent upon the receipt of Mr. Tomlinson's letter the Administrator General, on or about the 8th September 1960, accepted and entered upon the administration of the trust. Upon the death of Catherine Vickers the persons beneficially entitled to the proceeds of sale of the property were Miss Alice Maud Vickers of New South Wales, Australia and Mrs. Hilda Margaret Davis, the plaintiff's mother. Mrs. Hilda Davis died on the 19th of March, 1962, having mortgaged her interest in the said property to the plaintiff and having assigned a two-thirds undivided share in the said interest to the plaintiff. The plaintiff is the sole executor proving the will of his late mother. Both the plaintiff and Miss Alice Maud Vickers are persons of full age.

20

The property was not sold until in or about the month of August, 1964, and then for the sum of £57,200.

30 The plaintiff's complaints against the defendant alleging the commission of numerous breaches of trust in the administration of the trust are set out in his statement of claim as follows :-

- 40
- " (1) Failed to provide the Plaintiff with any alternatively any adequate information concerning the administration of the estate notwithstanding requests to do so;
  - (2) Failed to account to the beneficiaries for the income from the said estate;
  - (3) Failed to supply the beneficiaries with any alternatively any adequate accounts relative to the estate; notwithstanding requests to do so;
  - (4) Failed to keep adequate or proper records and accounts of his administration;



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- (5) Failed to perfect his title to the said property, alternatively failed to obtain a registered title to the said property (as he ought in the premises to have done), alternatively failed to consult the beneficiaries as to the title to be offered upon sale (as he ought in the premises to have done);
- (6) Failed to take any or any adequate steps for the care maintenance preservation or management of the estate; 10
- (7) Failed to accept and act upon directions given to him by the beneficiaries as to the sale of the property;
- (8) Failed to take proper and adequate steps to advertise the sale of the property Mount Edgecombe;
- (9) Entered into a contract for the sale of the property without testing the market for the same adequately or at all; 20
- (10) Entered into a contract for the sale of the property subject to depreciatory conditions thereby failing to obtain an adequate price for the same;
- (11) Entered into a contract for the sale of the property at a price lower than he ought reasonably to have obtained for the same and lower than the price he would have obtained had he not committed the above-mentioned breaches of trust and any of them; 30
- (12) Failed to act as a prudent trustee remunerated for the performance of his duties, ought to have acted."

At the trial of the action the plaintiff further alleged the commission by the defendant of equitable fraud on the beneficiaries in the payment by the defendant to one Andrew Abrahams of the sum of £2,360 out of the proceeds of sale of the property as a commission on the sale of the property. 40

The Plaintiff claimed the following orders:-

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- "(1) 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 Defendant as the trustee of the said Will or by any other persons or person by the order or for the use of the Defendant and of the dealings of the Defendant therewith.
- 10 (ii) An account of the rents profits interest and income received by the Defendant or by any other persons or person by the order of for the use of the Defendant of the property for the time being subject to the trusts of the Will above mentioned Charles Benjamin Vickers deceased and of the dealings of the Defendant therewith.
- 20 (iii) An inquiry under what circumstances the Defendant negotiated the sale of the property known as the Mount Edgecombe Estate and to whom.
- (iv) 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.
- 30 (v) 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 Defendant have been possessed and received by the Defendant or by any persons or person by the order of or to the use of the Defendant.
- (vi) An injunction restraining the Defendant 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.
- 40 (vii) An order directing the Defendant 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

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aforesaid Will.

- (viii) An order for the Plaintiff to be paid such sums as shall properly be found to be due to him on the aforementioned accounts and inquiries.
- (ix) Damages
- (x) Costs
- (xi) Such further and other relief as may be just."

In addition the plaintiff prayed that the above mentioned sum of £2,860 be restored to the trust. 10

The defendant denied that he had committed any breach of trust in the administration of the trust. He claimed that he had in the circumstances acted honestly and reasonably in the discharge of his duties as trustee and if (which was not admitted) he committed any breach of trust in relation to the administration of the trust he ought fairly to be excused and relieved of personal liability.

Under the provisions of section 32 of the Administrator General's Law, Cap. 1 of the 1953 Revised Edition of the Laws of Jamaica it is obligatory on the holder of the office of Administrator General to accept and forthwith enter upon the duties of administration of any trust to which he is appointed except where the Supreme Court authorises him to refuse to accept the trust. Subject to the Law (Cap.1) the rights, duties, powers and liabilities of the Administrator General acting as trustee is the same in all respects as the rights, duties, powers and liabilities of any other trustee. The provisions of the Trustee Law, Cap. 393 are thereby made applicable to the Administrator General in his administration of a trust. The Trustee Law, Cap. 393 came into operation in 1897. The English Trustee Act of 1925 does not apply to Jamaica (see Solomon v Cook (1888) Stephens R. 1848). The plaintiff's action was brought, as the rubric discloses, under the provisions of section 41 of the Administrator General's Law, Cap. 1, which empowers any person interested in an estate or trust vested in the Administrator General to apply to the Supreme Court for an order requiring the Administrator General to 20 30 40

do, or refrain from doing an act in the management of the estate or trust in respect of which that person complains. It is provided by that section that the Supreme Court in such proceedings may make such order as the Court thinks fit and such order may direct that the Administrator General shall pay out of his own pocket any sum of money required to compensate any person, estate or trust for the consequences of any wrongful act or omission of the Administrator General.

10

There is no provision in the Administrator General's Law Cap. 1 comparable with that of section 2(4) of the Public Trustee Act, 1906, which prohibits the Public Trustee in England from accepting any trust which involves the management or carrying on of any business except in cases in which he may be authorised to do so by rules made under the Act (see The Public Trustee Rules, 1912, S.R. & O. 1912 No. 348, rule 7).

20

It is to be observed, however, that in the instant case the will does not contain any authority, direction or power to the Administrator General to manage or carry on any business in relation to the trust property. The plaintiff's main complaints against the Administrator General may be summarised as follows : there being no authority, direction or power under the will and no power by statute given the Administrator General to postpone the sale of the property he was in breach of trust when he omitted to sell or to take steps to sell the property after a period of one year had elapsed from the date he entered upon the administration of the trust; that he committed further breaches of trust when he failed to take effective steps to preserve and maintain the property in the condition in which the property was when he entered upon the administration of the trust whereby the price obtained nearly four years thereafter was much less than would otherwise have been paid resulting in a loss to the trust. The measure of that loss, the plaintiff contends, is to be calculated by reference to the price which would be expected to be obtained at the time of actual sale had the property been preserved and maintained in the condition in which it was when the Administrator General entered upon administration of the trust less such amount as would have been expended in preservation and maintenance of the property.

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The evidence, oral and documentary, discloses that upon the Administrator General accepting and entering upon the trust he sought to take possession of the property. Acting upon the recommendation of Mr. W.J. Tomlinson he caused one Herman Smith, a retired Inspector of the Poor, to be appointed his agent in relation to the property. As the trial judge found the document of authority given Smith was quite inappropriate to his position and it was not until February, 1961 some five months after appointment that Smith was appointed agent for the collection of rents on the property and provided with receipt books and rent return forms. It is not disputed that the accounts kept by Smith were quite sparse and unsatisfactory. Very little income appears to have been received by way of grazing fees or the sale of produce and this is not surprising since little effort was made to maintain the property. Although the Administrator General was apprised of the identity and whereabouts of the persons beneficially entitled to the proceeds of sale of the property and to income arising from the property he did not seek to ascertain whether the beneficiaries wished to retain the property without sale and to have the same conveyed to them. However, this omission on the part of the Administrator General is of little moment for it is not disputed that there was never any desire on the beneficiaries' part to retain the property without selling it. Of the two beneficiaries one was resident in England and the other an old lady of some 80 years was resident in Australia. Both appeared to be anxious to have the enjoyment of the proceeds of sale of the property and they so informed the Administrator General. It is common ground that at the time the Administrator General undertook and entered upon the administration of the trust the real property market in Jamaica was depressed. It was stated before us that the country was at that time approaching Independence and that investors, more especially foreign investors wished to see how the political situation would develop before purchasing real property of that nature in Jamaica. Jamaica achieved Independence on the 6th August, 1962.

The Administrator General when he was being pressed by solicitor for the plaintiff to have a speedy sale of the property effected replied

(letter dated 21st November, 1962) that the reason why the property was not at that time readily saleable was that there had been a slump in real estate transactions in Jamaica for some time and that although he considered this to be temporary properties of that size did not attract the prices they would normally realise. In the meanwhile the plaintiff and the Australian beneficiary through their solicitors repeatedly complained of the failure on the part of the Administrator General to provide them with information as to the progress of the administration of the trust and more particularly as to the failure to render a proper account of the income realised from the property. In his desire to have a speedy sale of the property effected at a good price the plaintiff sought without success to get the Administrator General to advertise the sale abroad - in the United States of America and in England. At the trial of the action the Administrator General was constrained to admit that advertisement abroad might have led to a speedier sale but it is to be observed that before us counsel for the plaintiff agreed that there was nothing to show that the Administrator General would have succeeded where Hamptons and Lord Ronald Graham had failed. As counsel for the Administrator General observed even the high powered sales campaign carried out by the real property agents Hamptons of England failed to obtain a better price. Hamptons had been engaged by the plaintiff in 1963 to endeavour to find a purchaser after the plaintiff's efforts to get the Administrator General to advertise abroad had failed.

I think it a fair inference from the evidence that it was well into the year 1962 before the Administrator General decided to put up the property for sale. He did not endeavour to get a valuation of the property until the 31st October, 1961. The valuation was supplied by Mr. Kirkham on the 5th January, 1962. Kirkham valued the property on the basis of an agricultural valuation, at £50,370. Conveyance of the property in the name of the Administrator General was effected on the 12th July, 1962. The first advertisement of a sale of the property appeared in the issue of the Daily Gleaner, a local newspaper, on the 21st July, 1962.

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The highest offer obtained as a result of the Gleaner advertisement, apart from one for £90,000 which was later withdrawn after the offeror had inspected the property, was £50,000. This the Administrator General considered to be too low as he did Kirkham's valuation of £50,370. The plaintiff likewise considered the offer of £50,000 to be too low. He felt that a figure of £70,000 would be probably nearer the true value but that if a sale could be effected at £60,000 this should be accepted (see letter of the 19th December, 1962 from plaintiff's solicitor to Administrator General). The plaintiff's view in this regard was no doubt influenced by the report of Lord Ronald Graham (who had inspected the property) placing a value of £70,000 on the property allowing for development potential for tourist development "once this beautiful property is cleared and opened up". Lord Ronald Graham explained in giving evidence that in good condition and running as an agricultural property the asking price would be at £75,000 and with development potential included, £85,000. He put a figure of £60,000 to £65,000 from an overseas buyer with the property in its neglected condition and stated that Hampton's had asked £70,000 but had only got interest at £65,000.

On the 25th January, 1963, the plaintiff's solicitor wrote the Administrator General as follows :-

"Dear Sir,

In the Estate of Charles Benjamin Vickers  
deceased

Further to my letter of the 19th ultimo, I have now received further instructions from my Client as a result of further events which have occurred in this Country.

My Client has instructed me to say that if the offer of £50,000 which you state has been received by you for the property, is still open, and provided no increased offer has been received in the meantime, he feels that this should now be accepted, and is quite confident that this course would be agreeable to Miss Vickers in Australia. My Client has a letter dated the 29th December 1962 from Miss Vickers in which she states :-

".....and am quite agreeable to leave the decision entirely in your hands, as I know you will do your best for our mutual benefit."

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10 In the event of this offer no longer being open, my Client considers, and that this would appear to be quite reasonable, that the property should be advertised for sale, not only in the immediate neighbourhood, but in North America, and this Country, as it would appear reasonable to assume that there are many people in both North America and this Country, who would be more than interested in a property of this nature.

20 My Client's decision has been prompted by the fact that very little progress has been made over a number of years, and he now feels that if a firm offer of £50,000 is still open, it is probably for better to accept this than to anticipate a greater figure in the future, which at the moment would appear to be somewhat indefinite.

I shall be pleased to hear from you in reply to this letter by return of post.

Yours faithfully,

Signed: "Stewart Green"

The Administrator General,  
Administrator General's Office,  
P.O. Box 458, Kingston, JAMAICA, West Indies.

By Air Mail "

30 On the 15th February, 1963 the plaintiff's solicitor confirmed the contents of his letter of the 25th January, 1963 and stated that the Australian beneficiary Miss Alice Vickers concurred with his suggestion of sale at a reduced figure. On the 4th April 1963, the Administrator General informed the plaintiff's solicitor that the offer of £50,000 was no longer open. On the 8th April, 1963, the plaintiff's solicitor wrote informing the Administrator General that the plaintiff,  
40 "disturbed at the continued delay" and in a further effort to avoid any further undue delay had on solicitor's advice instructed Messrs. Hampton's & Son of London to endeavour to find a buyer and



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that that firm had instructed their agent Lord Ronald Graham to endeavour to negotiate a sale. He asked that any offer received by these agents be considered by the Administrator General. A further letter dated 15th April, 1963 was written by solicitor for the plaintiff to the Administrator General.

In the meanwhile the plaintiff had been in correspondence with the Australian beneficiary informing her of his views and of the action he proposed to take. It is perhaps fair to say that the Australian beneficiary gave the plaintiff to understand that she was in general agreement with him in the action he had so far taken though it is not clear that she communicated to the Administrator General the measure of her agreement with the plaintiff's views. 10

Lord Ronald Graham visited the property shortly before the 4th April 1963 and in his report to Hamptons after describing what he was able to see of the property said - 20

"I have tried in my mind to weight all the pro's and con's - including the fact that absolutely top, clean well established pasture land in St. Ann can be bought around £50 per acre. I have also tried to give weight to future development possibilities both in Jamaica and in Westmoreland in particular. In addition there is increasing political pressure for Government compulsorily to acquire undeveloped or unused agricultural property for land-settlement - and Mount Edgecombe seems a sitting duck! I do not believe a local buyer would pay more than £45/50,000 top as it is today but an oversea buyer with a long term view, or who could offset development costs against a tax situation, might pay as high as £70/75,000. I would not, however, ignore the political trend and wait too long to find him. 30

May I stress that this report does not constitute a "valuation" of Mount Edgecombe but is my opinion based on what I have been able to see and the "information" I have been able to glean on a visit to the area plus my local knowledge. I have seen no Title nor plan of the property. 40

In my view this property would be worth advertising in America and Canada but it might also appeal to an Englishman (or Company) with the right sort of tax picture."

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10 On the 27th May, 1963, the plaintiff's solicitor wrote the Administrator General referring to the fact that he had heard nothing from him in reply to his letters of the 8th and 15th April, 1963, and reminding the Administrator General that other questions put to him in earlier correspondence still remained unanswered. He then addressed a number of questions to the Administrator General relating to the preservation, maintenance and income of the property. It is regrettable that satisfactory answers to these questions were not forthcoming. Beyond unsatisfactory and unhelpful statement of account there was nothing in the nature of a reply to the plaintiff's request for information. The  
20 plaintiff sought unsuccessfully to get the Administrator General to agree to pay Lord Ronald Graham & Co. a commission of 5% on the sale price whether or not such sale be on the introduction of a purchaser by the Company or its principal Hamptons. The Administrator General agreed to consider the payment of commission only in the case of the company introducing a purchaser with a firm offer which he was prepared to consider acceptable.

30 On the 16th and 20th November, 1963, the Administrator General caused a further advertisement to be put in the Daily Gleaner asking for offers to be submitted for the purchase of the property. Subsequently Hamptons received an offer of £60,000, the terms of payment of £30,000 immediately and the remaining £30,000 over 5 years with interest at 5% per annum being acceptable to the plaintiff but not acceptable to the Australian beneficiary who desired a cash sale for £50,000 or better. Eventually, an offer of £57,000 was received through  
40 Hamptons from a syndicate referred to during the evidence as the Carlyle-Clarke syndicate. The interests of that Syndicate were represented in Jamaica by Mr. R.A. Pinsent. This offer the plaintiff wished the Administrator General to accept and so purported to instruct him to accept. The Australian beneficiary at first without appreciating

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the conditions of that offer seemed to think that that offer should be accepted. Two of the conditions of that offer were that a registered title be given by the Administrator General and that vacant possession be given on payment of the balance of the purchase price, the balance of the purchaser price to be payable on issue of a registered title. The syndicate also required entry into possession on signing of the contract of sale when 10% of the purchase price would be paid. This figure was later raised to 33<sup>1</sup>/<sub>3</sub>%. 10

On the 19th June, 1964, the plaintiff's solicitor commenting on the Carlyle-Clarke offer stated that the only point on which there might be difficulty was that of title and that the plaintiff was ready to fall in with the suggestion that the title to the property be registered, it being understood that the expense of this would fall upon the plaintiff and his co-beneficiary in Australia who, according to the plaintiff's solicitor, also concurred. In fact the Australian beneficiary never did advise the Administrator General that she would be willing to bear one half of the cost of obtaining a registered title. Solicitor for the plaintiff then went on to canvass the Administrator General's views on the proposed sale generally and also whether he "would consider implementing part of the Will, whereby it states that you could at the request of the beneficiaries convey and transfer the property to them." The Administrator General in reply to this latter proposition stated that he was advised that the terms of the Will did not authorise such a transfer. In any event the Australian beneficiary clearly did not wish the property to be conveyed to her but desired a speedy cash sale and payment to her of her share of the proceeds of sale. 20 30

On the 7th July, 1964, one James Williams writing from England offered the sum of £50,000 for the property, half immediately and the remainder on completion, subject to contract. On Williams' return to Jamaica he went to see the Administrator General who informed him that he would have to better an offer (Carlyle-Clarke's) of £57,000 he had received. Williams promptly offered £57,200 subject to contract. This offer was accepted on the 27th July, 1964, subject to certain terms and 40

conditions which inter alia required acceptance of a common law title. Payment of the purchase price was to be £14,300 as a deposit immediately a further instalment of £14,300 on or before the 31st August, 1964, and the balance of £28,600 on or before the 31st December, 1964. Possession was to be given to the purchaser on payment of the second instalment.

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10 Subsequent to Williams' offer being accepted the Administrator General in replying to solicitor for the Carlyle-Clarke syndicate stated that it would probably take about 2 or 3 years for a registered title by plan (as required by that syndicate ) to be obtained.

20 Eventually, on the 8th August, 1964, the Administrator General informed solicitor for the Carlyle-Clarke syndicate that the property had been sold. In the meanwhile it would appear that the plaintiff's solicitor had received information from some source (other than the Administrator General) that the property had been sold. He called upon the Administrator General for information as to the details of sale including the price and conditions of sale. On the 11th August, 1964, solicitor for the Australian beneficiary wrote the Administrator General endorsing the latter's reasons for refusal of the Carlyle-Clarke offer and stating that he was glad to receive the Administrator General's telegram advising that the property had been sold. On the 13th August, 1964, the Administrator General wrote solicitor for the plaintiff giving him details of the sale to Williams and observed that under the agreement of sale -

30 "(a) the estate is relieved of having :-

- 40 (i) to give any warranty as to squatters;  
(ii) to share in the costs of carrying out any survey of giving a registered title which, as already pointed out to you would take a long time and would be expensive;

and

(b) the purchasers would have to pay the full purchase money within 5 months.

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The commission would be the same as that already approved by you, namely, 5% and so would be apparent that the net result means considerable savings for the beneficiaries."

The plaintiff took counsel's opinion and so informed the Australian beneficiary seeking the latter's support. The Administrator General on the 26th August, 1964, in circumstances which will be examined later, paid to one Abrahams the sum of £2,860, being 5% of the purchase price as commission on the sale. On the 3rd September, 1964, solicitor for the plaintiff wrote the Administrator General enquiring the name and address of the purchaser and asking that no steps be taken to implement the sale until the beneficiaries had given their instructions. On the 9th September, 1964, the plaintiff's solicitor cabled the Administrator General to the effect that unless immediate confirmation were received that his instructions were being followed he would apply for an injunction to restrain the sale, alternatively, for damages for breach of trust. The Administrator General on the same day advised the plaintiff's solicitor by cable that the sale was closed and that the purchaser had been put in possession. Efforts made by the plaintiff's solicitor to have the Administrator General recall the sale to Williams and to seek fresh offers were unsuccessful. Nevertheless, the plaintiff through his solicitor but without the concurrence of the Australian beneficiary pursued his intention of seeking tenders for the property. The only tender received was from the Carlyle-Clarke syndicate who now offered a sum stated by solicitor for the plaintiff to be in excess of the sum of £57,200 for which the property had been sold to Williams. This information was conveyed by the plaintiff's solicitor to the solicitor for the Australian beneficiary in an endeavour to get the latter to re-assess the position and to agree to join in the proceedings contemplated to be launched in Jamaica against the Administrator General. The Australian beneficiary declined to join in the contemplated proceedings expressing her agreement with the sale made to Williams.

It was not until the 23rd November, 1964, that the local solicitors for the plaintiff were

supplied with a copy of the Agreement of Sale and Purchase.

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10 This action was commenced by the plaintiff on the 1st December, 1964 and among the relief sought was an injunction restraining the defendant from completing the sale to Williams. On the 17th December, 1964, a consent order was made for a speedy trial on the undertaking inter alia of the defendant not to complete the sale. At that point of time the defendant had accepted from Williams one half of the purchase price and had handed over to solicitors for the purchasers the title deeds. After giving the abovementioned undertaking the defendant nevertheless accepted the balance of the purchase price and allowed the purchaser's solicitors to retain the title papers. It was in these circumstances that the hearing of the action proceeded. The Australian beneficiary was not made a party in the proceedings although she was  
20 interested in the relief sought, or some of it, having an interest in the trust which was under enquiry. However, no objection was taken in this regard.

30 It should be mentioned that during the course of the correspondence between the plaintiff's solicitors and the Administrator General complaint was made of loss of growing timber, sand and pimento from the trust property the allegation being that such loss was occasioned by the neglect of the Administrator General or his agents.

The action came on for hearing on the 25th June 1965 and lasted for several days. The trial judge in a reserved judgment found for the plaintiff and made the order already referred to. In reviewing the evidence and a number of principles of law the learned trial judge held that the defendant had committed a number of the breaches of trust -

- (a) failure to provide adequate information to the beneficiaries;
- 40 (b) failure to account for income arising from the trust property;
- (c) failure to supply adequate accounts;
- (d) failure to keep adequate or proper records and accounts;

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- (e) failure to take adequate steps for the care, maintenance, preservation and management of the property;
- (f) failure to advertise the sale of the property adequately;
- (g) failure to test the property market;
- (h) failure to act as a prudent trustee, remunerated for the performance of his duties, ought to have acted.

The learned trial judge also held that the Administrator General erred in paying a commission of £2,850(sic) to Abrahams and that Abrahams was only entitled to a sum, fixed by the judge at £50, for showing Williams over the property. 10

The learned trial judge held that the other alleged breaches of trust namely -

- (a) failure to perfect his title, or alternatively to obtain a registered title;
- (b) failure to act upon the beneficiaries' directions as to the sale of the property; 20
- (c) failure to obtain an adequate selling price by selling subject to depreciatory conditions;
- (d) failure to sell at the best price,

were not proved.

The learned trial judge considered that the price of £57,200 obtained for the property was very good indeed and that there was nothing which could lead him to the conclusion that the price would have been enhanced in any measure had the defendant maintained the property in the condition it was when he took it over. As regards income the learned judge considered that it was problematical what further income might have been received had more and better agents been employed and more money spent on maintenance. He observed that it would have been necessary to raise capital to do these things and that the main sources of loss were theft and plant disease. He was not 30

10 convinced that the increased maintenance costs and interest would not have swallowed up any additional income that might have accrued to the property. While not saying that the defendant was justified in neglecting to take proper steps to sell the property or in refusing to address his mind to its preservation he was of the view that as things turned out the trust fund was no worse off as regards price and current income. He therefore declined to order an account in respect of rents, profits, interest and income which might have been but for the neglect or default of the defendant have been possessed and received by the defendant. He considered that having regard to the manner in which Smith performed his duties it would serve no useful purpose to order the taking of an account in respect of income received and with this view counsel agrees.

20 The learned trial judge ordered that the defendant restore to the trust fund the sum he deducted for commission on receipts, other than commission on the proceeds of sale of the property and bank interest, on the ground that he applied neither time nor responsibility on such receipts. He found that the conduct of the defendant left the plaintiff no choice but to sue and that the accounts and enquiries he asked the Court to take were proper accounts and enquiries in that the defendant neglected to give him the information he properly sought.

30 The learned trial judge found that the defendant acted honestly but not reasonably and therefore he could not fairly be excused for the breaches of trust found proved. He ordered that the defendant do personally pay the plaintiff's costs of the action on a party and party basis.

The plaintiff complains that the learned trial judge has not gone far enough in finding against the defendant. His complaints may briefly be summarised as follows -

- 40 (1) The learned trial judge erred in finding that certain of the breaches of trust alleged were not proved.
- (2) The learned trial judge failed to apply the correct test in ascertaining whether or not there was a loss occasioned to the trust fund by reason of the breaches of trust committed by the defendant.



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- (3) The learned trial judge ought to have ordered an account of rents, profits, interest and income which but for the neglect or default of the defendant might have been possessed or received by the defendant or ought to have made an award in respect thereof.
- (4) The learned trial judge ought to have granted the plaintiff's prayer for an indemnity having declined to set aside the sale to Williams. 10
- (5) The Administrator General ought to have been deprived in entirety of remuneration.
- (6) By reason of the conduct of the Administrator General and his particular statutory position any interest payable ought to be by way of compound interest and not simple interest.
- (7) Exemplary damages ought to have been awarded against the Administrator General.
- (8) The plaintiff's costs should have been ordered to be taxed on a solicitor and client's 20 basis (a common fund basis) and not on a party and party basis.

On the other hand the defendant urges that he was not in breach of trust in the events that occurred and that if he did commit a breach or breaches of trust (which is denied) he acted at all times reasonably and bona fide and in the circumstances ought to be excused. He further urges in the alternative that no loss has resulted to the trust by reason of any such breach or breaches. He also 30 urges that the other relief sought by the plaintiff at the hearing of this appeal should be refused.

It is common ground that the trust contained in the will is for the sale of the property and payment of the net proceeds of sale to the beneficiaries subject to a direction to postpone the sale for a period of at least six months after the death of the surviving life tenant to allow the beneficiaries to exercise the option of taking the property without sale. It is also common 40 ground that the beneficiaries did not wish to retain the property without sale. On the submission of counsel for the plaintiff the

property ought to have been sold not later than one year after the Administrator General had entered upon the administration of the trust while on the submission of counsel for the defendant the period of delay permissible in effecting a sale of the property ought to be some six months longer than the period of one year as the will directed postponement of the sale for at least six months after the death of the surviving life tenant unless the option already referred to were earlier exercised, assuming that counsel's contention that in the events which occurred the defendant was not in fact in breach in not selling until July, 1964, is not upheld. The reason for a permitted period of delay in selling trust property directed by a trust instrument to be sold calls for no comment. I think that in this case having regard to the nature of the property the subject matter of the trust and the defendant's omission to advise the beneficiaries of the option given them to retain the property without sale the period of delay in selling (ignoring for the moment any question of the state of the property market and direction on an application to the Supreme Court) should not have been greater than one year after the Administrator General had entered upon the administration of the trust. He should therefore have sold the property not later than September 1961.

The general rule is that the court will give effect, as it requires the trustees themselves to do, to the intentions of a settler or testator as expressed in the trust instrument and does not arrogate to itself any overriding power to disregard or re-write the trusts Chapman v Chapman (1954) A.C. 429. Exceptionally, the court has allowed trustees to enter into some beneficial business transaction by way of management or salvage or in an emergency which was not a transaction authorised by the trust. If a trustee acts in contravention of the duties imposed upon him by a trust or neglects or omits to fulfil those duties he is guilty of a breach of trust but he may be relieved from liability for any loss sustained thereby to the trust estate. In the instant case the sale of the trust property was effected nearly four years after the defendant had entered upon administration of the trust. This was clearly not within the terms of the trust as contained in the Will.

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The burden is upon the defendant to account for the delay. He has sought to do so in the following way. The state of the property market was depressed and he considered it to be in the best interests of the beneficiaries not to sell until a fair price could be obtained. The plaintiff and the Australian beneficiary did not wish him to sell at a price less than £60,000 and in compliance with their wishes he did not sell the property earlier than he did as he was unable, as indeed were Hamptons and Lord Ronald Graham, to obtain that price. When pressed by the plaintiff to effect a sale at a price below £60,000, with the concurrence of the Australian beneficiary he sold to Williams in 1964 for £57,200 after rejecting an offer of £57,000 from the Carlyle-Clarke syndicate on the ground that the conditions of sale required by that syndicate were too onerous and were less advantageous to all of the beneficiaries than were the conditions of sale contained in the contract to Williams. The defendant says that he acted bona fide and reasonably and ought fairly to be excused for the breach, assuming that in the events which occurred he was in breach of trust. 10

The defendant has, in effect, put up a plea of necessity to excuse his delay in selling the property. Had he sought the sanction of the court to take such a course it seems unlikely that such an application would have met with success. Be that as it may, he ought to have sought the direction of the court before or at the expiration of a year after entering upon the administration of the trust, (see sections 39 and 40 of the Administrator General's Law, Cap. 1). Having failed to do so and having delayed in effecting a sale of the property as he did, I think that not only was he in breach of trust but that he did not act reasonably. 30

The next question is - has this breach of trust, described by counsel for the plaintiff as a fundamental breach, occasioned loss to the trust and if so to what extent? In dealing with this question it seems convenient to deal with the submission of counsel for the plaintiff that, having regard to the circumstances of this case and to the nature of the office of Administrator General, the defendant ought to be ordered to pay exemplary damages. The plaintiff has brought 40

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10 this action in his capacity as a beneficiary  
under the trust. His interest in the trust  
property is an equitable interest. He  
complains of breaches of trust. A breach of trust  
does not give a remedy in damages. It gives a rem-  
edy by making the trustee restore the property  
with which he is chargeable and account for  
profits which he has made or which he is to be  
taken to have made. The words "and the Court may  
therefore make such order as the Court thinks fit"  
in section 41 of Cap. 1 relate to the acts in  
respect of which complaint is made in this case -  
breaches of trust. There is therefore no warrant  
for an award of damages - exemplary or otherwise  
and I can see no distinction in principle in this  
regard between a private trustee and the  
Administrator General.

20 Returning now to the question whether the  
trust suffered any loss as a result of the  
defendant's breach of trust in neglecting to obey  
the direction given in the will for sale there is  
evidence to support the view taken by the learned  
trial judge, that the value of the property at the  
time of the commission of the breach - September,  
1961, was somewhat less than the price obtained in  
August, 1964, and indeed counsel for the plaintiff  
referred to the "fortuitous increase" in value  
of the property as a result of the delay in  
effecting a sale. Counsel's argument is that an  
30 even higher price would have been obtained on sale  
in August, 1964, had the defendant preserved and  
maintained the property during the intervening  
years and that the capital loss occasioned the trust  
is the difference between the price which would have  
been so obtained and the value of the property in  
September, 1961, less such amount as would properly  
have been expended for preservation and maintenance  
of the property. In any event, counsel urged, the  
defendant ought to have probed the Carlyle-Clarke  
40 offer of £57,000 after receiving the Williams'  
offer of £57,200 and had he done so it is likely  
that the Carlyle-Clarke syndicate would have  
offered considerably more than £57,200. Having  
failed to do so the price obtained by the defendant  
was not the best price obtainable so that there was  
a resultant loss to the trust.

It is not doubted that the defendant was in duty  
bound to take steps to preserve the trust property.

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It is true that there were losses of growing trees and sand due to theft but it is not unreasonable to conclude that on a property of the size of Mount Edgecombe this could hardly be avoided. There is evidence that the defendant upon receipt of reports of losses by theft sought to have steps taken to prevent or minimise such losses and it has not been suggested what other practical and more effective steps could have been taken by the defendant in this regard. Even if it be considered in the first place the defendant did not take all reasonable and proper measures to preserve and secure the property from loss by theft, it has not been shown that any loss was occasioned thereby to the trust - any diminution by reason thereof in the price paid by Williams.

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In so far as maintenance of the property is concerned complaint is made that there was total neglect or nearly so. What is a trustee's obligation in respect of trust property where the trust instrument directs a sale within a specified time but gives no direction, authority or power as to maintenance? A trustee has an inherent power to maintain trust property until the time arrives at which he must sell in accordance with the direction given in that regard by the trust instrument. Thereafter unless he is empowered, authorised or directed by the trust instrument, he can only do so without increasing liability for loss occasioned thereby to the trust estate (the Trustee Act, 1925 does not apply in Jamaica) if he obtains the sanction of the court or acts under statutory authority or acts with the concurrence of all beneficiaries being sui juris.

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It has not been urged before us that this was a case of salvage whereby the sanction of the court would have been obtained for expenditure to be made. What has been urged is that expenditure on maintenance would have resulted in a higher price being obtained for the property on sale thereby resulting in increased benefits for the beneficiaries. In these circumstances it does not appear that there was any duty cast upon the defendant to maintain the property after September 1961. But what of the defendant's failure to maintain the property before that date? There is no evidence of any loss to the trust by reason of his failure to do so. The trust is one for conversion

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into money with the object of enabling the property to be divided when the proper time arrived. Both beneficiaries could call upon the trustee to convey the property to them and then there would be a re-conversion into real estate but they did not so call. At what date did conversion in equity take effect? The sale was not to take place until the happening of a future event, the exercise by the beneficiaries of the option to retain the property without sale within a period of six months after the death of the last surviving life tenant. Until this contingency was ascertained the conversion would not take place. It is true that the beneficiaries were not made aware of the existence of the option until after the option period has determined but as already stated it turned out the beneficiaries never wished to retain the property without sale and indeed always indicated their desire to receive their respective interests in cash. In such circumstances it would not be wrong in my view to hold that in equity conversion took effect on the 9th February, 1961, that is to say six months after the death of the surviving life tenant. As from the 9th February, 1961, the beneficiaries had ceased to become entitled to the property as land and had thereafter become entitled to property as money. It was after this date - on the 8th September, 1961, that the Administrator General became in breach of trust by reason of his failure to carry out that direction contained in the trust which required him to sell the property and to distribute the net proceeds of sale to the beneficiaries. The date at which any loss was occasioned to the trust fund by reason of this breach of trust is the 8th September, 1961, but at that date what vested in possession in the beneficiaries under the trust was not the property as land but the property as money. As from the 8th September, 1961, they became entitled also to receive interest upon their unpaid shares in the property until such amounts have been fully paid as well as such profits that were received or receivable by the Administrator General from the property until actual conversion took place and interest thereon. I would allow simple interest at the rate of 5% per annum and not compound interest at a higher rate as asked for by the plaintiff for I cannot see that the award of compound interest or interest at a rate higher than 5% per annum is justifiable having regard to the circumstances of

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this case and to the principles under which compound interest is awarded.

In order to see whether any loss has resulted from the defendant'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. In determining the notional proceeds of sale at 8th September, 1961, 10 one must ascertain the market value of the property at that date. Counsel for the plaintiff contended that a valuation of the property should contain an amount for development potential as at some time in the future the part of Jamaica in which the property is situate might well prove to be an attraction for the tourist industry. I think that facts should be preferred to prophecies and to speculations about what might be at some indeterminate time in the future. I would treat the property purely as an agricultural 20 property as indeed it was and still is and the property should receive an agricultural valuation accordingly. In the absence of any better evidence as to its value at the 8th September 1961, I would use Kirkham's valuation of £50,370 made in early 1962 as a basis for ascertaining the value of the property at 8th September 1961. Indeed Lord Ronald Graham's estimate of the value of the property at that time "in the fifties" - which I take to mean between 30 £50,000 and £60,000 is not in conflict with the use of Kirkham's valuation as such a basis. The available evidence does not disclose that between the 8th September 1960 (the date on which the Administrator General accepted and entered upon the administration of the trust) and the 8th September 1961, the condition of the property deteriorated to any significant extent. The notional net proceeds of sale at the material date (8th September 1961) when set off against the net proceeds of sale actually obtained 40 would show that no capital loss has been occasioned the trust by reason of the defendant's breach of trust. Had there been capital loss the question whether he ought to be made to restore to the trust any such loss from his own pocket would have arisen. However, I rather think that since the enactment of the Crown Proceedings Law, 1958, such a question would be merely academic.

It was urged by counsel for the plaintiff that the Administrator General shut his eyes to the

Carlyle-Clarke offer and omitted to probe that offer after Williams' offer was made. As the learned trial judge observed there appears to be no reported authority to the effect that a trustee is required to probe a lower offer. In the circumstances and having regard to the terms stipulated by the Carlyle-Clarke syndicate already mentioned I think that the Administrator General acted in this regard with proper prudence and that the sale to Williams cannot be challenged on this ground. It was submitted on behalf of the plaintiff that the defendant was required by law to maintain and manage the property until a sale was effected and is therefore accountable not only for any profits he did receive or ought to have received up to the time he should have sold the property under the direction given in the trust but also for any profits he did receive or ought to have received from that time until the date of the sale. As I have already said my view is that the defendant is not accountable for any profit he did not receive after the 8th September 1961, as there was no duty under the trust to maintain and manage the property after that date.

As regards income the trust fund is entitled to amounts actually received for pasturage, produce, salvaged material and rental as awarded by the learned trial judge and for the reasons I have endeavoured to give no account can be taken of income which might have been obtained subsequent to the 8th September 1961, had the defendant maintained and managed the property as if the will had so empowered, directed or authorised him - in effect income which might have been obtained by an improper or unauthorised use of the trust property.

The plaintiff has asked that an order be made indemnifying the plaintiff against the risk of action brought against the plaintiff in respect of the property the learned trial judge having refused to set aside the sale to Williams. We have been informed by counsel for the plaintiff that since the sale to Williams the Carlyle-Clarke syndicate has acquired a portion of the property from the person on whose behalf Williams made the purchase. Four years have now gone by since the sale to Williams and there has been no suggestion that the Carlyle-Clarke syndicate contemplates any action against the plaintiff. In the events that have occurred I think it is so very unlikely that the Carlyle-Clarke syndicate would bring any action against the plaintiff that the plaintiff prayer for an order for an indemnity should be refused. In any event even if any such action

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were launched in the light of the evidence adduced the chances of success on the part of the Carlyle-Clarke syndicate are so infinitesimal that it would in my view be quite wrong to make such an order and indeed it does not emerge from the evidence that there has ever been a binding contract of sale and purchase of the property between the Carlyle-Clarke syndicate and the plaintiff or anyone else.

In respect of the order for costs as between party and party made by the learned trial judge researches of counsel have failed to discover a case where an order for costs as between solicitor and client (a common fund basis) has been made against a trustee. I can see no good reason for departing from what appears to be the general rule in this regard and would reject counsel's submission that the proper order for costs should be on a common fund basis 10

Counsel for the plaintiff has also urged that the learned trial judge erred in allowing the defendant to retain commission deducted from the trust fund on receipts from - 20

- (i) the proceeds of the sale of the property;
- (ii) bank interest

Section 48 of the Administrator General's Law, Chapter 1, provides as follows -

48. (1) The Administrator General shall be entitled to a commission of six pounds per centum on all payments made by him in respect of debts, liabilities, cost of management, and other similar charges, and on all payments in respect of dividends, interests, rents, or other produce, or receipts of any estate or trust, and also on all property, real and personal, conveyed, assigned or distributed by him, including the final transfer of the corpus of any trust fund, or of any part thereof. Such commission shall be the remuneration for the time and responsibility of the Administrator General in the general administration of the estate or trust and the estate or trust shall not be subject to any other charge in respect thereof. 30 40

(2) Any expenses in respect of any other matters, including travelling expenses relating to any estate or trust, may be charged against the estate or trust, in the same way, and to the same extent, that such expenses might be charged under similar circumstances by any

administrator executor, trustee or guardian, other than the Administrator General."

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10 Counsel for the plaintiff has submitted that entitlement to commissions 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. 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. On the question of commission chargeable for receipts for pasturage, produce, salvaged material and rental obviously some amount of time was taken and some degree of responsibility displayed in the receipts and I regret that I must differ from the finding of the learned trial judge in this regard. However, the commission should be limited to receipts taken up to the 8th September, 1961, at which date the Administrator General became in breach of trust.

30 Counsel for the defendant has submitted that the Administrator General should not have been ordered to restore to the trust fund the amount of £2,860 paid to Andrew Abrahams as commission on the sale of the property to Williams less the sum of £50 as being the amount to which Abrahams was entitled for his services in showing Williams over the property. Counsel for the defendant urged that the real question was whether the Administrator General did reasonably believe that Abrahams had introduced the purchaser Williams and had thereby earned his commission?

40 Counsel for the plaintiff, on the other hand, contended that having regard to Williams' evidence of his conversations with Carlyle-Clarke in London the stimulus for Williams' offer came from Carlyle-Clarke and that Abrahams could not be said to have introduced Williams to the property. While there is nothing to suggest that the Administrator General ever was made aware of any contact between Williams and Carlyle-Clarke prior to the payment of the commission to Abrahams it does seem that Abrahams no more than casually mentioned Mount Edgecombe in reply to a casual enquiry by Williams about the availability of agricultural properties for sale in the Island and

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that there the matter rested in so far Abrahams was concerned until after Williams had spoken in England with Carlyle-Clarke and had thereafter approached the Administrator General about the possibility of his acquiring Mount Edgecombe. Then it was that Williams mentioned the name of Abrahams as having spoken of Mount Edgecombe as a property on the market. Without making any enquiry as to what Abrahams had done in order to interest Williams as a potential purchaser the Administrator General seems to have considered Abrahams as a person entitled to payment of commission in making the sale and accordingly paid him the sum of £2,860 being 5% of the sale price. 10

Counsel for the plaintiff has attacked not only the legality of the payment of a commission to Abrahams but has also impeached the bona fides of the Administrator General in making the payment on the ground that the payment of 5% as commission was contrary to the general practice of the Administrator General's Office and that payment of the commission was almost immediate upon receipt of Abrahams' account rendered in contradistinction to the tardiness in the administration of the trust and to the beneficiaries' difficulty in getting information in connection therewith. I do not think that the evidence, oral or documentary, supports the challenge as to the Administrator General's bona fides in this regard. However, it clearly emerges that the Administrator General did not take the necessary steps to ascertain Abrahams' true position in the sale to Williams and had he done so he ought readily to have seen that Abrahams had in fact done nothing to justify a conclusion that he had introduced Williams to the property. I think the learned trial judge was right in holding that Abrahams was not entitled to a commission on the sale of the property and that the amount paid him should be restored to the trust fund by the Administrator General less the sum of £50 for his services in showing Williams over the property in July 1964 at the Administrator General's request. 20 30 40

In the result I would dismiss the appeal with costs to be taxed or agreed and would vary the order made by the learned trial judge by deleting therefrom the direction that the defendant do restore to the trust fund the sum of £90.12.8d. charged as commission on receipts for pasturage, produce, salvaged material and rental.



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requested to do so by the devisees. The question of retention is only important to show that the Administrator General's duty to take steps to sell arose roughly around March 1961. On 31 October 61 the Administrator General requested Mr. Raymond Kirkham to value Mount Edgecombe. On 5 January 62 Mr. Kirkham forwarded his valuation of £50,370. The Administrator General first advertised the property for sale in the local press on 21 July 62, and thereafter on 28 July 62, 11 August 62, 16 November 63, 20 November 63. Lord Ronald Graham, local agent of Hampton & Sons of England, put the value of the property as a purely agricultural estate in the early part of 1963 at £45,000 to £50,000; but at the trial he said he would reasonably hope to obtain from an overseas buyer £60,000 - £65,000. The Administrator General sold to Mr. James Williams in July 1964 for £57,200.

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At the time of that sale the plaintiff was willing to sell to Carlyle-Clarke (C.C.) syndicate for £57,000, coupled with conditions e.g. registered title, and vacant possession to be given, which the trustee considered onerous and in which the trustee had the support of the Australian beneficiary. The Plaintiff complains nevertheless that the learned trial Judge

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(a) failed to consider whether the price obtained by the defendant for the trust property was the best price that could have been obtained for it,

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(b) failed to hold that the sale was effected on depreciating conditions, and

(c) ought to have held that the price obtained upon the sale of the trust property represented neither the full value nor the best price he could have obtained for the property.

Counsel for the plaintiff has urged that the Administrator-General having obtained Williams' offer ought to have gone back to the Carlyle-Clarke Syndicate seeking an offer higher than Williams' and, without their conditions. I daresay had he done that and obtained and accepted any figure higher than £57,200 the plaintiff would have been perfectly happy. Taken to its logical conclusion that argument

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that the trustee should have hopped from one to the other of two offerors until one or the other dropped out.

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The learned trial Judge considered Selby v. Bowie (1863 4 Giff 300, Harper v. Hayes, 2 De Gex Fisher & Jones 542 and Buttle v. Saunders (1950) 2 AER 193 where at p.195 Wynn-Parry J. said:

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"It is true that persons who are not in the position of trustees are entitled, if they so desire, to accept a lesser price than that which they might obtain on the sale of property, and not infrequently a vendor, who has gone to some lengths in negotiating with a prospective purchaser, decides to close the deal with that purchaser, notwithstanding that he is presented with a higher offer.

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It redounds to the credit of a man who acts like that in such circumstances. Trustees, however, are not vested with such complete freedom. They have an over-riding duty to obtain the best price which they can for their beneficiaries. It would, however, be an unfortunate simplification of the problem if one were to take the view that the mere production of an increased offer at any stage, however late in the negotiations, should throw on the trustees a duty to accept the higher offer and resile from the existing offer. For myself, I think that trustees have such a discretion in the matter as will allow them to act with proper prudence."

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The learned Judge then found that the defendant acted honestly and reasonably in regard to the Carlyle-Clarke request for registered title and vacant possession and said

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"On the issue whether the price of £57,200 was the best price obtainable for the beneficiaries, it must be recalled that 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."

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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. The learned trial Judge found that the defendant advertised "in an inadequate way." The fact that I may have found otherwise, however, is no good reason for saying his finding was wrong or unreasonable.

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Has the estate suffered loss?

The trustee was found to have committed several breaches of trust and among these were: failure to give information to the beneficiaries, failure to account adequately and (per Douglas J)

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"It is in regard to his duty to maintain, preserve and manage the property that there was such lamentable failure on the part of the Administrator General. He says he had a cattle property without cattle and no money to spend on its upkeep. What did he do about it? He had no scheme for exploiting the income bearing resources of the property. He failed to ensure that his agents were sufficient in number and quality to protect the trust estate. He took no advice from experts, nor did he apply to the Court, a course which should have been obvious to him."

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He later found them inexcusable in these words "In any trustee, so many failings would be deplorable - in a public trustee for remuneration, they constitute unreasonable conduct and are inexcusable."

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It is contended on behalf of the plaintiff 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

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 nor 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)

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10           The learned trial Judge asked himself the  
question: "In regard to loss to the trust fund, how  
does the matter stand?" He went on "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 to  
£90,000 - as the value of Mount Edgecombe in 1960  
and 1962. The fact is that when at last the  
20   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  
30   the Administrator General maintained the property in  
the condition it was when he took it over.

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40           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.

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."



In the Court  
of Appeal

No.16

Judgment of  
Shelley J.A.

7th March  
1969  
(continued)

The matter of the adequacy of the price obtained for the property in my view calls for no further comment except to make it plain that had it been sold for less than what might have been got at the time when the duty to sell ripened then the trustee would have been liable for the difference (see Earl of Gainsborough v. Watcombe Terra Cotta Clay Company, 53 L.T.R.116). But what of the income? Mr. Da Costa submits and Mr. Davies 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. approach was realistic and on the evidence his conclusion is justified.

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I turn now to the question of the Administrator General's remuneration on the proceeds of the sale. Mr. Davies contends that he ought to have been deprived of his remuneration; that the judge erred in failing to apply his own proposition to remuneration on the proceeds of the sale. By section 48 (1) of Cap. 1 "The Administrator General shall be entitled to a commission of Six pounds per centum on ..... all payments in respect of dividends, interests, rents, or other produce, or receipts of any estate or trust, ..... Such commission shall be the remuneration for the time and responsibility of the Administrator General in the general administration of the estate or trust and the estate or trust shall not be subject to any other charge in respect thereof."

30

40

Section 41 Cap.1 gives a person interested in an estate power to apply to the Court for an order requiring the Administrator General to do or refrain

from doing something if the Administrator General improperly acts or omits to act in the management of an estate or trust vested in him or the duties of which he shall have entered upon; the Court may thereupon make such order as the Court thinks fit. It is this section which provides "such order may direct that the Administrator General shall pay out of his own pocket any sum of money required to compensate any person, estate or trust for the consequences of any wrongful act or omission of the Administrator-General."

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(continued)

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.

It is as well to deal at this stage with the other questions of remuneration which are the subject of the respondent's application for variation of Douglas' J. order, namely:

- (a) £2,810 overpaid to Mr. Andrew Abrahams as commission.
- (b) £90.12.8 charged as commission on receipts for pasturage, produce, salvaged material and rental.

On the former the judge said this:

"Turning now to the payment of commission to Mr. Abrahams, I hold that the conversation in October, 1963, at the Port Antonio fishing tournament was a casual one between two persons sharing a common interest in farming. The absence of further contact between Mr. Abrahams and Mr. Williams bears out the

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casual nature of their talk and leads me to conclude that Mr. Abrahams did not introduce Mr. Williams as a purchaser. On these issues in which Mr. Abrahams is involved, I regret to say that his own evidence is unreliable and unworthy of belief. Regarding his showing Mr. Williams over Mount Edgecombe, it cannot be held that Mr. Abrahams was employed for the purpose of persuading Mr. Williams to confirm his offer. I hold that Mr. Abrahams is not entitled to the commission he received, although he is entitled to reasonable remuneration for such duties as he was engaged to perform, namely to show Mr. Williams over Mount Edgecombe. The sum of Fifty Pounds is, in my view, ample remuneration for those duties, and that is all the Administrator-General should have paid." 10

Mr. DaCosta submits that the judge's approach was mistaken; that the question he had to direct his mind to was "did the Administrator General reasonably believe that Mr. Abrahams had introduced the purchaser Williams and thereby earned his commission?" He seeks to support this by the evidence that it was the purchaser Williams who introduced Abrahams' name and he contends that there is nothing to suggest that the Administrator-General acted improperly on insufficient information to pay Abrahams. 20

Plainly this was a question of fact for the learned trial Judge. Having seen the witnesses and heard the evidence he made a specific finding that Abrahams did not introduce Williams; he found Abrahams "unreliable and unworthy of belief". With those findings I am not prepared to interfere. Clearly upon that flimsy evidence of introduction of Williams the Administrator-General could not hope to be held to have acted reasonably in paying that commission to Abrahams. 30

As to the latter here again it was a question of fact for the judge. He found "that on these items he (the Administrator-General) applied neither time nor responsibility". Was this a reasonable finding? It is true that in the general administration of the estate the defendant was in breach, albeit without loss to the estate, but it is because some time and responsibility was applied that the sums in respect of which this commission was paid were collected. I do not think this finding is supported by the evidence. 40

I now come to the question of interest.

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of Appeal

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Shelley J.A.

7th March  
1969  
(continued)

10 Mr. Davies contends that by reason of the  
conduct of the Administrator-General and his  
position any interest going should be at a compound  
rate and not simple interest and cites in support  
In re Emmett's Estate (1881) 17 Ch. 142. That was  
a case in which a trustee held certain funds with  
obligations to accumulate and she was held liable  
for the fund with compound interest. Mr. DaCosta  
submits that the instant case is not one calling for  
award of compound interest since no fraud is alleged  
and there was no serious misconduct by the trustee  
in the sale of the property to which the quantum of  
interest is specifically referable. He quotes in  
support Snell's Equity 26th Edition p.300.

20 The general rule appears to be to order simple  
interest, compound interest seems only to be  
considered in cases of what is called wilful default.  
In Attorney General v. Kohler, 9 H.L.C. 654 the  
question was whether an administrator, (who was a  
nominee of the Crown) who had wrongly paid over the  
estate under the intestacy was liable when he had to  
account to the next of kin for the principal to pay  
interest. The money had been paid away in error  
under a mistake of fact, there being no question of  
fraud; Lord Cranworth in his opinion at p.680 said:  
"His liability would have arisen from his having  
improperly paid over to the Crown money belonging  
to the next of kin."

30 In re Hulkes (1886) 33 Ch.D. 552 at p.557 Chitty, J.  
commented on those words of Lord Cranworth as  
follows: "He does not mean that there was any  
sinister intent, but that the payment had been made  
in a mistaken view of the law, or more probably in a  
mistaken view of the facts."

In that type of case the common practice is to  
order the trustee to pay simple interest.

40 In Burdick v. Garrick (1870) 5 Ch. Ap. Cases  
233 part of the headnote reads "An agent, who was a  
solicitor in London, held a power of attorney from  
his principal in America to sell his property and  
invest the proceeds in his name. The agent received  
certain moneys under the power and paid them into his  
own bankers to the general account of his firm. The  
principal died in 1859 intestate. In 1867 his widow

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(continued)

took out administration to his estate, and in 1868 she filed a bill against the agent for an account:- Held, there being no proof that the agent had made any interest or profit by the money in his hands, he was charged with simple interest at £5 per cent. Compound interest will only be given against an accounting party when he has employed the money in business." Lord Hatherley L.C. in his judgment said

"Then comes the question of interest. The Vice-Chancellor has directed interest to be charged at the rate of 5 per cent; which appears to me to be perfectly right, and for this reason, that the money was retained in the defendants' own hands, and was made use of by them. That being so, the Court presumes the rate of interest made upon the money to be the ordinary rate of interest, namely 5 per cent.

10

I cannot, however, think the decree correct in directing half-yearly rests, because the principle laid down in the case of Attorney General v. Alford (4 D.M. & G.843) appears to be the sound principle, namely, that the Court does not proceed against an accounting party by way of punishing him for making use of the plaintiff's money by directing rests, or payment of compound interest, but proceeds upon this principle, either that he has made or has put himself into such a position as that he is to be presumed to have made, 5 per cent., or compound interest, as the case may be."

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Sir G.M. Giffard, L.J., in his judgment said

"Then as regards the question of compound interest, no doubt the principle applicable to that point was very clearly laid down by Lord Cranworth in Attorney General v. Alford (ibid). All that this Court can do as against a defendant in such a case as this by way of penalty is to make him pay the costs of the suit. The question of interest clearly depends upon the amount which the person who has improperly applied the money may be fairly presumed to have made. If he has applied it to his own use, I think it is quite right to say that he ought never to be heard to say

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that he has made less than 5 per cent., and that that is a fair presumption to make; but if you seek to go further than that, and to charge him with more than 5 per cent you must make out a case for that purpose ..... there being neither proof nor presumption that compound interest was made, in my opinion compound interest ought not to be charged."

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Judgment of  
Shelley J.A.

10        In re Davis (1902) 2 Ch.314 was another case  
in which a trustee was charged with interest at 5  
per cent. In more recent times in Gordon v. Gonda  
(1955) 1 W.L.R.885 at p.896 Evershed, M.R. referred  
to "the ordinary rule which has undoubtedly been  
applicable for a great many years - the rule that  
where a trustee is chargeable with interest as for  
breach of trust, the rate of interest with which  
he is charged is 5 per cent., unless his conduct is  
such (as is not the case here) that he is made to  
pay compound interest. That rule as to interest  
20        dates back to cases like Burdick v. Garrick (ibid)  
and In re Davis (ibid)."

7th March  
1969  
(continued)

30        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 defendant should pay interest on  
the sums ordered to be refunded at the rate of  
5 per cent., from the date each was paid out.

On the question of costs Mr. Davies urges that  
the learned trial Judge's order for costs on the  
usual party and party scale should be set aside  
and an order for costs on solicitor and client, now  
common fund, scale should be substituted. He says  
this is eminently a case in which common fund costs  
ought to be awarded having regard to

- 40        (a) the gravity of the breaches of trust;  
(b) the conduct of the defendant generally;  
(c) the fact that he was a public servant;  
(d) the defence raised was never justified.

In the Court  
of Appeal

—————  
No.16

Judgment of  
Shelley J.A.

7th March  
1969  
(continued)

It is significant that no case has been found in which a Court of equity has ordered solicitor and client costs against a trustee. Costs are undoubtedly a matter of discretion and a party who is awarded costs of the action may be ordered to pay costs of any separate issues on which he has failed. (Odgers' Pleading & Practice; 19th Edition, p.405). Mr. DaCosta contends that the plaintiff has failed in what he terms "the real burden of this action" i.e. to upset the sale. Among the numerous items of the plaintiff's claim was an injunction restraining the defendant from completing the sale and an order directing the defendant to dispose of the property in accordance with directions to be given by the beneficiaries. On these issues he failed and, it seems, could have been ordered to pay the defendant's costs in respect of those issues. The learned trial Judge said "Lastly, on the ground of his mis conduct, the defendant must personally pay the plaintiff's costs." Clearly this was a considered decision. I am unable to find any reason for disturbing that decision reached in the exercise of the Judge's discretion. Indeed I agree with Mr. DaCosta's view that the learned trial Judge was generous to the plaintiff in the matter of costs.

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Finally, I find no merit in the plaintiff's contention that the Judge having refused to set aside the sale to Williams ought to have ordered the defendant to indemnify the plaintiff against the risk of action brought by the Carlyle-Clarke syndicate against the plaintiff. Mr. Davies concedes that although the danger exists it is minimal because the Carlyle-Clarke syndicate has in fact entered into contract with Mrs. Dixon who stood behind Williams and they split the property between them. In addition the plaintiff persisted in his arrangement with Hampton & Sons in the face of a clear stand by the Administrator-General that only a person introducing the purchaser would be paid commission.

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I agree with the order proposed by Luckhoo, J.





In the Court  
of Appeal

—  
No.17

Judgment of  
Luckhoo, J.A.

11th March  
1969

(continued)

at the date the sale actually took place, and with the property in no worse condition than it was on the death of Catherine Vickers, that is to say with the property in the condition it would have been in had there been no breaches by the defendant."

The arguments advanced by counsel for the appellant on this ground of appeal has already been dealt with in the course of my judgment.

In any event the learned trial Judge in his order after directing that certain specific amounts which he considered had wrongly been paid out of the trust fund should be restored to that fund ordered and adjudged that the defendant wind up the trust - using the words of the order - "and pay to the beneficiaries the sum to which each is entitled." This would obviously include all sums by way of interest payable by the Administrator-General and interest is payable by the Administrator-General on the beneficiaries' shares which remain undistributed even beyond the date of sale until the shares have been paid. That is so by operation of law and is implicit in the order of the learned trial Judge. Indeed counsel for the appellant seems to have accepted this when he submitted at the hearing of the appeal that by reason of the defendant's conduct and his particular statutory position any interest payable ought to be by way of compound interest and not simple interest. Perhaps an example may suffice to illustrate that the trial Judge's order in this regard was not defective. Had the defendant sold the property on or about the 8th September, 1961, for the sum of £50,370 he would not have been in breach of his duty to sell and if instead of proceeding to distribute the net proceeds of sale he had neglected to do so the order made by the learned trial Judge would clearly have been appropriate to that situation. There would have been no loss occasioned to the trust fund by reason of any neglect of the defendant to sell at the appropriate time for the sale would have been within the permissible period. Nevertheless interest would have become payable upon the net proceeds of sale if there were neglect to distribute. Similarly, the sale at the higher figure of £57,200 in and about August, 1964, cannot render the trial Judge's order defective in this regard.

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In the Court  
of Appeal

No.18

Judgment of  
Moody, J.A.

11th March  
1969  
(continued)

I might mention that we had an opportunity of referring to the notes of the previous occasion and it would appear that both parties made application in relation to costs. The decision was that they should abide the event. I had no recollection of it until we had reference to the notes. But it seems that each side made application in respect of costs.

No.19

Order granting  
final Leave to  
Appeal to  
Her Majesty  
in Council

11th March  
1969

NO. 19

ORDER GRANTING FINAL LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL

10

B E T W E E N : WILLOUGHBY ARTHUR VICKERS-  
DAVIS Plaintiff/  
Appellant

- and -

THE ADMINISTRATOR Defendant/  
GENERAL Respondent

UPON the Plaintiff/Appellant's Notice of Motion Applying for final leave to appeal to Her Majesty in Council and UPON hearing Dr. Lloyd Barnett of Counsel instructed by Mr. Raymond Sanguinetti-Steel of Myers, Fletcher & Gordon Solicitors for the Plaintiff/Appellant and Mr. Roald Henriques of Counsel instructed by Mr. Douglas Brandon of A.E. Brandon & Company Solicitors for the Defendant/Respondent IT IS HEREBY ORDERED that:-

20

1. Final leave is hereby granted to the Plaintiff/Appellant to appeal to Her Majesty in Council.
2. The costs of and incident to this application be costs in the cause.

30

REGISTRAR

BY THE COURT

FILED by MYERS, FLETCHER & GORDON of No.36 Duke Street, Kingston, Solicitors for and on behalf of the abovenamed Plaintiff/Appellant.

EXHIBITSTHE LAST WILL AND TESTAMENT OF  
CHARLES BENJAMIN VICKERS

## EXHIBITS

The last Will  
and Testament  
of Charles  
Benjamin  
Vickers  
22nd July  
1910  
with copy  
Probate  
6th February  
1923

10 THIS IS THE LAST WILL AND TESTAMENT of me  
CHARLES BENJAMIN VICKERS of Mount Edgecombe in the  
Parish of Westmoreland in the Island of Jamaica  
Esquire I DIRECT payment of all my just debts  
funeral and Testamentary expenses I APPOINT my  
natural son Alfred Vickers of Mount Edgecombe  
aforesaid the EXECUTOR AND TRUSTEE of this my Will  
but should the said Alfred Vickers predecease me or  
refuse or become incapable to act then I appoint the  
Administrator General for Jamaica for the time  
being the Executor and Trustee of this my Will

(sic) I BEQUEATH the following legacies which I  
direct shall be free from any legacy or other  
Jamaica Duty or Duties and cost of remittance to the  
Legalees To my brother Edward Vickers at present  
residing in Brighton England the sum of One hundred  
pounds to my sister Fanny Louisa Vickers at present  
20 residing at Dunster Somerset England the sum of Three  
hundred pounds To my sister Julia Elizabeth Vickers  
at present residing at Cedars Mansions Gunterstone  
Road West Kensington London England the sum of Three  
hundred pounds to my brother Aubrey James Vickers  
at present residing at 109 St. John's Road Forrest  
Lodge Sydney New South Wales the sum of Three  
hundred pounds But in the event of the said Aubrey  
James Vickers predeceasing me I give and bequeath the  
30 said sum of Three hundred pounds to his present wife  
Maggie Susan Vickers and their two at present un-  
married daughters Alice and Mabel Vickers or to the  
survivor or survivors of them share and share alike

40 I GIVE devise and Bequeath my Pen property known  
as "Mount Edgecombe" situate in the Parish of  
Westmoreland and containing One thousand seven  
hundred and sixty five acres more or less Together  
with any other lands which I may hereafter acquire and  
add it to my two natural children Alfred Vickers and  
Catherine Vickers at present residing there with me  
for and during their respective natural lives and  
from and immediately after the death of the survivor  
of them the said Alfred and Catherine Vickers I give  
devise and bequeath the said property Mound  
Edgecombe with all the lands added thereto as afore-  
said to the Administrator General for Jamaica for the  
time being whom I hereby appoint Trustee of the said

(sic)

EXHIBITS  
 The last Will  
 and Testament  
 of Charles  
 Benjamin  
 Vickers  
 22nd July  
 1910  
 with copy  
 Probate  
 6th February  
 1923

(continued)

property for the purposes of this my Will in fee simple I Direct the said Administrator General to sell the same and after paying all expenses attendant attendant on such sale to divide the proceeds (sic) equally between all the lawful children alive at their decease of my late brother William Vickers and of my brothers the said Edward Vickers and Aubrey James Vickers as Joint tenants In the event of there being no children of my said three brothers alive at the date of the death of the Survivor of the said Alfred and Catherine Vickers then I give devise and bequeath the moneys arising from the sale of the said property Mount Edgecombe to all the lawful grandchildren of my brothers the said William Edward and Aubrey James Vickers But is my desire that the said property Mount Edgecombe should if possible be retained in the family therefore I direct that the said property shall not be sold by the said Administrator General until at least six months after the decease of the survivor of them the said Alfred and Catherine Vickers unless he is requested to do so before then by all the Devisees and my brothers children or grandchildren as the case may be aforesaid and should the said Devisees decide to retain the said property without selling same I direct the said Administrator General to convey and transfer the same to them or as they shall instruct him to do in writing

I direct that the said Alfred Vickers and after his death if he predeceases her the said Catherine Vickers shall have full and complete control power and management over and upon the said property Mount Edgecombe and shall not be responsible or accountable to my Trustee or to any other person But neither the said Alfred nor Catherine Vickers shall have power to sell or to leave the said property All the rest residue and remainder of my Estate Real personal and Mixed or whatsoever kind and wheresoever situate I GIVE DEVISE AND BEQUEATH unto my two said natural Children Alfred and Catherine Vickers as to the personally in equal shares absolutely and as to the Really as joint tenants I revoke all Wills by me at any time heretofore made and declare this which I have executed this day in duplicate to be my only true and last Will and Testament

(sic)  
 (sic)

IN WITNESS whereof I have hereunto and to the duplicate hereof set my hand this twenty second day of July One thousand nine hundred and Ten

22 July 1910

Chas. B. Vickers

50

SIGNED Published and Declared in duplicate by the said Testator Charles Benjamin Vickers as and for his last Will and Testament before us the undersigned who at his request in his presence and in the presence of each other have hereunto and to the Duplicate hereof subscribed our names as witnesses.

H.F. Stone  
Clerk  
Sav la Mar

A.W. Alcock  
Accountant  
Sav la Mar

10

Certified a true and correct copy of the original last Will and Testament of the late Charles Benjamin Vickers as admitted to Probate on the 6th day of February 1923

Reginald Seaton  
Acting Registrar (L.S.)

EXHIBITS  
The last Will  
and Testament  
of Charles  
Benjamin  
Vickers  
22nd July  
1910  
with copy  
Probate  
6th February  
1923  
(continued)

In the Supreme Court  
of Judicature of Jamaica

In Probate and Administration

20

In the Estate of Charles Benjamin Vickers  
late of Mount Edgecombe in the Parish of  
Westmoreland Penkeeper Deceased.

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BE IT KNOWN that on the 6th day of February One thousand Nine Hundred and Twenty-three the last Will and Testament (a true copy whereof is hereunto annexed) of Charles Benjamin Vickers late of Mount Edgecombe in the Parish of Westmoreland Penkeeper Deceased who died on or about the Fourteenth day of January One Thousand Nine Hundred and Twenty-three was proved and registered in the said Court and that Administration of all the Estate which by Law devolves on and vests in the Personal Representatives of the said Deceased was granted by the aforesaid Court of Alfred Vickers the sole Executor named in the said Will he having been first sworn well and faithfully to administer the same by paying the just debts of the Deceased and the Legacies contained in his Will and to exhibit a true and perfect Inventory of all and singular the said Estate and effects of the said Deceased and to render a just and true account thereof whenever required by Law so to do.

40

Reginald Seaton  
Acting Registry of the Supreme Court

## EXHIBITS

P.2

P 2 - FIRST REPORT OF LORD RONALD  
GRAHAM AND COMPANY LTD.

First Report  
of Lord  
Ronald Graham  
and Company  
Ltd.  
26th April  
1963

LORD RONALD GRAHAM & COMPANY LTD. Real Estate  
In Association with Hampton & Sons (Jersey)  
& Hampton & Sons,  
6 Arlington Street, London, S.W.1.

Peter Willett, Esq., 26th April, 1963  
Hampton & Sons,  
6, Arlington Street,  
London, S.W.1.

10

Dear Peter,

Mount Edgecombe - Westmoreland

On Wednesday I was at last able to visit the above property where I located Mr. Spence, the Headman, and spent several hours with him going over the estate. We inspected it as well and fully as we could in the appalling state of neglect into which it has fallen - in fact in most places the thorn bush is so thick it is difficult to get an accurate picture.

20

It must certainly have been a lovely property at one time but it would take a great deal of money - impossible to estimate casually but between £15/20,000 certainly - to get it back into workable shape and then some more to re-establish suitable grasses, citrus and other crops. This must, of course, effect the present day value.

There are about 400 acres of swamp but, according to Spence who has been there all his life, all of it was not swamp land when the bush and drains were cared for. Similar land on Auchindown Estate next door has been greatly improved and much of it now grows rice successfully.

30

A great deal of the land, even the hill land, could probably be cleared by bull-dozer but much would still remain to be bushed by hand. The bush is now so thick that, in spite of pushing my car through miles of overgrown and neglected property roads, it is hard to see what there is there - not much of value I believe. Some areas have quite a lot of pimento but it is almost impossible to reap (or protect) in the bush and most of the trees I

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saw had been ruinously "stripped" by "poachers" last season though there is quite good blossom at the moment. The mango trees to which you referred are mostly common or black mangoes of no real value. Spence says that there are quite a lot of cedar trees on the property but I saw none.

First Report  
of Lord  
Ronald Graham  
and Company  
Ltd.  
26th April  
1963  
(continued)

10 Spence tells me that there a number of "tenants" at peppercorn rental "working land" on parts of the property - a common practice in Jamaica and harmless - even useful - if properly controlled. They should not be allowed to "squat" and establish themselves there but I saw no sign of this.

The old house is a typical "old time Jamaica house" of no real consequence and like so many, though it stands within a hundred yards of a breath-taking site, it has been built right back where there is no view at all. The out-buildings are in complete disrepair.

20 There are some wonderful hillside sites IF this part of the Island ever develops but there is no real sign of this yet.

30 Mt. Edgecombe has about four miles of sea frontage at least a mile of which is white sand beach - it is not prime quality beach, having a considerable amount of clay in it, but it is attractive and fronts on a reef-protected bay. Much of the rest is rocky with small sandy inlets in it. Again this will have value when the area develops. There are fishermen on the beach in some places and the Beach Control Authority will undoubtedly insist on specific areas being allocated to them by any developer.

40 There is a considerable amount of this type of land available in the area but I am not aware of any recent sales of big development blocks. I believe the sale of Fonthill some years ago was the last and nothing has yet been done with that. A few "developed" sites have been sold in the area at around £2,000 per acre - particularly near Bluefields.

An excellent main highway runs along the South Coast and passes right through the Estate, but there is no electricity in the area. There is some form of public water supply to the village but I am sure



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P.2

First Report  
of Lord  
Ronald Graham  
and Company  
Ltd.  
26th April  
1963  
(continued)

(sic)

it is inadequate to carry any form of development. The highlands of Mt. Edgecombe have catchment ponds but I understand there is a well and several springs on the lower level but some of these are brackish.

I have tried in my mind to weight all the pro's and con's - including the fact that absolutely top, clean well established pasture land in St. Ann can be bought around £50 per acre. I have also tried to give weight to future development possibilities both in Jamaica and in Westmoreland in particular. In addition there is increasing political pressure for Government compulsorily to acquire undeveloped or unused agricultural property for land-settlement - and Mount Edgecombe seems a sitting duck! I do not believe a local buyer would pay more than £45/50,000 top as it is today but an oversea buyer with a long term view, or who could offset development costs against a tax situation, might pay as high as £70,75,000. I would not, however, ignore the political trend and wait too long to find him.

10

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May I stress that this report does not constitute a "valuation" of Mount Edgecombe but is my opinion based on what I have been able to see and the "information" I have been able to glean on a visit to the area plus my local knowledge. I have seen to (sic) Title nor plan of the property.

In my view this property would be worth advertising in America and Canada but it might also appeal to an Englishman (or Company) with the right sort of tax picture.

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Yours sincerely,

"Lord Ronald Graham"

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P.3 - LORD RONALD GRAHAM'S  
SECOND REPORT

EXHIBITS  
P.3  
—

LORD RONALD GRAHAM & COMPANY LIMITED

Real Estate

Lord Ronald  
Graham's  
Second  
Report

Port Antonio  
Representative  
Lt.Col M. Davie  
P.O. Box 138

10

In Association with Hampton & Sons (Jersey)  
& Hampton & Sons,  
6 Arlington St., London, S.W.1.

3/64

Pineapple Place,  
P.O. Box 16,  
Ocho Rios, Jamaica, W.I.

MOUNT EDGECOMBE ESTATE WESTMORELAND JAMAICA

20

UNUSUAL OPPORTUNITY TO ACQUIRE A CATTLE AND  
PIMENTO PROPERTY WITH SOME CITRUS, OF ABOUT 1750  
ACRES WITH NEARLY 4 MILES OF SEA FRONTAGE  
(INCLUDING 2 MILES OF WHITE SAND BEACH) SITUATED  
IN THE PATH OF FUTURE DEVELOPMENT

This attractive property was once a prime cattle and pimento property, running some 700 head. It had a considerable amount of lime and citrus, ran its own Lime Factory. (now derelict) and has some valuable lumber trees and a considerable quantity of pimento still remaining.

30

Since the death of the last male owner, it has been allowed to go back and deterioration is rapid in Jamaica, so that today practically the entire property is in thick bush. However, this in itself can offer useful tax and other opportunities to a buyer.

The property is situated on the South Coast of Jamaica - between Bluefields and Whitehouse (the top sport fishing areas of Jamaica).

40

It lies on the coast having some 4 miles of sea frontage, of which about two miles are continuous white sand and the rest attractive patches of rock and sandy coves - the whole backed by a flatish area running back to the main highway which passes right through the property. This highway is one of the

(sic)

## EXHIBITS

P.3

Lord Ronald  
Graham's  
Second  
Report

(continued)

best in Jamaica, giving a quick, easy run for the 38 miles from Montego Bay (International Airport).

North of the highway the property rises up in easy slopes to some 5/600 ft., giving magnificent home sites with fabulous views of the sea and coast.

Agricultural Development: This property could be brought back without too much trouble. A large part of it could be mechanically cleared, and hand labour is not expensive in the area. Many of the costs of agricultural development are tax deductible, which can be interesting to the right buyer. There are some 200/300 acres possibly suitable for sugar cultivation. 10

Tourist Development: Once cleared and opened up, this beautiful property has very considerable potential indeed for tourist development. To date this area has not developed as rapidly as the North Coast but beach sites are now extremely difficult to find there and the excellent highway to the South Coast makes it practically certain that this area will develop from now on. Some development has already taken place in the accessible areas both at Bluefields and Whitehouse where seafront lots of  $\frac{3}{4}$  - 1 acre have sold as high as £2,000/3,000 per lot. Part of Mt. Edgecombe's sea front is close enough to the main highway for rapid development and possibly enough lots could be sold over three or four years to recover the cost of the property and without diminishing the agricultural value. Probably in ten years the whole area will be ripe for big scale development. 20 30

Parts of the back land could be readily sold off to local small settlers and the other sections planted with lumber trees.

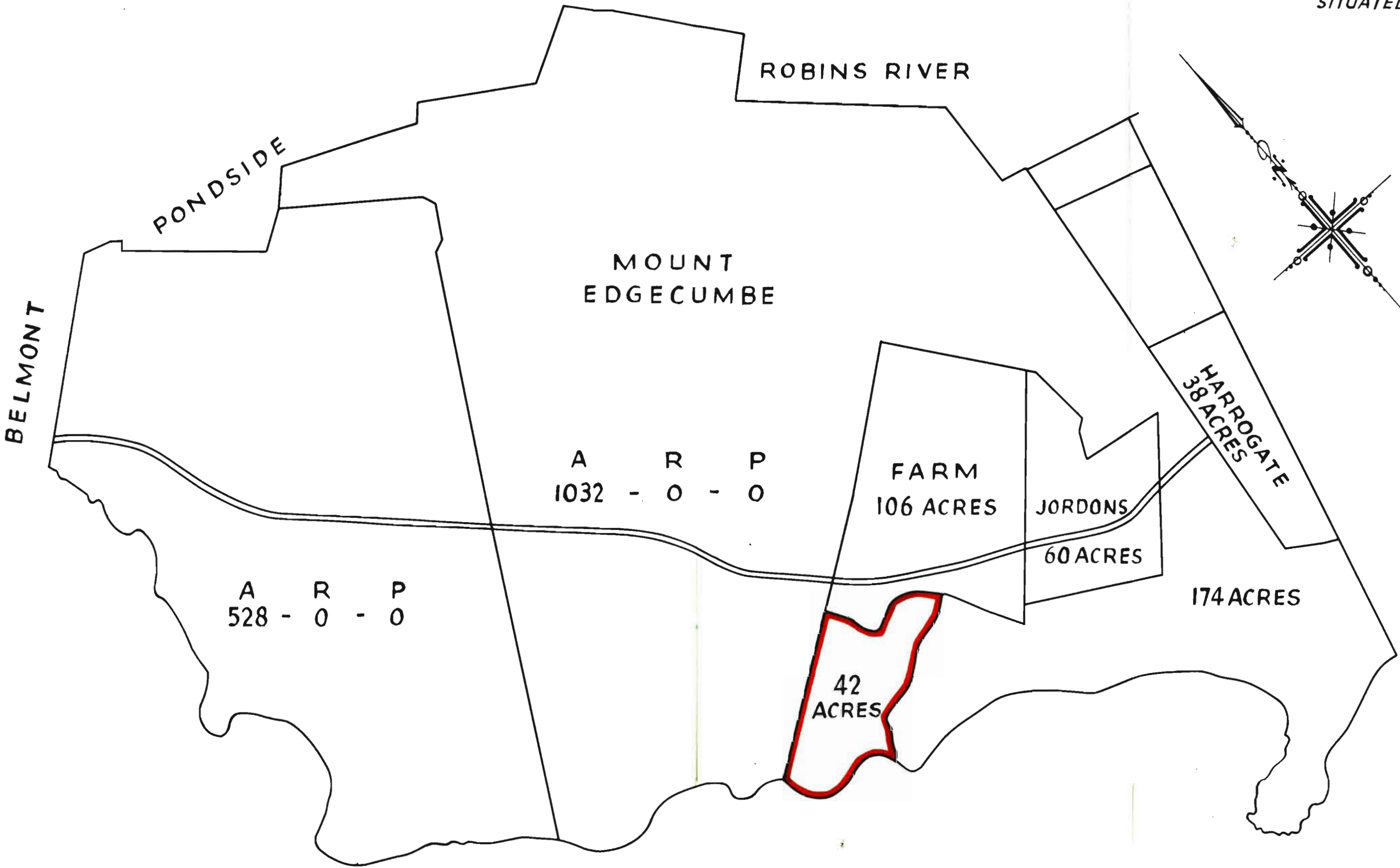
WATER: There is a public supply in the local village but, as stated not enough for development. There is an ample main water supply to the adjacent property which could be brought to Mount Edgcombe.

There are several strong springs on the property - some of which are slightly brackish. 40

There are ponds throughout the property for the

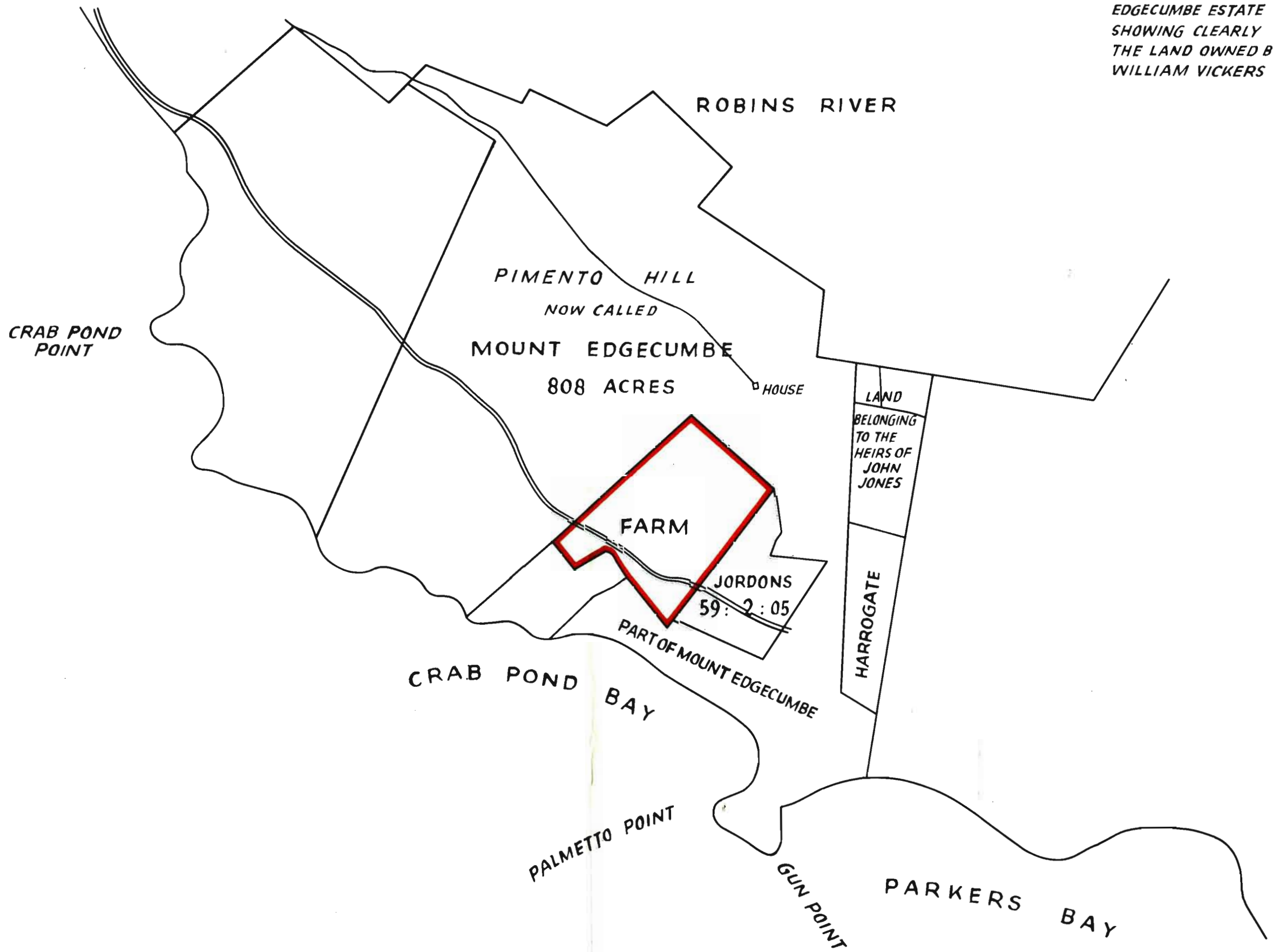
P.4 - PLAN OF AREA WHERE MOUNT EDGECUMBE IS SITUATED

P.4  
PLAN OF AREA  
WHERE MOUNT  
EDGE CUMBE IS  
SITUATED



P. 5 - PLAN OF MOUNT EDGECUMBE ESTATE SHOWING  
CLEARLY THE LAND OWNED BY WILLIAM VICKERS

*P.5  
PLAN OF MOUNT  
EDGE CUMBE ESTATE  
SHOWING CLEARLY  
THE LAND OWNED BY  
WILLIAM VICKERS*



PARISH OF WESTMORELAND

watering of stock.

ELECTRICITY: Electricity is scheduled to pass through the property this year.

TAXES: £70 (seventy pounds) per annum.  
(Approx: \$200 U.S.)

Under recent legislation Estate Duties have been abolished in Jamaica.

PRICE: FOR SALE AT £70,000.

MT.E.

EXHIBITS  
P.3

Lord Ronald  
Graham's  
Second  
Report

(continued)

10

APPOINTMENT OF H.B. SMITH AS AGENT

JAMAICA

IN THE SUPREME COURT OF JUDICATURE  
PROBATE AND ADMINISTRATION

Appointment  
of H.B.  
Smith as  
Agent

8th September  
1960

IN the Estate of Charles Benjamin Vickers late of Mount Edgecombe in the Parish of Westmoreland deceased, intestate 14th day of January, 1923

20

Letters of Administration having been granted to me on 6th day of February 1923 I do hereby authorize you as my Agent to demand receive and take possession of all and singular the personal estate and effects of the above deceased and to keep the same for me subject to my directions from time to time hereafter.

You must render all bills for your services and agree to receive for your remuneration such a sum as may be allowed by the Court on taxation by the Registrar out of the estate without appeal and not to hold me personally liable for same.

30

All sums of money received by you for me must be forwarded to me forthwith and without any deduction whatever.

And I do hereby require all persons having any part of the estate or effects of the deceased to

## EXHIBITS

Appointment  
of H.B.  
Smith as  
Agent

discover and deliver up to you the same for me.

Dated at Kingston this 8th day of September  
1960.

8th September  
1960  
(continued)

To: Mr. H.B. Smith,  
Petersfield P.O.

L.M.

for Administrator General  
Trustee Estate Charles B. Vickers,  
deceased

Memorandum  
of First  
Report of  
H.B. Smith

MEMORANDUM OF FIRST REPORT OF H.B. SMITH

10

Est. Charles Benjamin Vickers, dec'd.

15th September  
1960

Mr. H.B. Smith attended here today and advised that -

- (a) there are 320 heads of cattle on the Property "Mount Edgecombe" Westmoreland, for which he has charged a fee of 4/- per head per month for pasturage which will be paid the end of October,
- (b) the house is 66 feet square and already insured; Valued at £2000 (Insurance),
- (c) the quarterly taxes on the holding amount to approximately £55 and due the end of October, 20
- (d) no produce at present to realise any income. Limes sold realised the amount of £7.0.3 (Paid in on behalf of Clarence & Caswell Vickers O. Receipt B 107118),
- (e) any other information required he should be communicated with.

A.L.G

15/9/60

123.

THE APPOINTMENT OF MR. SMITH AS  
AGENT FOR COLLECTION OF RENT

Date 28th February, 1961

Dear Sir,

Estate Charles Vickers, deceased  
re Mount Edgecombe

EXHIBITS  
The  
Appointment  
of Mr. Smith  
as Agent for  
collection  
of Rent

28th February  
1961

10 This serves to appoint you my Agent for the collection of rents of the above premises. Your remuneration will be 10% of all rents collected by you and paid into this Office.

2. You should forward to me Return showing the number of apartments on the holding in respect of which rents are to be collected, the rents payable in each case, the names of the respective tenants at the present time, and the date on which rents are payable.

3. Enclosed are:-

20 (a) Counterfoil Receipt Book from which alone must receipts for rent paid to you by the tenants be issued at the time for all moneys received by you;

(b) A supply of 6 Rent Return Forms.

30 4. The Receipt Forms are printed in triplicate for use with Carbon Paper, carbonized on both sides. The uppermost of the three forms is to be given to the tenant, the first carbon impression to be attached to your monthly Rent Return to be brought into Office with your collection not later than the second day of the month succeeding that in which your collection have been made. The second carbon impression is to be left in the Receipt Book, which Receipt Book as soon as completed is to be brought into Office and surrendered to me.

5. Monthly Rent Returns must contain:-

(a) a list of all the rooms on the premises, whether tenanted or not, or whether no rent is paid by the tenant;



## EXHIBITS

The  
Appointment  
of Mr. Smith  
as Agent for  
collection  
of Rent

28th February  
1961

(continued)

- (b) A List showing the names of all the tenants, and the number of rooms occupied by each of them;
- (c) Rate per month;
- (d) Amount paid by each tenant;
- (d) The total balance, if any, due by each tenant, and the date to which such balance is outstanding.
- (e) The total balance, if any, due by each tenant, and the date to which such balance is outstanding. 10

6. If a tenant leaves, a note is to be made in the "Remarks Column," and you should similarly note any recommendations you desire to make for the issue of a Levy Warrant or other steps to be taken to secure collection of arrears, if any.

7. You are to incur no expenditure without my Consent being first obtained, and you will report in writing from time to time any repairs which may be required. 20

8. You are authorized to take on new tenants, and to determine tenancies for good reasons, and subject to my approval, provided that the rent of such tenant is paid to date, but whenever practicable my approval must be obtained in advance.

9. Your services may be determined at any time without notice or without any reason being assigned.

Yours truly,

SGD. S.E. Vaz

for Administrator General. 30

Mr. H.B. Smith  
Petersfield.

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CONVEYANCE FROM R.W.B. WHITELOCKE  
TO ADMINISTRATOR GENERAL

EXHIBITS  
Conveyance  
from R.W.B.  
Whitelocke to  
Administrator  
General

JAMAICA S. S.

12th July  
1962

10 THIS INDENTURE OF CONVEYANCE is made this 12th day of July One thousand nine hundred and Sixty-two BETWEEN ROLAND WINSTON BULSTRODE WHITELOCKE of Bluefields in the parish of Westmoreland Planter (hereinafter called "THE EXECUTOR") of the FIRST PART and the ADMINISTRATOR GENERAL OF JAMAICA of the City and parish of Kingston (hereinafter called "THE TRUSTEE") of the OTHER PART:

20 W H E R E A S by Indenture of Conveyance dated the Thirtieth day of December 1878 made between Elizabeth Vickers (therein described) of the One Part and Charles Benjamin Vickers (therein described) of the Other Part and recorded in the Island Record Office at Liber New Series 2 Folio 292 the lands tenements and hereditaments therein mentioned and described and intended to be hereby conveyed were for the consideration therein expressed conveyed to the said Charles Benjamin Vickers in Fee Simple subject to an Annuity of FIFTY POUNDS to Elizabeth Vickers charged on the said lands AND WHEREAS the said Elizabeth Vickers died on the Thirtieth day of February 1952.

30 A N D W H E R E A S the said Charles Benjamin Vickers made and published his Last Will and Testament dated the Twenty-second day of July 1910 and therein appointed Alfred Vickers the sole Executor thereof:

40 A N D W H E R E A S the said Charles Benjamin Vickers devised the lands tenements and hereditaments known as Mount Edgecombe in the parish of Westmoreland more fully mentioned and described in the Schedule hereto Alfred Vickers and Catherine Vickers for and during their respective natural lives and immediately after the death of the survivor of them the said Alfred and Catherine Vickers he devised the said property Mount Edgecombe aforesaid to the Trustee as Trustee upon certain terms and conditions set forth in the said Will:

AND WHEREAS the said Charles Benjamin Vickers died on the Fourteenth day of January 1923 seized and possessed in Fee Simple freed from all encumbrances in the said land and without in any way

EXHIBITS  
 Conveyance  
 from R.W.B.  
 Whitelocke to  
 Administrator  
 General

12th July  
 1962

(continued)

having revoked or altered his Will as aforesaid

AND WHEREAS on the sixth day of February 1923 Probate of the Last Will and Testament of the said Charles Benjamin Vickers was granted out of the Supreme Court of Judicature of Jamaica to Alfred Vickers:

AND WHEREAS in accordance with the devise contained in the Last Will and Testament of Charles Benjamin Vickers aforesaid Alfred Vickers and Catherine Vickers as Tenants for life entered into possession of the lands tenements and hereditaments known as Mount Edgecombe in the parish of Westmoreland as is more fully described in the Schedule hereto:

10

AND WHEREAS the said Alfred Vickers made and published his last Will and Testament dated the Fourteenth day of June 1944 and did therein appoint the Executor and Alexander Winston Aguilar the Executors thereof:

AND WHEREAS the said Alfred Vickers died on the Eighteenth day of April 1945 without in any way having revoked or altered the aforesaid Last Will and Testament:

20

AND WHEREAS Probate of the Last Will and Testament of the said Alfred Vickers was granted out of the Supreme Court of Judicature of Jamaica on the Seventeenth day of October 1945 to the Executor and Alexander Winston Aguilar:

AND WHEREAS the said Alexander Winston Aguilar died on the Seventeenth day of December 1957:

30

AND WHEREAS Catherine Vickers the sole surviving life tenant died intestate on the Ninth day of August 1960:

AND WHEREAS the Trustee has requested the Executor to convey to him the lands tenements and hereditaments hereinafter more fully mentioned and described in the Schedule hereto in accordance with the direction contained in the Last Will and Testament of the said Charles Benjamin Vickers:

40

NOW THIS INDENTURE WITNESSETH that in consideration of the premises the Executor as the Personal Representative of the estate of ALFRED VICKERS and in

exercise of his statutory powers HEREBY CONVEYS unto the Trustee ALL THAT parcel of land situate at Mount Edgecombe in the parish of Westmoreland and more fully mentioned in the Schedule hereto TO HAVE and TO HOLD the same UNTO and TO THE USE of the Trustee in Fee Simple as TRUSTEE with intent that the said Trustee shall carry out the directions contained in the Last Will and Testament of the said Charles Benjamin Vickers aforesaid

EXHIBITS  
**Conveyance**  
 from R.W.B.  
 Whitelocke to  
 Administrator  
 General

12th July  
 1962  
 (continued)

10 IN WITNESS WHEREOF the Executor has hereunto set his hand and affixed his seal the day and year first hereinbefore written

SCHEDULE

20 ALL THAT piece or parcel of land known as MOUNT EDGECOMBE situate in the parish of Westmoreland containing ONE THOUSAND SEVEN HUNDRED ACRES be the same more or less and now consisting of the original estate or Penn of Mount Edgecombe acquired by Benjamin Vickers under a Vesting Order of the High Court of Chancery of Jamaica made on the Fourteenth day of May in the year one thousand eight hundred and seventy in a certain suit at the instance of the Honourable Michael Muirhead as Petitioner against Hugh Anthony Whitelocke and others as Respondents and a small adjoining piece of land formerly known as Jordon Penn subsequently acquired and added to the said Mount Edgecombe Estate by the said Benjamin Vickers recorded in the Office of the Island Secretary of Jamaica in Libro 30 965 Folio 62 and another piece of land formerly called Harrogale purchased by the said Honourable Benjamin Vickers and by him incorporated into the Mount Edgecombe Estate are now butting and bounded Northerly on Belmont Plantation Old Shafston Pond Side Settlement Mount Airey Settlement and Robins River Penn Southerly on the Sea and Farm Plantation Easterly on Robins River Penn MacAlpine Settlement land belonging to Mrs. Walcott and Ackendown Penn and Westerly on the Sea and Belmont 40 Plantation or howsoever otherwise the said lands hereditaments and premises or any or either of them are is or may be bounded known distinguished or described and all and singular the erections and buildings houses and works thereon.

SIGNED SEALED AND DELIVERED by the ) Seal  
 said ROLAND WINSTON BULSTRODE ) (Sgd.)  
 WHITELOCK (as Executor) in the ) R.W.B. Whitelocke  
 presence of: )

50 (Sgd.) A. C. Munroe  
 JUSTICE OF THE PEACE, WESTMORELAND

## EXHIBITS

Conveyance  
from R.W.B.  
Whitelocke to  
Administrator  
General

12th July  
1962  
(continued)

JAMAICA S. S.

BE IT REMEMBERED that on the 12th day of July One thousand Nine Hundred and Sixty-one personally came and appeared before me the under- signed one of Her Majesty's Justices of the Peace in and for the parish of Westmoreland ROLAND WINSTON BULSTRODE WHITELOCKE a party named in the foregoing written Indenture of Conveyance who then and there acknowledge that he did sign and seal and as and for his proper act and deed execute and deliver the said Indenture for the purposes therein mentioned

10

(Sgd.) A.D. Munroe

JUSTICE OF THE PEACE, WESTMORELAND

Account from  
Administrator  
General to  
Livingstone  
Alexander  
& Levy

ACCOUNT FROM ADMINISTRATOR GENERAL  
TO LIVINGSTONE ALEXANDER & LEVY

ESTATE G.B. VICKERS, DEC'D.

GENERAL ACCOUNT

11th September 1963	By Pasturage	£854.16. 3	
	" Sale of Produce	393. 1. 6	20
	" Rental	12.17. 6	
	" Bank Int. to 31/3/63	20. 9. 8	
		<u>1,281. 4.11</u>	
	Less Govt. 6% comm. on £1208.14.5	72.10. 6	£1,208.14. 5

PAYMENTS

To R.G. Kirkham - valuation fees	21. 1. 0	
" M.M. Hamaty - cost Conveyance	120. 0. 0	30
" W.J. Tomlinson - recording conveyance	3. 7. 9	
" Gleaner Co.Ltd. - Advtg. sale of Mt. Edgecombe	11.11. 0	
" Collector of Taxes - Taxes	776. 8. 4	
Carried forward	£932. 8. 1	£1,208.14. 5

129.

Brought forward	£932. 8. 1	£1,208.14.5
To Transpt. &		
" Subst. Exp.	69.18. 4	
" Petties	4. 3. 3	
Bal. c/d	<u>202. 4. 9</u>	
	£1,208.14. 5	£1,208.14. 5
		£202. 4. 9

EXHIBITS  
Account from  
Administrator  
General to  
Livingstone  
Alexander  
& Levy

11th September  
1963  
(continued)

Administrator General's Office,  
Kingston, Jamaica, W.I.

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D. 1 - LIST OF TENDERS FOR PURCHASE

D. 1

<u>Name</u>	<u>Address</u>	<u>Offer</u>	<u>Remarks</u>
H.H. Hastings	12 Montgomery Ave.	£90,000	Withdrawn on 6/9/62
H.H. Hastings	- do -	50,000	
A.H. Lawrence	Mountainside P.O.	40,000	
Vernon L. Cover	Black River P.O.	40,000	
M.J. Mullings	Water Cross, Cave	35,000	
Clarence Vickers et al	Bluefields P.O.	30,000	
Leslie Hew	12, St. James St. Mo. Bay	20,000	

List of  
Tenders for  
Purchase

20

EXHIBITS  
D.2

D.2 - LICENCE AND THREE RECEIPTS  
IN RESPECT OF MR. ANDREW  
ABRAHAMS, AUCTIONEER

Licence and  
Three Receipts  
in respect of  
Mr. Andrew  
Abrahams,  
Auctioneer

LICENCE UNDER SECTION 7 OF THE  
LICENCES ON TRADES AND BUSINESS LAW, CAP.221

No. 231411 1st Inst.  
Parish of St. Andrew  
Andrew Abrahams of 31a Old Hope Rd. in the Parish  
of St. Andrew having paid (a moiety of) the  
licence duty amounting to £6.5. is hereby  
licensed to carry on the business of a Auctioneer  
at premises situate at 31a Old Hope Rd. in the  
parish of St. Andrew from the date hereof to the  
31st day of March, 1964.

10

Dated this 7th day of May 1963.

(Sgd.) ?  
Collector of Taxes for the  
Parish of St. Andrew

IR 04402

E N D O R S E M E N T

20

I V.B. Collector of Taxes for  
the parish of St. Andrew hereby certify that the  
said Andrew Abrahams has paid me the sum of  
£6.5. being (a moiety of) the licence duty  
payable as an Auctioneer at premises situate at  
31a Old Hope Rd. aforesaid

Stamp: Collector of Taxes  
(Sgd.) ?

ST. ANDREW

R E C E I P T SEXHIBITS  
D. 2

ST. ANDREW B 1965-66 No.04685  
 NAME Andrew Abrahams PLACE 31A Old Hope Rd.  
 LICENCE DUTY ON Auctioneer Lic. balance  
 1st Instl. Licence No. 228314  
 Other  
 Parochial  
 Revenue  
 £18.15.0. Total  
 £18.15.0.

Licence and  
 Three Receipts  
 in respect of  
 Mr. Andrew  
 Abrahams  
 Auctioneer  
 (continued)

10 I declare that the amount entered hereon is the  
 sum I have paid. Received this 31st day of May,  
 1965.  
 Cheq. £18.15.0. Eighteen Pounds Fifteen Shillings  
 (Sgd.) ?  
 Collector of Taxes

ST. ANDREW B 1965-66 No.05021  
 NAME Andrew Abrahams PLACE 31A Old Hope Rd.  
 LICENCE DUTY ON Auctioneer St. Andrew  
 Other  
 Parochial  
 Revenue Total

20 Arrears 2nd to 4th instalments  
 1963-64 £18.15.0  
 Arrears 1st Quarter  
 1964-65 6. 5.0  
 £25. 0.0 £25. 0. 0.

I declare that the amount entered hereon is the  
 sum I have paid. Received this 2nd day of June 1965.  
 £25. Twenty five Pounds  
 (Sgd.) ?

30 Collector of Taxes

NEW  $\frac{3}{4}$  year  
 ST. ANDREW F 1964-65 No. 08740  
 NAME Andrew Abrahams PLACE 31a Old Hope Rd.  
 LICENCE DUTY ON Auctioneer Lic. 259861  
 Other  
 Parochial Revenue Total  
 £18.15.0. £18.15.0.

40 I declare that the amount entered hereon is the sum  
 I have paid. Received this 9th day of Sept. 1964  
 £19. Chg. 5/-.  
 Eighteen Pounds Fifteen shillings  
 (Sgd.) ?  
 Collector of Taxes



IN THE PRIVY COUNCIL

No. 32 of 1970

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ON APPEAL  
FROM THE COURT OF APPEAL OF JAMAICA

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B E T W E E N :

WILLOUGHBY ARTHUR VICKERS-DAVIS Appellant

- and -

THE ADMINISTRATOR GENERAL  
(Trustee of the Estate of Charles  
Benjamin Vickers deceased) Respondent

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RECORD OF PROCEEDINGS

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CHARLES RUSSELL & CO.,  
Hale Court,  
Lincoln's Inn,  
London WC2A 3UL

Solicitors for the Appellant

DRUCES & ATTLEE,  
115 Moorgate,  
London  
EC2M 6YA

Solicitors for the  
Respondent