Privy Council Appeal No. 28 of 1984

The Royal Bank Trust Company (Trinidad) Limited — *Appellant*

v.

Joseph Norbert Pampellonne and Another — *Respondents*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH NOVEMBER 1986

Present at the Hearing:

LORD BRIDGE OF HARWICH
LORD TEMPLEMAN
LORD OLIVER OF AYLMERTON
LORD GOFF OF CHIEVELEY
SIR ROBIN COOKE

[Majority Judgment delivered by ***Lord Goff of Chieveley****]*

There is before their Lordships an appeal by the appellants, the Royal Bank Trust Company (Trinidad) Ltd., against a judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali C.J., Kelsick and Cross JJ.A.) dated 18th March 1982 whereby they allowed in part an appeal by the respondents, Joseph Norbert Pampellonne and his wife Mrs. Jocelyn Pampellonne, from a judgment delivered by Roopnarine J. on 4th November 1977 in which he dismissed a claim by the respondents against the appellants for damages for negligent advice alleged to have been given by the appellants in relation to the respondents' investments. The appellants, who are a company associated with the Royal Bank of Canada, will be referred to as "the Bank", and the respondents respectively as Mr. and Mrs. Pampellonne.

The claim advanced by Mr. and Mrs. Pampellonne was founded upon the principle established in the leading case of *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* [1964] A.C. 465, and later developed in *Mutual Life and Citizens' Assurance Co. Ltd. v. Evatt* [1971] A.C. 793. The general nature of the Pampellonnes' claim was that a Mr. Kennedy, who was at all relevant

times General Manager of the Bank, gave negligent advice to them in relation to two companies in which they then invested money - Davies Investments Ltd. ("Davies") and Pinnock Finance Co. (Gt. Britain) Ltd. ("Pinnock") - which subsequently failed, with the result that the Pampellonnes lost the greater part of the money so invested by them. The learned judge dismissed the claims in respect of the investments in both companies, holding that on the facts no duty of care was owed by the Bank to the Pampellonnes and further that, in so far as information or advice was given by Mr. Kennedy in respect of the relevant investments, it was not relied upon by the Pampellonnes in making the investments. The Court of Appeal dismissed the Pampellonnes' appeal in respect of the investment in Davies but allowed their appeal in respect of the investment in Pinnock. It is against the latter decision that the Bank now appeals; the Pampellonnes no longer pursue their claim in respect of their investment in Davies. It is fair to say that the appeal does not raise any question of law; indeed the applicable legal principles are not in dispute. The central question arising on the appeal has been whether the Court of Appeal was entitled to interfere with the judge's conclusions upon matters which, in the submission of the Bank, were essentially matters of fact. But the Bank also expressed anxiety about the implications arising from the Court of Appeal's decision with regard to the future conduct of their own officers in relation to customers of the Bank, and indeed with regard to the conduct of officers of banks generally in relation to customers.

The case has a long history, and it is necessary to set out the relevant facts in some detail. The story begins in 1963, and it is right to record that, for several years before that date, Mr. Pampellonne had had an account with the Nassau branch of the Royal Bank of Canada in the Bahamas. In 1963 Mr. Pampellonne was a supervisor of the Shell Refinery at Penal in Trinidad. He was then 52 years old. Although the Pampellonnes were by no means wealthy, they had some money to invest; Mr. Pampellonne struck the judge as a thrifty and careful man in matters of finance. He had had some money invested in mortgages in Trinidad which brought in what was then regarded as a good rate of interest, 9-10 per cent. However, as a result of an apparent "scare" in Trinidad, he transferred the money to a deposit account at the Royal Bank of Canada at Nassau. There it yielded only 3½-4 per cent. He was anxious to re-invest the money more profitably. Some time in 1963 his attention was drawn by a Mr. Keith Urich (a gentleman who had no connection with the Bank) to Davies. He learned from Mr. Urich that Davies was a finance company which paid 8 per cent on money deposited with it. Following receipt of that information, Mr.

Pampellonne decided to look into the possibility of investing money in Davies.

He called at the Bank in Trinidad on a date in December 1963 or January 1964. No appointment had been made for the visit. There he met a Mr. Slack, who was an old acquaintance of his, and told him that he would like to see the General Manager of the Bank. Mr. Slack took him in to see Mr. Kennedy. It was the case of the Pampellonnes that, on the occasion of that visit to Mr. Kennedy, Mr. Pampellonne told Mr. Kennedy that he desired to make certain investments and that Davies had been suggested to him; and that he requested Mr. Kennedy to investigate and report upon Davies and to advise him whether he should place his investments with Davies, whereupon Mr. Kennedy agreed to do so. Subsequently Mr. Kennedy, by letter dated 23rd January 1964, advised Mr. Pampellonne that Davies was a respectably constituted private limited company and that it might be regarded as trustworthy for its ordinary business engagements; and in reliance upon that advice the Pampellonnes invested money by way of deposit with Davies in three sums totalling nearly T$43,000.

There was no dispute that Mr. Pampellonne did indeed call at the Bank, and that he had an interview with Mr. Kennedy. There was also no dispute that Mr. Pampellonne handed to Mr. Kennedy a letter from Mr. Urich concerning Davies, and that he asked Mr. Kennedy to investigate Davies for him; he also asked Mr. Kennedy whether he could assist him in making his will. Mr. Kennedy then agreed to investigate Davies and subsequently wrote to Mr. Pampellonne on 23rd January 1964 in the following terms:-

"Dear Mr. Pampellonne,

With reference to your recent visit here we are now advised that Davies Investment Ltd., is a respectably constituted private limited company with an authorised capital of £150,000. The last published balance sheet as at 30th June 1962 indicated capital and general reserves of £512,806 and current liabilities of £99,256 against current assets of £1,227,249. All our reports indicate that this company may be regarded as trustworthy for its ordinary business engagements.

We trust this information will assist you in making up your mind as to the deposit.

...."

That letter was in fact based upon an up-to-date credit information report received by the Bank from a well known and reputable mercantile agency called

Syed & Co. (a company which was later merged with Dun & Bradstreet). In answer to that letter, Mr. Pampellonne wrote to Mr. Kennedy on 28th January 1964 as follows:-

"Dear Sir,

Your letter of January 23rd, is hereby acknowledged with thanks.

Will endeavour to call at your office at earliest opportunity for further discussion on the subject."

Following that letter, no further discussion or correspondence took place between Mr. Pampellonne and the Bank with regard to investment in Davies; the judge rejected evidence by Mr. and Mrs. Pampellonne that investment in Davies was again briefly mentioned at a subsequent meeting, in November 1964, concerned with investment in Pinnock. The investments made by the Pampellonnes in Davies were as follows:

(1) The first investment, of T$6,000 (£1,250), was made on 1st April 1965, about 14 months after the correspondence between Mr. Pampellonne and Mr. Kennedy.

(2) The second investment, of T$28,000 (£5,833.6s.8d.), was made on 9th February 1966.

(3) The third investment, of T$7,823.92 (£1,629.18s.10d.), was made between 20th and 28th April 1966.

No reference was made to the Bank in respect of any of these investments. Interest at 8¾ per cent was paid on these investments; but in 1967 Davies failed and was wound up on 24th December 1967. Eventually a dividend of about 60p. in the £ was paid, enabling the Pampellonnes to recover T$27,532.93.

The judge rejected the Pampellonnes' claim in respect of their loss on these investments. So far as the duty of care was concerned, the judge held that, when Mr. Pampellonne made his request to Mr. Kennedy at the meeting with him, he did not do so for the purpose of making any investment in Davies, but filed Mr. Kennedy's letter away for future reference. He further held that Mr. Pampellonne's enquiry disclosed a "casual approach which did not indicate the gravity of the enquiry and the importance and influence attached to the answer to impose on [the Bank] a duty of care". Finally, having observed that the first investment in Davies was made more than a year after the enquiry without further reference to the Bank, he held that the Pampellonnes did not rely

on the skill and judgment of the Bank in making the original investment or the later investments in Davies: indeed, under cross-examination, Mr. Pampellonne was driven to admit that this was so. It has to be said that, in the result, not only was Mr. Kennedy's evidence accepted by the judge, but where there was any conflict between that evidence and the evidence of Mr. Pampellonne, the judge rejected the evidence of the latter. It is not to be forgotten, with regard to the finding that there was, in the circumstances, no duty of care owed by the Bank to the Pampellonnes, that not only was the visit made without any prior appointment or warning, but also that no fee was charged by the Bank; that no information was given by Mr. Pampellonne regarding his own assets; that no document was signed by Mr. Pampellonne regarding his alleged request for advice; that no indication was given by Mr. Pampellonne of the amount of any sum which he then had available for investment, or as to how much might be invested in Davies; and that the letter sent by Mr. Kennedy to Mr. Pampellonne was in obviously guarded terms, in that it closed with the words - "We trust this information will assist you in making up your mind as to the deposit". In all the circumstances, there was the most ample evidence to support the judge's conclusion, the effect of which was that, following a request by Mr. Pampellonne to investigate Davies, the Bank did no more than furnish him with the information contained in the letter dated 23rd January 1964, and that the Pampellonnes, when they subsequently invested in Davies, did not rely on the skill and judgment of the Bank. It is plain that the judge did not accept Mr. Pampellonne's evidence that he asked Mr. Kennedy to advise him whether he should place his investments with Davies, and that he did not therefore think it necessary to consider whether there had been any negligence on the part of the Bank. In fact an expert witness called on behalf of the Pampellonnes, an accountant called Mr. Girdharrie, gave evidence that very extensive enquiries would have to be made by an investment adviser to his client before advising him that he could safely place money with a deposit-taking company such as Davies - or indeed Pinnock.

The events giving rise to the Pampellonnes' allegation against the Bank in relation to the Pinnock investments took place later in 1964. The case advanced by them was as follows. In about November 1964, Mr. Pampellonne, at another interview with Mr. Kennedy at his office, sought his advice in connection with the investment of certain monies, and Mr. Kennedy orally advised the Pampellonnes that they might safely invest their monies with Pinnock. In reliance on Mr. Kennedy's advice they made four separate investments of money by way of deposit with Pinnock totalling nearly T$76,000. Pinnock went into

liquidation in April 1968, though trading had been suspended in March 1967. The Pampellonnes lost nearly all their investment in Pinnock because the dividend paid on the winding-up was only 5p. in the £. Again, it was alleged that Mr. Kennedy's advice was negligent in that he failed to make the same substantial enquiries as it had been alleged should have been made in the case of Davies.

At the trial, Mr. Kennedy stated that he had had two meetings in the autumn of 1964, the first with Mr. Pampellonne alone, and the second with both Mr. and Mrs. Pampellonne. At the first meeting, which took place in September or October 1964, Mr. Pampellonne called to enquire about a deposit-taking company in the United Kingdom. Mr. Kennedy informed him that he had a recent credit report on Pinnock; he then orally passed on to Mr. Pampellonne the substance of that report, which was in fact another report from Messrs. Syed and which was in very similar terms to the report which the Bank had received on Davies and which was summarised in the letter dated 23rd January 1964. He also handed Mr. Pampellonne a brochure and other literature about the company, together with an application form provided for those wishing to make a deposit with the company. Subsequently, on 10th November 1964, Mr. Pampellonne returned to the Bank with his wife, bringing with him the application form filled in. He authorised Mr. Kennedy to have the funds then held to their account at the Royal Bank of Canada's branch in Nassau (£6,250 plus interest) invested in Pinnock. Mr. Kennedy then dictated a letter of authorisation to his secretary: that was immediately typed, and signed by both Mr. and Mrs. Pampellonne. On the same date, Mr. Kennedy wrote to the secretary of Pinnock enclosing the application form duly signed by both the Pampellonnes, together with a copy of the letter of authority signed by them. On 20th November, Pinnock issued their receipt for £6,451.5s. "... deposited for a period of 11 calendar months only from this date and repayable on 20th October 1965. Withdrawals prior to this date subject to 6 months' notice in writing".

There was a considerable conflict of evidence between Mr. Kennedy on the one hand, and Mr. and Mrs. Pampellonne on the other hand, as to what passed between them in the autumn of 1964. First of all, the Pampellonnes stated that there was only one meeting, which took place in November, at which they said that Mr. Kennedy gave the alleged advice, whereas Mr. Kennedy said that there were two meetings, as stated above. Next, the Pampellonnes both stated that Mr. Pampellonne asked Mr. Kennedy if he could recommend a safe company for investing their money and that Mr. Kennedy promptly recommended Pinnock. Mr. Kennedy denied that he made any

recommendation; he stated that, at the first meeting, he simply provided the name of Pinnock and gave Mr. Pampellonne such information as he had about the company. Mr. Pampellonne asserted that Mr. Kennedy made no reference to any letters, magazines, brochures, etc., whereas Mr. Kennedy stated that at the first meeting he provided Mr. Pampellonne with a brochure and other literature concerning Pinnock, together with the application form. Finally, both Mr. and Mrs. Pampellonne stated that, at the meeting in November, Mr. Kennedy nodded his approval to a proposal by Mr. Pampellonne that he should invest money in Davies, because he preferred not to place all his eggs in one basket; Mr. Kennedy denied that any mention was made of Davies, and stated that it was he who had said that the Pampellonnes should not place all their eggs in one basket. On all these points, the judge rejected the evidence of the Pampellonnes, and accepted the evidence of Mr. Kennedy, substantially as set out in the previous paragraph.

In the result the judge held that, in the case of the enquiry concerning Pinnock:-

> "... no special relationship was created between [the parties] to impose a duty of care. Information was given to [the Pampellonnes] some time at the end of September 1964 - early October 1964 which they considered and that voluntarily they took a decision to invest in Pinnock and merely used [the Bank] to channel the funds they had in R.B.(Nassau) to Pinnock."

In any event, it seemed to the judge that:-

> "... half an hour on 10.11.64, of which ten - fifteen minutes were spent in getting the necessary authorisation prepared could hardly have been sufficient for [Mr. Pampellonne] to tell [the Bank] its servant or agent the gravity of the enquiry and the influence attached to the answer."

It is to be observed that on this, as on the previous occasion, there was no prior appointment (for either of the two visits); no fee was charged by the Bank; no information was given by the Pampellonnes regarding their assets (other than the amount which they proposed, on their second visit, to invest in Pinnock); and that no document was signed by Mr. Pampellonne concerning his alleged request for advice.

The investments made by the Pampellonnes in Pinnock were as follows:-

(1) The initial investment of £6,451.5s. made on 20th November 1964, for a term of 11 months.

(2) Re-investment of that sum when the deposit expired on 20th October 1965, and presumably again when the deposit expired in September 1966.

(3) A second investment of T$20,500 (£4,270.15s.8d) on 16th December 1965.

(4) A third investment of T$16,500 (£3,437.10s) on 24th January 1966.

(5) A fourth investment of T$8,000 (£1,666.13s.4d) on 4th August 1966.

As already recorded, trading in Pinnock was suspended in March 1967, and the company was wound up in 1968. Until the suspension of trading, the Pampellonnes received interest at 9 per cent on their deposits, which appears to have been credited to them and added to the money deposited by them with the company.

The judge held that, quite apart from his finding that the Bank owed no duty of care to the Pampellonnes in respect of the Pinnock investments, in any event any re-investment of the original sum invested, and any further sums invested in Pinnock without reference back to the Bank, were not the responsibility of the Bank for which it could be held liable. Indeed his conclusion was that, with regard to all the investments in Pinnock, the Pampellonnes:-

> "... could not be said to be relying on the skill and judgment of Kennedy the agent or servant of [the Bank], nor as a reasonable man could Kennedy have known this, particularly from the nature of the enquiry, the form of the answers and the circumstances in which they were given ..."

It is not to be forgotten that the Pampellonnes' original investment was intact at the time when the original deposit with Pinnock expired on 20th October 1965; and so far as re-investment of that sum, and subsequent investments, were concerned, the judge's conclusion on reliance was supported in particular by the evidence of the Pampellonnes' own expert witness, Mr. Girdharrie, who is recorded in the judge's note of the evidence as having stated that, if he received general advice in November 1964, he would think it foolhardy to make any further investment in the company a year later without a review of the advice originally given.

In the result, the judge dismissed the claim of the Pampellonnes with regard both to the Davies investments and the Pinnock investments, with costs. It is plain that, whereas Mr. Pampellonne had first mentioned Davies to Mr. Kennedy, it was Mr. Kennedy

who had first mentioned Pinnock to Mr. Pampellonne. However, the judge's conclusion was to the effect that Mr. Kennedy had done no more than provide information about Pinnock, similar to the information which he had provided about Davies, though in this case orally rather than in writing. The judge must have refused to accept the evidence of both the Pampellonnes that Mr. Kennedy had advised them that they might safely invest their money with Pinnock; and for that reason, no doubt, he again did not find it necessary to consider in his judgment whether there had been negligence on the part of the Bank. It is right to record that the trial before Roopnarine J. was a long one. It lasted for very nearly four weeks, during which Mr. Kennedy spent four days, and Mr. Pampellonne nearly four days, in the witness box. The judge had therefore the most ample opportunity to assess them as witnesses. There is no shorthand note of the trial. The judge's note of the 19 days of the hearing occupies 144 broadly spaced typed pages of the record; his note of each day's evidence consists of between 4 and 10 such pages. It is no criticism of the judge to state that his note of the evidence does not purport to be anything like a verbatim record of what the witnesses said.

The Pampellonnes appealed to the Court of Appeal from the judgment of Roopnarine J., with regard to both the Davies investments and the Pinnock investments. They dismissed the appeal with regard to the former, but allowed it with regard to the latter. The leading judgment was given by Kelsick J.A. He accepted that the trial judge had correctly stated the applicable legal principles. He also accepted his determination that, in the case of Davies, the Bank owed no duty of care to the Pampellonnes, and his reasons for reaching that conclusion; and he accepted the conclusion that Mr. Pampellonne did not rely on Mr. Kennedy's letter of 23rd January 1944, which Mr. Pampellonne himself had stated that he placed no store on and which he filed away.

Kelsick J.A. differed, however, from the judge so far as the Pinnock investments were concerned. He summarised the judge's reasons for his conclusions as follows:-

"(i) that considering 'information' given to them between September and October, 1964, the plaintiffs voluntarily decided to invest in Pinnock and merely used the defendants to channel the funds they had in Royal Bank (Nassau) to Pinnock;

(ii) that the short duration of the interview in November, 1964, was insufficient for

the defendant to convey to the plaintiffs the gravity of the inquiry and the influence attached to the answer;

(iii) that if the defendant owed a duty of care it was only in respect of the first investment made through it in November, 1964, which came to an end when that deposit matured on October 20, 1965, and the defendant was not responsible for the further sums invested without reference back to it."

He then said:-

"As regards (i) and (ii) the 'information' in the circumstances was, as pointed out by Lord Diplock in *Evatt*'s case (*supra*), equivalent to 'advice'. The decision to invest was not solely that of the plaintiffs but was shared by the defendant whose business it was to supply, and who supplied, the information which influenced the plaintiffs' decision to invest. From the nature of the plaintiffs' enquiry and the defendant's subsequent action in obtaining the additional data from the mercantile agency in London, it is apparent that both parties were aware of the gravity of the request and answer.

Ground (iii) is untenable in the light of the standard of care expected of the defendant, which included a duty in the circumstances to warn the plaintiffs that the initial advice to invest was good for only six months and that they should not embark on any further deposits without updating that information or advice.

In my judgment the defendant is liable for the loss incurred from Pinnock for the following reasons:

The defendant carried on, and held itself out as carrying on, the business of giving advice as to reliable financial investments and thereby represented that it possessed, or was in a position to command, the requisite experience and skill for rendering such a service.

A special relationship was created between the plaintiffs and the defendant which gave rise to a duty-care situation on the part of the defendant. This arose when Joseph [Pampellonne] in September - October, 1964, requested the defendant, to recommend a suitable United Kingdom deposit-taking company in which he should invest; in response to which the defendant mentioned Pinnock and supplied him with literature and application forms to be filled out for such an investment.

> Those forms and the authorisation for the transfer of funds to Pinnock were processed through the defendant shortly thereafter in November, 1964.
>
> This conduct of the defendant was tantamount to advice to invest in Pinnock, which was taken by the plaintiffs to their detriment. The defendant fell short of the standard of care expected of a prudent investment adviser, when it failed to make adequate enquiries into the personal circumstances of the plaintiffs and the financial position of Pinnock and of associated companies in its group before tendering the advice. Those enquiries most probably would have revealed the high degree of risk involved in the investment, in consequence whereof the defendant would have been obliged to advise the plaintiffs, one of whom was about to retire on pension, against embarking on the first investment in Pinnock. ...
>
> By the omission to take the above steps the defendant was negligent in the statements it made to the plaintiffs concerning Pinnock.
>
> There can be no doubt that the plaintiffs, as they deposed, made the Pinnock investments in reliance on the defendants' unqualified recommendation or advice which it was reasonable for them to act upon; and that the breach of the duty to take care owed to the plaintiffs not only directly caused the loss of the investments but the consequence of that loss was, or ought reasonably to have been, foreseen by the defendant."

Sir Isaac Hyatali C.J. delivered a concurring judgment. He went further than Kelsick J.A., however, in holding that there was a special relationship, giving rise to a duty of care, both in relation to the Davies investments and the Pinnock investments. In both cases, he held that there was negligence on the part of the Bank, as held by Kelsick J.A. in respect of the Pinnock investments. In the case of the Davies investments, however, he considered that the Pampellonnes did not place reliance on the advice given by Mr. Kennedy. So far as the Pinnock investments were concerned, he held that the Bank was liable for the same reasons as those given by Kelsick J.A. He said:-

> "With respect to Pinnock however, I agree with the conclusions and orders of Kelsick J.A. and the reasons he has given for them. Counsel for the defendant in the course of his reply submitted that the plaintiff should not be allowed to argue as he had done that the defendant was negligent in failing to warn the plaintiffs that the advice

given was not valid for more than six months. Counsel contended that this default on the part of the defendant was not pleaded or agitated in the court below and the plaintiffs ought not to be allowed to avail themselves of it. Counsel for the plaintiffs however submitted that this default on the part of the defendant was clearly embraced in the particulars of negligence given in the amended statement of claim which alleged that the defendant -

> '[failed] to exercise reasonable skill and care as a professional investment adviser in giving information and/or advice and/or opinion to the plaintiffs or either of them in relation to Davies and Pinnock respectively.'

I am of opinion that it was so embraced, for it seems to me that the obligation of a professional adviser to exercise reasonable care and skill in giving advice on investment necessarily involves a duty to give complete and competent advice. Consequently, an investment advice, in the circumstances of the instant case, which did not warn or which was not guarded by a caution that it would become obsolete after, or was not valid for more than six months, was neither complete nor competent."

Cross J.A. delivered a brief concurring judgment, reaching the same conclusion as that reached by the learned Chief Justice, viz. that there was a duty of care and a breach of duty in the case both of the Davies and the Pinnock investments, but that the Pampellonnes failed in the case of Davies investments because they had failed to prove that they had relied on the opinion or advice of Mr. Kennedy.

Before their Lordships, Mr. Longmore for the Bank submitted that the Court of Appeal, in reversing the decision of the judge on the question whether there was a duty of care with regard to the Pinnock investments, substituted their own view for that of the judge on questions of fact when they had no right to do so. In the opinion of their Lordships, that submission is well-founded. Kelsick J.A. treated the information provided by Mr. Kennedy regarding Pinnock as equivalent to advice; he held that "a duty-care situation" arose when, at the first meeting, Mr. Pampellonne requested Mr. Kennedy to recommend a suitable United Kingdom deposit-taking company in which he should invest, and Mr. Kennedy then mentioned Pinnock and supplied Mr. Pampellonne with relevant literature and application forms. However the question whether the furnishing of information is in any particular case to be treated as equivalent to advice must depend upon the facts of the case, and in

particular upon the precise circumstances in which the relevant information has been given. It was the judge who heard, at length, the evidence of Mr. Kennedy and the Pampellonnes concerning the two meetings in the autumn of 1964; and he, having heard that evidence, formed the opinion that Mr. Kennedy gave no recommendation to the Pampellonnes that it was safe to invest in Pinnock, simply providing Mr. Pampellonne with such information concerning Pinnock as was available to him. It was not, in their Lordships' opinion, open to the Court of Appeal to conclude, on the basis of the judge's note of the evidence, that he erred in reaching that conclusion of fact. Kelsick J.A. also concluded that both parties were aware of the gravity of the request made of Mr. Kennedy and the answer given by him, his conclusion being founded on the nature of the enquiry and the Bank's subsequent action in obtaining additional data from the mercantile agency in London. With great respect to Kelsick J.A., he was in this respect confusing Pinnock with Davies; it was only in relation to the latter that the Bank obtained additional data. This may not be important. Moreover, if the Bank had indeed provided advice to the Pampellonnes about their investments, it would in all probability have been held that the occasion was one of sufficient gravity to give rise to a duty of care, in which event the evidence of Mr. Girdharrie concerning the extensive enquiries which, in his opinion, the Bank should have made, would have become relevant; though it is usual for any such advice to be contained in, or regulated by, some form of document. But once it was held, as the judge held, that at a brief meeting the Bank was prepared to do no more than provide such information as was available to them, the judge was entitled to form the opinion on the evidence before him that no duty of care arose, other than (no doubt) to pass such information accurately to Mr. Pampellonne. For these reasons, in the opinion of their Lordships, the decision of Kelsick J.A. that a duty of care rested upon the Bank in relation to advice concerning the Pinnock investments (and the like decision of Sir Isaac Hyatali C.J. and Cross J.A. concerning both the Davies and the Pinnock investments) cannot stand.

It was, in the circumstances, perhaps not surprising that Mr. McKinnon, for the Pampellonnes, sought only faintly to support the reasoning of the Court of Appeal on this aspect of the case. He concentrated rather on a submission that their conclusion should be supported on a different ground. This was that, when supplying information relating to Pinnock, in the form of the substance of the credit report from Messrs. Syed which Mr. Kennedy orally passed on to Mr. Pampellonne at the first meeting (in September or October 1984), a duty rested on the Bank (through Mr. Kennedy) to warn the Pampellonnes that

such information was not of itself appropriate, or sufficient, or suitable, as material on which to base a decision to invest; and that, since no such warning was given, there was a breach of duty by the Bank. It is fair to comment that this argument formed no part of the Pampellonnes' case, either before the judge or before the Court of Appeal; indeed it did not even appear in their printed case before their Lordships. If such a contention had been advanced before the judge, then it could have been properly tested by examination and cross-examination of the relevant witnesses, including expert witnesses; and the judge would then have been able to form a view, upon such evidence, whether the circumstances were such as to impose a duty upon the Bank to give any such warning. It may very well be, for example, that since (as the judge held) Mr. Kennedy simply provided information to the Pampellonnes but tendered no advice, the information so given was tendered in such words, in such a manner, and in such circumstances, that it was plain that it was simply provided as the only information which was available to the Bank, and that it was for the Pampellonnes to make their own assessment of the company as a suitable recipient of their money by way of deposit, in which circumstances it might well have been inappropriate to conclude that any legal duty rested on the Bank to attach a warning to the information so provided.

For these reasons alone, the appeal must succeed; but there is a second reason why it must do so. The judge held, in the case of Pinnock as in the case of Davies, that the decision to invest in Pinnock was a voluntary decision taken by the Pampellonnes. He further held that, even if that was not so with regard to the original investment in November 1964, nevertheless (here relying in particular on the evidence of Mr. Girdharrie) any re-investment of the original money or investment of further money in Pinnock without reference back to the Bank was not the responsibility of the Bank. Once again, their Lordships consider that these were findings of fact by the judge, founded upon ample evidence, for which it was not open to the Court of Appeal to substitute their own view. The Court of Appeal held that the Bank was nevertheless liable because it was under a duty to warn the Pampellonnes that its initial advice was good for only six months. This conclusion appears to have been based on the judge's note of evidence by Mr. Girdharrie to the effect that if, after six months had expired following advice given by an investment adviser to an investor, that investor still wished to invest in accordance with that advice, it would be desirable for him to review the position with his adviser. But it cannot follow that in the present case, if the Bank had given advice regarding Pinnock, it should have been stated that the advice was good for six months; indeed, any

such advice might be extremely dangerous. Any sensible investor (and it is not to be forgotten that the judge considered Mr. Pampellonne to be a thrifty and careful man in matters of finance) must realise that, if advice is given regarding investments, it is given in the light of the circumstances then prevailing, and that such circumstances may change. In their Lordships' opinion there was no basis for interfering with the judge's conclusion, particularly with regard to the re-investment of the initial sum invested by the Pampellonnes in Pinnock, and with regard to any further investments by them in Pinnock, that such investments were made by the Pampellonnes on their own initiative independently of any advice which might have been given by the Bank.

The judge of course made his finding on causation with reference to the case advanced before him, which was that Mr. Kennedy had negligently advised the Pampellonnes that they could safely invest their money in Pinnock. If the argument now advanced by Mr. McKinnon had been raised at the trial, that trial would no doubt have taken a different form; and in particular the question would have arisen whether Mr. Pampellonne had placed any reliance upon Mr. Kennedy's summary of the credit report on Pinnock from Messrs. Syed. On the face of the judge's note, there is no evidence whatsoever that Mr. Pampellonne placed any such reliance; on the contrary, Mr. Pampellonne vigorously denied that the first meeting concerning Pinnock in September or October 1964 ever took place, and further denied that Mr. Kennedy ever showed him any report about Pinnock, or told him any features about Pinnock. Furthermore, when the judge found that the decision of the Pampellonnes to re-invest the money originally invested by them in Pinnock was a voluntary decision taken by them, it is plain that he was making a finding not on remoteness but on causation; he was concluding that the decision to re-invest was a decision of the Pampellonnes independent of any alleged negligent advice given by Mr. Kennedy the year before. In reaching that conclusion, he was no doubt influenced by evidence of Mr. Pampellonne that he re-invested the money on his own initiative, and by the evidence of Mr. Girdharrie to which their Lordships have already referred. This was a conclusion which the judge was entitled to reach on the evidence before him. Since the point now advanced before their Lordships was never adumbrated before the judge, he did not have to consider the question whether the re-investment was influenced by Mr. Kennedy's summary of Messrs. Syed's credit report. It is enough to say that there is, on the face of the judge's note, no evidence whatsoever to support any such conclusion; indeed it seems inevitable that the judge, on the evidence before him, would have held that the re-investment was in no way influenced by that summary.

Their Lordships wish to stress that this case is not concerned with any question of law, and certainly was not presented as such in argument before the Board. In truth, after Mr. McKinnon had effectively abandoned any attempt either to revive his clients' case before the judge at first instance or to defend the reasoning of the Court of Appeal, the question became one whether the appeal could be salvaged upon a ground which had never been argued or tested in evidence below. This is never an easy exercise; and here, as so often in such circumstances, it is a matter of speculation what evidence (including expert evidence) would have been tendered on behalf of the Bank if the case now made against them had been advanced at first instance. The difficulty was compounded in the present case where there was no shorthand record of such evidence as was given, but only a very brief note of that evidence. Their Lordships of course share the opinion of the minority that the leading cases which they cite have had a beneficial influence upon the development of the common law. But they are also of the opinion that it is a fundamental principle of justice that every defendant should be afforded a fair opportunity to answer the case against him, and that it is that principle (and not the application or development of the principle in *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* [1964] A.C. 465) which is at stake in the present appeal in its final form.

For these reasons, their Lordships allow the appeal. In doing so, they wish to echo the words of Roopnarine J. that it is a matter of regret that the Pampellonnes should have lost a substantial part of their savings in their middle life. That regret is shared by the Bank, which has very properly intimated that it asks for no costs against the Pampellonnes either before the Court of Appeal or before their Lordships. It follows that the only orders which require to be made are that the appeal be allowed, that the order of the Court of Appeal save as to costs be discharged, and that the order of Roopnarine J. be restored.

Dissenting Judgment by **Lord Templeman** *and* **Sir Robin Cooke**

The material facts relevant to this appeal were found by the trial judge. Mr. Pampellonne was a customer of the Royal Bank of Canada. In September or October 1964 Mr. Pampellonne went to the offices of the Bank which were also the offices of its associated company, the appellant Royal Bank Trust Company (Trinidad) Limited, and called on Mr. Kennedy, the general manager of the Trust Company.

The Trust Company in general, and Mr. Kennedy in particular, were available for investment advice to customers of the Bank. Mr. Pampellonne asked Mr. Kennedy to suggest a deposit-taking company in the United Kingdom. Mr. Kennedy answered with the name Pinnock and volunteered a brochure published by Pinnock and an application form for investors applying to deposit money with Pinnock at interest. Mr. Kennedy also informed Mr. Pampellonne of the contents of a credit report on Pinnock held by the Bank. Had Mr. Kennedy given thought to the brochure and the credit report he would not have advised Mr. Pampellonne to invest in Pinnock without further investigation. The inadequacy and misleading nature of the information supplied by Pinnock would have been appreciated by Mr. Kennedy who by reason of his training was capable of deducing from the Pinnock balance sheet included in the brochure that the ability of Pinnock to pay the interest promised to depositors and the safety of the principal entrusted to Pinnock by the depositors depended on the undisclosed profit earnings of Pinnock's subsidiary trading companies and on the undisclosed capital soundness of those subsidiary companies.

In November 1964 at a second interview Mr. Pampellonne with the assistance of Mr. Kennedy arranged for the transfer of £6,250 (plus interest) of Mr. Pampellonne's savings from the Bank where it was safe to Pinnock where it was, unknown to Mr. Pampellonne and unknown to Mr. Kennedy, decidedly unsafe. In 1967 Pinnock foundered because its subsidiary companies were not and had not been generating adequate profits and because the finances of the Pinnock group were and had long been unsound. Mr. Pampellonne lost his money.

The other facts and conflicts of evidence set out at length in the opinion of the majority of the Board do not add to or clarify the material facts which are undisputed. In our opinion the reversal by the Court of Appeal of Trinidad and Tobago of the decision of the trial judge in favour of the Trust Company did not involve the Court of Appeal in substituting their own view for that of the judge on questions of fact.

The Court of Appeal held from the facts as found a legal duty of care by Mr. Kennedy to Mr. Pampellonne in connection with the investment by Mr. Pampellonne of his deposit of £6,250. We agree. That duty of care arose when Mr. Kennedy, the expert, supplied to Mr. Pampellonne, the layman, information about Pinnock which influenced Mr. Pampellonne to invest in Pinnock. That duty of care would not have arisen if Mr. Pampellonne had been familiar with finance companies and their accounts. But the naive enquiry from Mr. Pampellonne for the name of a deposit-taking company was an indication of Mr. Pampellonne's

ignorance. If Mr. Kennedy failed to appreciate the significance of that enquiry nevertheless Mr. Kennedy had no right to assume that Mr. Pampellonne would understand the relevance of information contained in or omitted from the Pinnock brochure which Mr. Kennedy handed over in order to assist Mr. Pampellonne.

The trial Judge appears to have held that there was no special relationship and no duty of care at all, because Mr. Kennedy only gave information and of the two relevant interviews the second took only half-an-hour. While agreeing that the Court of Appeal went too far if they meant that the Trust Company was bound to make further investigations into the financial position of the Pinnock group, we think that Mr. Pampellonne's two visits to the manager, Mr. Kennedy, were manifestly not merely casual or devoid of serious business purpose. At the very least Mr. Pampellonne was seeking information. In the words of Lord Reid in *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* [1964] A.C. 465, at page 486, he was 'trusting the other to exercise such a degree of care as the circumstances required'. So, on principles that we regard as settled, there must have been a duty of care, a duty not onerous for it entailed no more than what was reasonable in the circumstances.

Mr. Kennedy's duty of care could have been satisfied in a number of ways. He could have offered to study the literature fully, make any necessary further enquiries and advise Mr. Pampellonne (no doubt for a fee) or he could have advised Mr. Pampellonne to take other professional advice. At the very least Mr. Kennedy could have warned Mr. Pampellonne that Mr. Kennedy had inadequate information about Pinnock to enable him to recommend the company as an investment and without further investigation had no means of knowing whether Pinnock was a safe haven for Mr. Pampellonne's money.

In the circumstances the duty naturally extended to warning Mr. Pampellonne of the shortcomings of the information passed on by Mr. Kennedy about Pinnock. The Judge's notes of the evidence show that, in cross-examination, in various ways it was put repeatedly to and accepted by Mr. Kennedy that the information was inadequate to enable a decision about whether an investment in Pinnock would be prudent. Instead of telling Mr. Pampellonne so, Mr. Kennedy gave some degree of imprimatur to the deposit-taking company suggested by him by telling Mr. Pampellonne the substance of the credit report from a mercantile agency since merged with Dun & Bradstreet. As in the case of the Davies episode, Mr. Kennedy appears at the time - and in substance he acknowledged this at the trial - to have had a misplaced confidence in these credit reports for the purpose of investment

decisions as distinct from the grant of credit. In one answer he put it, "All advisers now realise this".

The assessment in the report, - "It is a respectably constituted concern ... reported trustworthy for its ordinary business engagements to the extent of some £1000s [credit] if wanted ..." was useless information for a person contemplating depositing money with a company which (as the brochure showed) lent it on to associated companies. To someone unsophisticated in corporate techniques it was positively dangerous information, as collapses in several countries of deposit-taking companies have underlined. The conclusion seems inevitable that Mr. Kennedy was negligent in passing on the brochure and stating the substance of the report as if the latter was helpful.

That conclusion is based on Mr. Kennedy's own evidence and the facts found by the trial Judge. We are unable to agree that the advantage of seeing and hearing the witnesses provides a ground for abstaining from it.

Mr. Pampellonne relied on the inadequate and misleading information supplied by Mr. Kennedy without advice or warning beyond a warning not to put all his eggs in one basket. Indeed there was no other information which could have influenced Mr. Pampellonne to make an investment with Pinnock.

Finally Mr. Pampellonne suffered damage when he lost his deposit with Pinnock, and the damage flowed from Mr. Kennedy's breach of duty in not giving Mr. Pampellonne anything approaching adequate advice or warning.

The trial judge, having held that Mr. Kennedy did not in law owe a duty of care to Mr. Pampellonne, added:-

> "Information was given to [the Pampellonnes] some time at the end of September 1964 - (early October 1964) which they considered and voluntarily they took a decision to invest in Pinnock ...."

Of course the Pampellonnes voluntarily took a decision. But that decision was taken on the faith of misleading and inadequate literature and information which Mr. Kennedy had furnished without sufficiently warning or advising the Pampellonnes. It seemed to the trial judge that the time spent in the second interview was not sufficient to tell Mr. Kennedy "the gravity of the inquiry and the influence attached to the answer". But at the first interview it was clear that the Pampellonnes were contemplating

investment, a matter of sufficient gravity to prompt a duty of care, while at the second interview it was clear that the Pampellonnes were investing £6,250 (and interest) on the faith of the literature and information supplied to them by Mr. Kennedy. On the existence of a duty of care the majority of the Board are impressed by the fact that Mr. Pampellonne had no prior appointment for the first interview. But the existence of a duty of care on the part of Mr. Kennedy can hardly depend on whether or not Mr. Pampellonne telephoned the previous day and said that he would like to have a word with Mr. Kennedy at his convenience. The majority of the Board point out that no fee was charged by the Bank. But on principle and on ample authority a Bank is not absolved from a duty of care or from breach of duty of care by the failure of the Bank to charge for information or advice rendered by the Bank to a customer. The Bank is not absolved from a duty of care to give warning or advice where it is incumbent on them to do so. The same principles applied to the Trust Company. "No information was given by the Pampellonnes regarding their assets". But Mr. Kennedy knew before it was too late that the Pampellonnes were entrusting £6,250 to Pinnock and he had no reason to believe that the financial position of the Pampellonnes justified them in gambling £6,250 on the strength of the inadequate and misleading information which Mr. Kennedy had given to the Pampellonnes.

The opinion of the majority of the Board with regard to the deposit and loss of the initial £6,250 seems to depart in spirit, if not in express words, from the approach in leading cases of recent times, such as *Hedley Byrne (supra)*, *Overseas Tankships (U.K.) Ltd. v. The Miller Steamship Co. Pty. and Another (The Wagon Mound) (No. 2))* [1967] 1 A.C. 617, *Home Office v. Dorset Yacht Co. Ltd.* [1970] A.C. 1004, and *McLoughlin v. O'Brian* [1983] 1 A.C. 410. The cases in this line have had a beneficial influence on the development of the common law of jurisdictions other than that of England itself.

Mr. Kennedy's breach of duty was confined to the sum of £6,250 and accumulated interest which Mr. Kennedy assisted the Pampellonnes to invest in Pinnock. Mr. Kennedy never knew of any other investment. Mr. Pampellonne was entitled by the terms of his deposit to withdraw the deposit after a fixed period, eleven months. Mr. Kennedy did not advise Mr. Pampellonne to consider the financial position of Pinnock at the end of the fixed period of the deposit.

An important point of principle arises as to causation or remoteness. In *Hedley Byrne* liability, as with other heads of negligence liability,

reasonable foresight would appear to be relevant. No doubt a stage could come when, as a matter of degree, reinvestment of the investment originally made in reliance on the information supplied by the defendant would be too remote. But nothing was more natural or more foreseeable than that in the first two or three years, with no warning of any danger, Mr. Pampellonne would almost automatically reinvest. As Lord Reid said of another instance of intervening human action, in the *Dorset Yacht* case at page 1030, it was "the very kind of thing that [the defendant] ought to have seen to be likely". The damage caused to Mr. Pampellonne in 1967 flowed from the information supplied and from the failure of Mr. Kennedy to warn Mr. Pampellonne about the information in 1964.

In our view the trial Judge was wrong, when deciding whether the damage would be recoverable, not to consider whether it was plainly foreseeable that after making the initial investment on the basis of the information supplied by Mr. Kennedy, Mr. Pampellonne would renew the investment. The Trust Company's negligence was a major cause of the loss. All the ingredients of liability were thus established.

We would uphold the decision of the Court of Appeal with regard to the sum of £6,250 and interest. In the absence of any payment into court we would order the Trust Company to pay the costs of the Pampellonnes. In defending these proceedings, the Trust Company and the Bank have adopted the motto "caveat customer". But Mr. Kennedy failed to warn the customer not to rely on the information with which he supplied him.