15, 1951

P.C.A. No. 82 of 1945.

In the Privy Council.

UNIVERSITY OF LONDON
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ON APPEAL

FROM THE SUPREME COURT OF BRITISH HONDURAS.

BETWEEN

ARTHUR BALDERAMOS and HUBERT HILL CAIN as Executors of Isaiah Emmanuel Morter deceased (Defendants) - - - - *Appellants*

AND

JOHN CLAUDE THOMSON (Receiver)
WOLDRICH HARRISON COURTENAY
UNIVERSAL NEGRO IMPROVEMENT ASSN. INC.
ERNEST JOHNSTON HOFIUS, original Plaintiff now *pro forma* Respondent - - - - - - - - - *Respondents*

(Action No. 7 of 1942)

AND BETWEEN

UNIVERSAL NEGRO IMPROVEMENT ASSN. INC. - - - - *Appellant*

AND

JOHN CLAUDE THOMSON (Receiver)
WOLDRICH HARRISON COURTENAY
ARTHUR BALDERAMOS
HUBERT HILL CAIN
ERNEST JOHNSTON HOFIUS (*pro forma*) - - - - - *Respondents*

(Action No. 11 of 1939)

RECORD OF PROCEEDINGS.

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London, S.W.1,
Solicitors for the Executors.

A. L. BRYDEN & WILLIAMS,
53 Victoria Street,
London, S.W.1,
Solicitors for the Universal Negro Improvement Association Inc.

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

The Solicitors' Law Stationery Society, Limited, Law and Parliamentary Printers, Abbey House, S.W.1.
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RECORD OF PROCEEDINGS

No. 82 of 1945.

In the Privy Council

ON APPEAL

FROM THE SUPREME COURT OF BRITISH HONDURAS.

BETWEEN

ARTHUR BALDERAMOS and HUBERT HILL CAIN as Executors of ISAIAH EMMANUEL MORTER deceased (Defendants) - - - *Appellants*

AND

JOHN CLAUDE THOMSON (Receiver)
WOLDRICH HARRISON COURTENAY
UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.
ERNEST JOHNSTON HOFIUS, original Plaintiff now *pro forma* Respondent - - - - - - - - - - - *Respondents*

(Action No. 7 of 1942)

AND BETWEEN

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC. - *Appellant*

AND

JOHN CLAUDE THOMSON (Receiver)
WOLDRICH HARRISON COURTENAY
ARTHUR BALDERAMOS
HUBERT HILL CAIN
ERNEST JOHNSTON HOFIUS (*pro forma*) - - - - - *Respondents.*

(Action No. 11 of 1939)

RECORD OF PROCEEDINGS

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P.C.A. No. 82 of 1945.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF BRITISH HONDURAS.

BETWEEN

ARTHUR BALDERAMOS and HUBERT HILL CAIN as Executors of ISAIAH EMMANUEL MORTER deceased (Defendants) - - - - - - - - - *Appellants*

AND

JOHN CLAUDE THOMSON (Receiver)
WOLDRICH HARRISON COURTENAY
UNIVERSAL NEGRO IMPROVEMENT ASSN. INC.
ERNEST JOHNSTON HOFIUS, original Plaintiff now *pro forma* Respondent - - - - - - - - *Respondents.*

(Action No. 7 of 1942.)

AND BETWEEN

UNIVERSAL NEGRO IMPROVEMENT ASSN. INC. *Appellant*

AND

JOHN CLAUDE THOMSON (Receiver)
WOLDRICH HARRISON COURTENAY
ARTHUR BALDERAMOS
HUBERT HILL CAIN
ERNEST JOHNSTON HOFIUS (*pro forma*) - - *Respondents.*

(Action No. 11 of 1939.)

RECORD OF PROCEEDINGS

In the Supreme Court of British Honduras.

No. 1. Writ of Summons, Universal Negro Improvement Assn. Inc., Plaintiff and Arthur Balderamos and H. H. Cain, Defendants, 21st June 1939.

No. 1.

WRIT OF SUMMONS, Universal Negro Improvement Assn. Inc., Plaintiff, and Arthur Balderamos and H. H. Cain, Defendants, dated 21st June 1939.

IN THE SUPREME COURT OF BRITISH HONDURAS, A.D. 1939.

Action No. 11.

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

Between UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INCORPORATED - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of ISAIAH MORTER, deceased) - - - - - - - - Defendants.

LET Arthur Balderamos of Belize, Solicitor, and Hubert Hill Cain of Belize, Newspaper Proprietor, within eight days after service of this

In the Supreme Court of British Honduras.

No. 1. Writ of Summons, Universal Negro Improvement Assn. Inc., Plaintiff and Arthur Balderamos and H. H. Cain, Defendants, 21st June 1939, *continued.*

summons on them, inclusive of the day of such service, cause appearances to be entered for them to this summons, which is issued upon the application of the Universal Negro Improvement Association, Incorporated, a corporation Incorporated and residing at 120 W. 135th Street in the City of New York in the State of New York, one of the United States of America, who claims to be the residuary devisee and legatee under the Will dated the 15th day of February, 1924, of Isaiah Emmanuel Morter, deceased, who died at Belize on the 7th day of April, 1924, and whose Will was duly proved on the 8th day of September, 1924, for an order for and directing—

(1) administration of the real and personal estate of the said Isaiah Emmanuel Morter,

(2) conveyance by the Defendants to the Plaintiff of the residuary real and personal property of the said estate,

(3) how the costs of this application shall be borne.

Dated the 21st day of June, 1939.

This summons was taken out by WOLDRICH HARRISON COURTENAY of Church Street, Belize, Solicitor for the above-named Plaintiff.

The Defendants may appear hereto by entering appearances either personally or by solicitor at the office of the Registrar.

NOTE.—If the Defendants do not enter appearances within the time and at the place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

No. 2. Order on Originating Summons, 31st August 1939.

No. 2.

ORDER ON ORIGINATING SUMMONS, dated 31st August 1939.

IN THE SUPREME COURT OF BRITISH HONDURAS, A.D. 1939.

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

Between UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INCORPORATED - - Plaintiffs

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of ISAIAH E. MORTER, deceased) - - - - - - - - Defendants.

This is an Originating Summons brought by the UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INCORPORATED (hereinafter referred to as U.N.I.A., Inc.) Plaintiffs against ARTHUR BALDERAMOS and HUBERT HILL CAIN Executors of ISAIAH EMMANUEL MORTER, deceased, Defendants applying for an order for :—

(1) Administration of the real and personal estate of the said Isaiah Emmanuel Morter, and

(2) Conveyance by the Defendants to the Plaintiffs of the residuary real and personal property of the said estate, and

(3) Directions how the costs of this application shall be borne.

Mr. Courtenay, with him Mr. Hassock, appeared for the Plaintiffs.

Mr. A. Balderamos, with him Mr. A. Balderamos Junior, appeared for the Defendants.

There were several technical defects in the summons and subsequent proceedings, but both parties very wisely agreed to waive all objections and to make all necessary amendments in order to bring the matter properly before the Court. This was on July 4th, 1939.

Mr. Balderamos applied for security of costs on the grounds that—

(1) The Plaintiffs' identity was uncertain.

(2) The Plaintiffs were out of the jurisdiction.

After hearing Mr. Courtenay, I ordered security of costs in the sum of $100.00 to be furnished by the Plaintiffs on or before August 15th.

The hearing was resumed on August 15th. Mr. Dragten, K.C., applied for leave to intervene on behalf of Isabella Lawrence, to whom under the will of Isaiah Emmanuel Morter, deceased, a bequest was made contingent on the residue of the estate exceeding a certain sum. Mr. Courtenay undertook that if the Plaintiffs were successful, the bequest to Isabella Lawrence would be paid, provided that the residue of the estate at the time of Probate exceeded the sum mentioned : the question of interest due, if any, to be settled by Counsel.

On this undertaking Mr. Dragten withdrew.

On August 16th Mr. Lewis applied for leave to intervene on the grounds that he had just been retained to put forward a claim to the residuary estate by Richard Lewis Felix on behalf of the Universal Negro Improvement Association and African Communities League August, 1929 (hereinafter referred to as the U.N.I.A. and A.C.L. August, 1929).

Several claimants were mentioned in the affidavit of Mr. Balderamos of August 14th, 1939, and in order, if possible, to settle this matter finally I granted the application with an order for security of costs in the sum of $11.25 to be furnished by Mr. Felix before Mr. Lewis should be heard on August 17th.

This summons has been taken out after lengthy litigation, commenced in 1924, over the will of Isaiah Emmanuel Morter, deceased, probate of which was granted on September 8th, 1924. By this will the testator bequeathed the residue of his real and personal estate (with a legacy contingent on the value of the said estate to Isabella Lawrence) to the Parent Body of the United (*sic*) Negro Improvement Association for the African Redemption Fund. It is the identity of the Residuary Legatee that has been the cause of all the litigation. No purpose will be served by referring in detail to previous proceedings except to the second appeal to the Privy Council No. 33 of 1932.

In the Supreme Court of British Honduras.

No. 2. Order on Originating Summons, 31st August 1939, *continued.*

This was an appeal between—

Charles Wright and Ethel Collins for and on behalf of as representing themselves and all other persons forming the society known as the Universal Negro Improvement Association and African Communities' League (Defendants) - Appellants

and

Universal Negro Improvement Association, Inc. (Defendants) - - - - - - - - Respondents.

The judgment dismissing this appeal was to the effect, to put it briefly, that the Respondent Corporation was the Parent Body referred to in the Testator's will. No question can now be raised as to a corporation styling itself U.N.I.A., Inc. being entitled to the residuary bequest. The only question that can be properly raised is whether the Plaintiffs in this summons are the same U.N.I.A., Inc. who were the successful respondents in the Privy Council Appeal No. 33 of 1932.

The only oral evidence given was by Mr. Felix. Evidence for the Plaintiffs' claim and for the claims enumerated in Mr. Balderamos' affidavit of August 14th, 1939, was documentary. No objections were raised as to the admissibility of these documents filed, though the validity of the contents of the power of attorney given to Counsel for the Plaintiffs was queried.

I will deal with the Defendants' claimants first.

Mr. Felix based his claim on a letter from Mr. Marcus Garvey, signing himself President General of the U.N.I.A. on notepaper headed " Parent Body U.N.I.A. and A.C.L. August, 1929." To this letter was attached a copy of a letter from Mr. Garvey to the Registrar General. While comments might well be made as to Mr. Garvey's procedure in writing to the Registrar General, in the absence of any objection I passed it over and allowed the copy to be admitted in order to consider the merits of all claims put forward.

Mr. Felix stated on oath that he is the secretary of the U.N.I.A. and A.C.L. Inc. in Belize, and was holding that office when this litigation was proceeding in Belize. The U.N.I.A., Inc. of New York is still in existence, but its name was changed to U.N.I.A. & A.C.L. August 1929 at a Convention held in Jamaica in 1929.

He admitted that the U.N.I.A. & A.C.L. whom he represents now is the same body that were appellants in the Privy Council Appeal No. 33 of 1932. That being so, the claim of a party who was unsuccessful in that appeal cannot be sustained for one moment, and ought never to have been brought.

As to the other claimants set out in Mr. Balderamos' affidavit of August 14th.

Paras. 2&3. The Executive Secretary of the Detroit Division of the U.N.I.A. and the President of the Cincinnati Division No. 146 of the U.N.I.A. in letters dated respectively March 27th, 1931, and March 30th, 1931, only state that the U.N.I.A. Inc. of New York are the rightful beneficiaries and warning the executors not to pay over the proceeds to any other

body. These letters are in no sense a claim to the proceeds but merely reiterate that the U.N.I.A. Inc., of New York, is entitled to the bequest.

Mr. Murray Bein, a Counsellor at Law in New York, wrote to Mr. Balderamos on November 4th, 1935, stating that he was attorney for the U.N.I.A., Inc. and asking for a copy of the accounts. This is not a rival claim to the Residuary Bequest. It recognized the claim of the U.N.I.A., Inc.

This claim purports to be a power of attorney given by the U.N.I.A., Inc. of New York on June 27th, 1936, to Frans Robert Dragten of Belize, giving, *inter alia*, power to sue for and recover the residuary bequest. The question whether this U.N.I.A., Inc. is the same as the Plaintiffs in this summons or not, does not arise. Mr. Dragten has not acted under his power of attorney and has taken no steps to put forward any claim. Para. 4. Para. 5.

This claim is made in a letter from Mr. Garvey signing as President General U.N.I.A. on notepaper headed Parent Body U.N.I.A. & A.C.L. August, 1929, to the executors, dated September 19th, 1936, inclosing a copy of letter to Mr. Dragten, K.C. This letter states that the groups represented by Miss H. V. Davis and Lionel Francis have no claims to the bequest. Para. 6.

Even if this could be interpreted as being a claim to the bequest Mr. Felix's evidence would dispose of it completely.

The letter from Mr. Melendez King dated July 31st, 1935, asking for information is in no sense a claim. Para. 7.

This disposes of all the claims, or so-called claims enumerated by Mr. Balderamos in his affidavit as well as that put forward by Mr. Felix. It remains to consider whether the Plaintiffs can establish their identity with the successful respondents in Privy Council Appeal No. 33 of 1932.

The documents filed in support of the Plaintiffs' claim are :—

(1) A power of attorney dated February 24th, 1938, to Mr. Courtenay from the U.N.I.A., Inc. signed by Lionel A. Francis, President ; R. Howard Price and J. Williams, Directors and Lulu Johnson, Secretary, sealed with a seal containing the words U.N.I.A., Inc. Parent Body, New York.

(2) Affidavit by Lulu Johnson dated February 24th, 1938, verifying the names and offices of the signatories to the power of attorney and the seal.

(3) Affidavit by Lulu Johnson, Secretary of U.N.I.A., Inc. dated 8th August, 1939, certifying a copy of a Resolution by the Board of Directors of the U.N.I.A., Inc. passed in accordance with the By-laws on February 21st, 1938, that a power of attorney should be given to Mr. Courtenay.

(4) Affidavit by Lulu Johnson, Secretary of the U.N.I.A., Inc. dated 12th July, 1939, to the effect that the officers of the Association are—

Lionel A. Francis	-	President.
R. Howard Price	-	Treasurer.
Lulu Johnson	-	Secretary.

(5) Affidavit by Lionel A. Francis dated 18th July, 1939, to the effect that he as President of the U.N.I.A., Inc. in 1933 with

In the Supreme Court of British Honduras.

No. 2. Order on Originating Summons, 31st August 1939, *continued.*

the authority of the Directors engaged the firm of Douglas Grant and Dold, Privy Council Appeal Agents of London to represent the U.N.I.A., Inc. Respondents in Privy Council Appeal No. 33 of 1932.

(6) Affidavit by F. Dold sole partner of the firm of Douglas Grant and Dold dated 19th July, 1939, to the effect that his firm was retained in September, 1933, to represent the U.N.I.A., Inc. of New York, Respondents in Privy Council Appeal No. 33 of 1932. The retainer being signed by Lionel A. Francis, President and Lulu Rutter as Secretary.

(7) Two certificates from the Department of State, State of New York, dated 7th and 10th July, 1939, respectively, to the effect that :—

(i) The certificate of incorporation of the U.N.I.A., Inc. was filed on July 2nd, 1918, and that no other certificate of incorporation of a corporation of that name can be found, and

(ii) According to their records the U.N.I.A., Inc. is a subsisting corporation.

All these documents appear to be in order and no objections were raised as to their proper execution. The only document that was attacked was the power of attorney to Mr. Courtenay.

Mr. Balderamos submitted that this power of attorney was invalid being made by authority of the Board of Directors contrary to the Constitution and Book of Laws (1918) referred to in the Privy Council Appeal. It is not disputed that these rules have since been amended on more than one occasion and there is no evidence to show what those amendments were.

This submission is no argument against the Plaintiffs being the rightful beneficiaries but is only an attempt to prove that Mr. Courtenay has no authority to represent them. From the affidavits filed by Mr. Courtenay it is clear that Lionel A. Francis, President of the U.N.I.A., Inc. who signed the power of attorney is the same Lionel A. Francis who signed a retainer, also as President of the U.N.I.A., Inc. to Messrs. Douglas Grant & Dold to represent that Association in the appeal.

Mr. Courtenay has appeared for the Plaintiffs and even if there were any irregularities leading up to his retainer—and there is no proof whatever of this—his appearance on behalf of his clients cannot be questioned by Mr. Balderamos.

Mr. Balderamos' next submission is the only one in the whole case that is any real attempt to throw doubt on the identity of the donors of the power of attorney. His argument is that as the judgment of the Privy Council Appeal was that " the Respondent Corporation (i.e. the U.N.I.A., Inc.) was the Parent Body referred to in the testator's will " the seal of the Association retaining Mr. Courtenay should only have contained the words " U.N.I.A., Inc." whereas the seal of the power of attorney contained the words " U.N.I.A., Inc. Parent Body New York." Therefore, he submitted, the donor of the power of attorney cannot be the same Association that is entitled under the Privy Council Appeal.

I cannot accept this argument. From Mr. Balderamos' own affidavit it appears there are at least two divisions of the U.N.I.A., Inc.

The seal contains the name of the Association in legible characters and the words " Parent Body, New York " are descriptive only. Reference is made to it in the power of attorney, as the common seal of the U.N.I.A., Inc., and it is verified as such in the affidavit of Lulu Johnson of February 24th, 1938.

Another submission made by Mr. Balderamos was that as the certificate by the British Pro-Consul certifying the signature of the Notary Public before whom Lulu Johnson swore to her affidavit of February 24th, 1938, contains these words in the stamped certificate " For the contents of this document His Britannic Majesty's Consulate General assumes no responsibility." This is proof that the Pro-Consul did not believe that the signatures to the power of attorney to Mr. Courtenay had the proper authority to sign.

It is hardly credible that an argument of this sort should have been put forward seriously by Counsel, but as it was, I have thought fit to mention it here. It requires no consideration.

Mr. Balderamos also argued that the U.N.I.A., Inc. became defunct in 1929. It appears that certain members of the U.N.I.A., Inc. having left New York, held a convention in Jamaica and purported to change the name of the Association to Parent Body U.N.I.A., & A.C.L. August, 1929, with Mr. Garvey, President General.

The certificate of incorporation in New York was not amended or cancelled. There is no evidence whatever to show the original U.N.I.A., Inc. ceased to exist in 1929. On the contrary the correspondence filed by Mr. Balderamos, and referred to in his affidavit of August 14th, 1939, shows that it has been definitely in existence since that date, and the certificates from the State of New York confirm this.

To summarize briefly :—

In the Privy Council Appeal No. 33/1932 the successful respondents were the U.N.I.A., Inc., it being held that this corporation was the Parent Body referred to in the will. This Corporation therefore is entitled to the residuary bequest.

Not one of the claims put forward by the Executors has any foundation nor has the claim by Mr. Garvey through Mr. Felix.

It has been established beyond a doubt that the Plaintiffs in the summons are the same corporation that succeeded in the Privy Council Appeal No. 33/1932 and are therefore the rightful beneficiaries under the will.

The Plaintiffs are entitled to the order asked for in the summons.

A. K. AGAR,

Chief Justice.

31st August, 1939.

In the Supreme Court of British Honduras.

No. 3.
Decree on Originating Summons, 14th September 1939.

No. 3.

DECREE ON ORIGINATING SUMMONS, dated 14th September 1939.

UPON the Notice dated the 9th day of August, 1939, under the Originating Summons herein coming on for hearing before the Chief Justice in Chambers on the 15th day of August, 1939, the 16th day of August, 1939, the 17th day of August, 1939, the 31st day of August, 1939, and the 14th day of September, 1939, AND UPON HEARING Mr. Courtenay of counsel for the Plaintiffs and Mr. Balderamos of counsel for the Defendants, AND UPON HEARING the evidence of Richard Louis Felix who, on the 17th day of August, 1939, was allowed by the Court to intervene in the proceedings on behalf of the Universal Negro Improvement Association and African Communities League, August, 1929, and Mr. Lewis of counsel for the said Richard Louis Felix, This Court DOTH ORDER that the following accounts and inquiry be taken and made, that is to say :—

1. An account of the personal estate not specifically bequeathed of Isaiah Emmanuel Morter, the testator in the summons named, come to the hands of Arthur Balderamos and Hubert Hill Cain, the above-named Defendants, or either of them the executors and trustees of the Will of the said testator, or to the hands of any other person or persons by the order or for the use of the Defendants, distinguishing between capital and income.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the testator's legacies and annuities (if any) given by the testator's Will.

5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

AND IT IS ORDERED that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his Will.

AND IT IS ORDERED that the following further inquiries and accounts be made and taken, that is to say :—

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by the said Arthur Balderamos and Hubert Hill Cain or either of them.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

AND IT IS ORDERED that the residue of the real and personal estate and effects of the testator now in the hands of Arthur Balderamos and Hubert Hill Cain or either of them, or in the hands of any other person or persons by the order or for the use of the Defendants, be conveyed and handed over to the Plaintiffs or to such other person or persons as the

Plaintiffs may direct not later than the 25th day of September, 1939, the Plaintiffs undertaking to execute a bond to secure the repayment of the said residue or a due proportion thereof in the event of debts or other prior demands being subsequently discovered including such costs and commissions as may be payable to the Defendants by order of the Court.

AND IT IS ORDERED that the taxed costs of and incidental to this action of both the Plaintiffs and the Defendants as between Solicitor and client be paid out of the estate of the testator AND that Richard Louis Felix pay to the Plaintiffs their costs occasioned by his intervention in the proceedings on the 17th day of August, 1939.

LET the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

Dated the 14th day of September, 1939.

By Order,

(Sgd.) A. O. LONGSWORTH,
Registrar-General.

No. 4.

SUMMONS by W. H. Courtenay, dated 25th February 1941.

LET all parties attend His Honour the Chief Justice in Chambers on Friday the 28th day of February, 1941, at ten o'clock in the forenoon on the hearing of an application on the part of the Plaintiffs :—

(1) To proceed with the accounts and inquiries directed by the judgment herein dated the 14th day of September, 1939 ;

(2) That the Defendants pay over to the Plaintiffs the sum of $1,075.22 being the balance of cash in their hands as at the 12th day of September, 1939 ;

(3) That the Defendants pay over to the Plaintiffs such further sums of money (if any) come to the hands of the Defendants or either of them or to the hands of any other person or persons by the order or for the use of the Defendants since the 1st day of October, 1939 ;

(4) That the Defendants take all necessary steps to effect the transfer to the Plaintiffs of twenty-four shares of capital stock in the Royal Bank of Canada, a corporation existing under the laws of the Province of Quebec in the Dominion of Canada ;

(5) That the Defendants be restrained from getting in or receiving and disposing of or encumbering any part of the personal estate and effects of Isaiah Emmanuel Morter, the testator named in the Originating Summons herein ; and

(6) That the costs of and incidental of this application be taxed and paid by the Defendants to the Plaintiffs.

Dated the 25th day of February, 1941.

This summons was taken out by WOLDRICH HARRISON COURTENAY of Church Street, Belize, Solicitor for the Plaintiffs.

TO the above-named Arthur Balderamos and Hubert Hill Cain AND TO Arthur Balderamos, Esquire, their Solicitor.

In the Supreme Court of British Honduras.

No. 5.
Affidavit in support of summons by W. H. Courtenay, 25th February 1941.

No. 5.

AFFIDAVIT in support of Summons by W. H. Courtenay, dated 25th February 1941.

I, WOLDRICH HARRISON COURTENAY of Eyre Street, Belize, Barrister-at-law, make oath and say as follows :—

1. I am a Solicitor of this Honourable Court and the Solicitor on the record for the above-named Plaintiffs.

2. By the Judgment in the above-mentioned matter dated the 14th day of September, 1939, to which I crave leave to refer, it was ordered that :—

(*a*) certain accounts and inquiries be taken and made, and

(*b*) the residue of the real and personal estate and effects of the testator in the hands of the Defendants or either of them, or in the hands of any other person or persons by the order or for the use of the Defendants, be conveyed and handed over to the Plaintiffs or to such other person or persons as the Plaintiffs may direct not later than the 25th day of September, 1939, the Plaintiffs undertaking to execute a bond to secure the repayment of the said residue or a due proportion thereof in the event of debts or other prior demands being subsequently discovered including such costs and commissions as may be payable to the Defendants by order of the Court.

3. The said accounts and inquiries have not been taken and made and the Plaintiffs are desirous of proceeding with them.

4. Although the bond referred to in paragraph two hereof has been executed and handed to the Defendants, the Defendants have failed to convey and hand over to the Plaintiffs all of the residue of the personal estate and effects of the testator.

5. According to the statement of cash received and expended by the Defendants dated the 14th day of September, 1939, and filed by them in the Probate Registry of the Supreme Court, to which I crave leave to refer, a balance of cash remained in the hands of the Defendants as at the said date amounting to $1,075.22. This amount has not been paid over to the Plaintiffs and is still in the hands of the Defendants.

6. I am informed and verily believe that since the date of the judgment herein, Arthur Balderamos, one of the above-named Defendants, has collected certain monies, that is to say, the proceeds of sales of coconuts and arrears of rents in respect of properties in the town of Belize, which he has not paid or accounted therefor to the Plaintiffs.

7. The portion of the personal estate and effects of the testator handed over by the Defendants to the Plaintiffs included a share certificate for 24 shares of capital stock in the Royal Bank of Canada, a corporation existing under the laws of the Province of Quebec in the Dominion of Canada. These shares are still in the names of the Defendants for the reason that the Defendants have failed to take the steps necessary to effectuate their transfer. The copy letter now produced and marked W.H.C. 6 is the copy of a letter which I wrote to Arthur Balderamos on the 26th June, 1940. In reply to the said letter I received from the

said Arthur Balderamos the letter dated 29th June, 1940, which is now produced and marked W.H.C. 7. The copy letters now produced and marked W.H.C. 8 are copies of letters dated 16th September, 1940, and the 21st September, 1940, respectively, which I subsequently wrote to the said Arthur Balderamos. I have also been informed by Andrew F. Masson, the Manager of the local Branch of the said Royal Bank of Canada, and verily believe that the letter dated 8th October, 1940, was received by him from the Registrar at the Head Office in Montreal of the said Bank. The said letter is now produced and marked W.H.C. 9.

8. I am informed and verily believe that the Defendants have been indebted for a long time and are still indebted to Messieurs Hofius and Hildebrandt of Belize in the sum of $641.79, to Messieurs John Harley and Company in the sum of $533.85 and to the Director of Surveys for Land Taxes for the year 1939–40 in the sum of $405.33.

Sworn at Belize the 25th day of February, 1941 } (Sgd.) W. H. COURTENAY.

Before me,

(Sgd.) A. O. LONGSWORTH,
Registrar-General.

NOTE.—This affidavit is filed on behalf of the Plaintiffs.

No. 6.

AFFIDAVIT of Arthur Balderamos, dated 27th February 1941.

No. 6. Affidavit of Arthur Balderamos, 27th February 1941.

I, ARTHUR BALDERAMOS, of Belize, Barrister-at-Law, a practising Solicitor of the Supreme Court of British Honduras and Solicitor for the Defendants herein, make oath and say as follows :—

1. I and Hubert Hill Cain, who is a Newspaper Proprietor in Belize are the Executors and Trustees of the above estate under the Will of Isaiah Emmanuel Morter deceased dated the 15th February, 1924, who died at Belize on the 7th day of April, 1924, and whose Will was duly proved on the 8th day of September, 1924.

2. On or about the 15th of August, 1939, at the hearing of the Originating Summons herein Woldrich Harrison Courtenay the Solicitor for the above-named Plaintiffs gave this Honourable Court an undertaking that if the said Plaintiffs were successful, the bequest to Isabella Lawrence would be paid provided that the residue of the estate at the time of Probate exceeded $50,000.00 as mentioned in the said Will of Isaiah Emmanuel Morter deceased. I crave leave to refer to the late Sir Arthur Agar's Judgment of 31st August, 1939, in the Originating Summons herein. I am informed and verily believe that the amount has not yet been paid and the Defendants are legally responsible for payment of the amount as directed under the said Will. I crave leave to refer to the said Will which was an exhibit in the Originating Summons herein.

In the Supreme Court of British Honduras.

No. 6. Affidavit of Arthur Balderamos, 27th February 1941, *continued.*

3. It was agreed between Woldrich Harrison Courtenay Solicitor for the above-named Plaintiffs and Arthur Balderamos Solicitor for the above-named Defendants in the presence of Sir Arthur Agar the late Chief Justice that if the Defendants supply the Plaintiffs with as many as possible of the annual accounts for 15 years that were filed yearly in the General Registry Belize that no further accounts and inquiries be taken and made as directed by the Order herein dated the 14th day of September, 1939, except the final account in winding up and closing the said estate.

4. I on behalf of the above-named Defendants delivered to Woldrich Harrison Courtenay Solicitor for the above-named Plaintiffs 11 of the Annual Accounts and I was informed by him and verily believe that he obtained from the General Registry Belize copies of the 1st, 2nd, 3rd and 4th Annual Statement of Accounts. I crave leave to refer to his letter of 16th September, 1940.

5. That the amount of $1,075.22 balance shown in the 15th Annual Account filed by the Defendants in the General Registry, Belize, was not payable to the Plaintiffs as the amount was carried forward in the usual manner to be accounted for in the final account in winding up and closing the said estate when the residue of the estate can then be properly ascertained.

6. By the Order herein dated the 14th day of September, 1939, to which I crave leave to refer, viz. :—" AND IT IS ORDERED that the taxed costs of and incidental to this action of both the Plaintiffs and the Defendants as between Solicitor and client be paid out of the estate of the testator."

(A) The Defendants' Bill of Costs herein was taxed by the Registrar-General on 29th March, 1940, at $138.80 and the Plaintiffs have not yet paid the Defendants the amount.

(B) There is an amount due me under my General Bill of Costs dated the 19th August, 1940, for professional services rendered, the taxation of which has been completed by the Registrar-General and I have been informed and verily believe that he will give his decision thereon on the 28th February, 1941, at 2.30 p.m.

7. On the 16th of September, 1940, Woldrich Harrison Courtenay as Solicitor for the Plaintiffs made an arrangement with me as Solicitor for the Defendants that as the Plaintiffs are indebted to the Defendants in the sum of $138.80 and the Bill of Costs dated the 19th August, 1940, is likely to amount to more than $1,000.00 then if the Defendants will pay to the Plaintiffs all the dividends on the twenty-four shares in the Royal Bank of Canada which are still in the names of the Defendants, that he on behalf of the Plaintiffs will pay the Creditors' Bills. The Bills are as mentioned in paragraph 8 of the Affidavit of Woldrich Harrison Courtenay of 25th February, 1941. I agreed on behalf of the Defendants and all the dividends have been paid to the Plaintiffs from time to time but the said Woldrich Harrison Courtenay Solicitor for the Plaintiffs has not yet paid the Bills.

8. In reference to paragraph 4 of the Affidavit of Woldrich Harrison Courtenay of 25th February, 1941, the residue of the personal estate cannot be ascertained to hand over to the Plaintiffs until all the liabilities are paid including costs and executors' commissions.

In the Supreme Court of British Honduras.

No. 6. Affidavit of Arthur Balderamos, 27th February 1941, *continued.*

9. In reference to paragraph 6 of the above affidavit of Woldrich Harrison Courtenay, the said Woldrich Harrison Courtenay asked me specially for the Defendants to continue to collect the proceeds of sale of cocoanuts for the month of October 1939, and to pay the labourers and other expenses therefrom and that they be included in the final account. And it was agreed between us that the Defendants also collect all the arrears of rents of properties in Belize to 30th September, 1939, and pay all expenses in connection therewith and that they also be included in the final account in the winding up and closing of the estate.

10. That it is the fault of the said Woldrich Harrison Courtenay that the 24 shares of the Capital Stock in the Royal Bank of Canada were not yet transferred as I am informed and verily believe that he retained them to obtain a purchaser. On the 9th of December, 1939, the Defendants executed the Power of Attorney for the transfer of the shares and it was delivered to Woldrich Harrison Courtenay and he did not inform the Defendants of any objections raised by the Royal Bank of Canada until the 26th June, 1940, and a letter was written by me to him in reply on 29th June, 1940. I am informed and verily believe that the contents of the last-mentioned letter were not conveyed to the Head Office in Montreal until on or about the 16th September, 1940. I crave leave to refer to the copies of letters dated 26th and 29th June, 1940, and 16th September, 1940.

11. The Bills as mentioned in paragraph 8 of the above affidavit of the said Woldrich Harrison Courtenay should have been paid by the Plaintiffs in accordance with the arrangement as stated in paragraph 7 hereof from the proceeds of the sale of some of the properties which were conveyed by the Defendants to the Plaintiffs.

Sworn at Belize the 27th day of February, 1941 } (Sgd.) ARTHUR BALDERAMOS

Before me,

(Sgd.) A. O. LONGSWORTH,

Registrar-General.

This Affidavit is filed on behalf of the Defendants by Arthur Balderamos of North Front Street Belize, Solicitor for the Defendants.

In the Supreme Court of British Honduras.

No. 7. Writ of Summons E. J. Hofius Plaintiff and A. Balderamos and H. H. Cain Defendants, 2nd October 1942.

No. 7.

WRIT OF SUMMONS, E. J. Hofius, Plaintiff, and A. Balderamos, and H. H. Cain, Defendants, dated 2nd October 1942.

LET the Defendants Arthur Balderamos of Belize Barrister-at-Law and Hubert Hill Cain of Belize Printer executors of the estate of Isaiah Emmanuel Morter within 8 days after service of this summons cause appearances to be entered for them to this Summons which is issued upon the application of Ernest Johnston Hofius of Belize Merchant carrying on business under the style or name of Hofius & Hildebrandt in Albert Street Belize who claims to be interested as a debtor of the estate for an order for the administration of the real and personal estate of the said Isaiah Emmanuel Morter with all necessary and proper directions.

Dated the 2nd day of October, 1942.

This Summons was taken out by Messrs. Dragten, Woods & Co., of North Front Street, Belize, the Solicitors for the above-named Plaintiff.

The Defendants may appear hereto by entering appearances either in person or by solicitor at the General Registry, Belize.

If the Defendants do not enter appearances within the time and at the place above mentioned such order will be made and proceedings taken as the Judge may think just and expedient.

No. 8. Affidavit in support of Summons by E. J. Hofius, 2nd October 1942.

No. 8.

AFFIDAVIT in support of Summons by E. J. Hofius, dated 2nd October 1942.

I, ERNEST JOHNSTON HOFIUS of Belize, Merchant, carrying on business in Albert Street, Belize under the style or name of Hofius & Hildebrandt make oath and say as follows :—

1. The said Isaiah Emmanuel Morter died on the 7th day of April, 1924, leaving a Will dated the 15th day of February, 1924, and which said Will was proved on the 8th day of September, 1924, by the above-named Defendants as the executors therein named.

2. The said Arthur Balderamos and Hubert Hill Cain as such executors as aforesaid are indebted to me in the sum of $758.54 for balance owing for goods supplied to them for the said estate and interest thereon.

3. I have repeatedly requested payment of the said debt and the said Defendants have not made any payment towards the said debt.

4. The assets of the estate of the said Isaiah Emmanuel Morter are sufficient to satisfy all creditors.

5. I have been informed by my solicitors Messrs. Dragten, Woods and Co. and verily believe that they have also made application for the payment of the said debt.

Sworn at Belize this 2nd day of October, 1942 } (Sgd.) ERNEST J. HOFIUS.

Before me,

(Sgd.) A. O. LONGSWORTH,
Registrar General.

No. 9.

AFFIDAVIT of A. Balderamos, dated 15th October 1942.

In the Supreme Court of British Honduras.

No. 9. Affidavit of A. Balderamos, 15th October 1942.

I, ARTHUR BALDERAMOS of Belize Barrister-at-Law a practising Solicitor of the Supreme Court of British Honduras and Solicitor for the Defendants herein, make oath and say as follows :—

1. I and Hubert Hill Cain, who is a Newspaper Proprietor in Belize are the Executors and Trustees of the above estate under the Will of Isaiah Emmanuel Morter deceased dated the 15th February, 1924, who died at Belize on the 7th day of April, 1924, and whose Will was duly proved on the 8th day of September, 1924.

2. The executors of the above estate under Orders of this Honourable Court dated the 31st day of August and the 14th day of September, 1939, conveyed to the Universal Negro Improvement Association Incorporated of 120 West 135th Street in the City of New York in the State of New York in the United States of America, the real estate under a Conveyance dated the 30th day of September, 1939, and handed over the said real estate to Woldrich Harrison Courtenay of Church Street Belize the Solicitor and Attorney of the said Universal Negro Improvement Association Incorporated under a Power of Attorney from the said Association to the said Woldrich Harrison Courtenay dated the 24th day of February, 1938. The major part of the personal estate was handed over by the said Executors to the said Woldrich Harrison Courtenay as Solicitor and Attorney of the said Association, the balance to be accounted for in the final account in winding up and closing the said estate.

3. I am informed and verily believe that the said Association have appointed Dr. Lionel A. Francis of North Front Street, Belize, their Attorney.

4. I am informed and verily believe that the said Association by their Attorney or Attorneys have made arrangements for the payment of the debts due to Messrs. Hofius & Hildebrandt and Messrs. John Harley & Co. and the other creditors.

5. The debts due to Messrs. Hofius and Hildebrandt and Messrs. John Harley & Co. and the other creditors should have been paid by the said Association out of the proceeds of the sale of some of the properties which were conveyed by the Defendants to the said Association under the said Conveyance dated the 30th day of September, 1939.

6. I verily believe that it will be a proper course to join the said Universal Negro Improvement Association Incorporated as a Defendant in this cause or matter.

7. I crave leave to refer to my Affidavit of 27th day of February, 1941, filed in the Summons in Chambers dated the 25th day of February, 1941, in which the Universal Negro Improvement Association Incorporated were Plaintiffs and Arthur Balderamos and Hubert Hill Cain Executors

In the Supreme Court of British Honduras.

No. 9. Affidavit of A. Balderamos, 15th October 1942, *continued.*

of the above estate were Defendants and also the file of proceedings in the Matter of the Estate of Isaiah Emmanuel Morter deceased.

Sworn at Belize the 15th day of October, 1942 } (Sgd.) ARTHUR BALDERAMOS.

Before me,

(Sgd.) A. O. LONGSWORTH,

Registrar General.

This Affidavit is filed on behalf of the Defendants by Arthur Balderamos of North Front Street Belize Solicitor for the Defendants.

No. 10. Registrar's Notes of Proceedings, 16th October 1942.

No. 10.

REGISTRAR'S NOTES OF PROCEEDINGS, dated 16th October 1942.

Friday, 16th October, 1942
At 10 a.m.

Action No. 7/1942

HOFIUS

vs.

BALDERAMOS & CAIN

Mr. Dragten for Plff.

Mr. Balderamos for Defts.

Mr. Dragten to Court.

Mr. Balderamos in reply.

(1) Order for Administration.

(2) Order to send on to U.N.I.A. Inc. at New York & also Mr. W. H. Courtenay & Mr. Francis as the alleged Attorneys & that the said parties be joined as Defds.

Adjd. to 27/11/42 at 10 a.m.

A. O. LONGSWORTH,
Registrar.

No. 11.

JUDGE'S NOTES OF PROCEEDINGS, dated 16th October 1942.

In the Supreme Court of British Honduras.

No. 11. Judge's Notes of Proceedings, 16th October 1942.

7/1942. Ernest Johnston Hofius, Pltff.
Arthur Balderamos and
Hubert Hill Cain, Executors
of the Estate of Isaiah E.
Morter, decd.

Dragten K.C. Pltff.

Balderamos, Solicitor for the estate.

Dragten.

Order 55, Rule 18, as creditor.

Order for Administration.

Debt owing contracted by administrators as shown by affidavit.

There is an order handing over estate 14th Sept. 1939.

Account of the testator's debts.

(Bond in case debts were not paid. Bond last resort.) Admitted.

Legacy also unpaid not started to avoid multiplicity of actions.

Order 55. Rule 24.

May order other persons to be served with summons.

Since last order of Court ppty of the estate to the extent of $20,000 odd shd. have been sold.

Applications between 4th June, 1940, and 17th Jan., 1941.

No personalty now.

Goods supplied before this correspondence.

No objection to order under Order 55, Rule 24.

Balderamos.

In accordance to have estate administered.

Applies.

U.N.I.A. Inc. Represented by Att. Mr. Harrison Courtenay.

Dr. Lionel Francis under another power of Attorney.

Mr. Harrison Courtenay as Trustee vested with custody of certain real properties in the Colony transferred from the Executors of the estate of the deceased.

Miss Lawrence to be paid legacy on undertaking of Mr. Courtenay if he was successful.

1. Order for Administration.
2. Service.
3. Adjourned to 27th Nov., 1942.
   Liberty to apply.
4. Appointment of the Administrator until all the parties are before the Court.
5. Executors a/cs Statutory (30th April to 16th Oct., 1942).

C. G. LANGLEY,
C. J.

In the Supreme Court of British Honduras.

No. 11. Judge's Notes of Proceedings, 16th October 1942, *continued.*

Dragten.

Notice of Order served.

Letter from Ex. Gen. U.N.I.A. Inc.

No affidavit.

Balderamos.

Leaves it to the Court whether affidavit for service may be dispensed with.

Dr. Francis.

Prepared to go on.

Courtenay.

Says that the U.N.I.A. Inc. to whom he is Trustee that two groups of persons who claim to be the proper officers of the U.N.I.A. Inc.

States his authority was originally derived from a group in 1938 headed by Dr. Francis.

Since that injunction applied for to the United States Courts restraining Dr. Francis group from holding themselves out as officers of the U.N.I.A. Inc.

Dr. Francis confirms this statement.

Court proceeds.

Dragten.

Suggests that J. C. Thompson Esq. be appointed Administrator to the real and personal estate of the deceased.

Balderamos.

Desires matter be settled as soon as possible and offer no objection to Mr. Thompson.

Dr. Francis.

Objects to appointment on ground of expense involved.

States that difficulties have arisen between him and Mr. Courtenay otherwise debts would have been paid before.

Courtenay.

Submits that it is an unnecessary expense.

Suggests sale of property. Escalante Hotel, Queen St. Belize which will realise at least $9,000. Debts estimated at under $5,000.

Order Rule 16. (Mr. Balderamos)

Mr. Thompson appointed. $10,000. (Bond)

Court adjourns until Friday 18th Feby.

Draft order to be agreed by parties and submitted to Court.

In the event of agreement Order made without further appearance of parties.

In the event of none being made case heard on Friday 10 a.m.

C. G. L.

C.J.

No. 12.

In the Supreme Court of British Honduras.

ORDER ADDING DEFENDANTS AND DECREEING ADMINISTRATION, dated 16th October 1942.

No. 12. Order adding Defendants and Decreeing Administration, 16th October 1942.

Dated the 16th day of October, 1942.

Before His Honour The Honourable CARLETON GEORGE LANGLEY, K.C., Chief Justice—in Chambers.

ORDER.

UPON READING the Summons herein dated the 2nd day of October, 1942 and the Affidavit of the above-named Plaintiff sworn herein on the 2nd day of October 1942 and UPON HEARING Mr. Dragten of Counsel for the above-named Plaintiff and Mr. Balderamos of Counsel for the above-named Defendants IT IS ORDERED :

(1) That the real and personal estate of the above-named deceased be administered by the Court by an administrator to be appointed on the passing of the final order.

(2) That the above-named Defendants as executors of the said deceased file their final account to the date of this order.

(3) That this order be served on the Universal Negro Improvement Association, Inc., at their last known address in New York and on Mr. Woldrich Harrison Courtenay and Dr. Lionel Francis as their attorneys, and on the said Mr. Woldrich Harrison Courtenay, as Trustee of the Universal Negro Improvement Association Inc. under two trust deeds dated the 3rd day of November 1939 and the 16th day of November 1939 respectively, and that all the aforesaid parties in their several capacities be joined as Defendants in this action.

(4) That the further hearing of the Summons be adjourned to the 27th day of November, 1942, at 10 o'clock in the forenoon.

(5) Liberty to all parties to apply.

Dated the 17th day of October, 1942.

By Order,

(Sgd.) A. O. LONGSWORTH,

Registrar-General.

In the Supreme Court of British Honduras.

No. 13. Registrar's Notes of Proceedings, 15th December 1942.

No. 13.

REGISTRAR'S NOTES OF PROCEEDINGS, dated 15th December 1942.

Tuesday 15th December 1942

At 10 a.m.

Action No. 7/1942

HOFIUS

vs.

BALDERAMOS & CAIN et al.

Mr. Dragten for Plff.

Mr. Courtenay on his own behalf.

Mr. Balderamos for Exors.

Mr. Francis in person for U.N.I.A. Inc. as Atty.

Mr. Dragten to Court.

Suggested that Mr. Jack Claude Thomson be appointed to administer the real & personal estate of I. E. Morter decd.

Mr. Balderamos offers no objection.

Mr. Francis objects on ground of expense.

Mr. Courtenay agrees with Mr. Francis.

After discussion both withdraw their objections—Order made accordingly.

Adjd. to 18/12/42 at 10 a.m.

(Sgd.) A. O. LONGWORTH,
Registrar.

No. 14. Judge's Notes of Proceedings, 15th December 1942.

No. 14.

JUDGE'S NOTES OF PROCEEDINGS, dated 15th December 1942.

15th Dec. 1942.

7/1942.

ERNEST JOHNSTON HOFIUS - - - Pltff.

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN Executors of the Estate of Isaiah Emmanuel Morter Dec.

Dragten K.C. Pltff.

Courtenay on his own behalf Trustee U.N.I.A. Inc.

Balderamos. Defts.

Dr. Francis. Att. U.N.I.A. Inc.

No. 15.

ORDER APPOINTING RECEIVER, dated 15th December 1942.

In the Supreme Court of British Honduras.

No. 15. Order appointing Receiver, 15th December 1942.

IN THE SUPREME COURT OF BRITISH HONDURAS, A.D. 1942.

IN THE MATTER of the Estate of Isaiah Emmanuel Morter late of Belize, Planter deceased.

No. 7/1942.

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of the Estate of Isaiah Emmanuel Morter deceased) - - - Defendants

by original action

and

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of the Estate of Isaiah Emmanuel Morter deceased)

and

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY and LIONEL FRANCIS as attorneys of the said Universal Negro Improvement Association Inc.

and

WOLDRICH HARRISON COURTENAY as trustee of the said Universal Negro Improvement Association Inc. - - - Defendants.

By Order dated the 15th day of December, 1942.

Before His Honour The Honourable CARLETON GEORGE LANGLEY, K.C., Chief Justice—in Chambers.

ORDER.

UPON READING the Summons herein dated the 2nd day of October 1942 the Affidavit of the above-named Plaintiff sworn herein on the 2nd day of October 1942 and the Affidavit of Arthur Balderamos sworn herein on the 15th day of October 1942 AND UPON HEARING Mr. Dragten of Counsel for the above-named Plaintiff and Mr. Balderamos

In the Supreme Court of British Honduras.

No. 15. Order appointing Receiver, 15th December 1942, *continued.*

of Counsel for the said Arthur Balderamos and Hubert Hill Cain the executors of the estate of Isaiah Emmanuel Morter deceased and Mr. Woldrich Harrison Courtenay and Mr. Lionel Francis as attorneys for the said Universal Negro Improvement Association Inc. and Mr. Woldrich Harrison Courtenay as trustee for the said Universal Negro Improvement Association Inc. IT IS ORDERED that John Claude Thomson, Accountant be appointed Receiver upon first giving security by bond in the sum of Ten thousand dollars to the satisfaction of the Chief Justice to take and make the following accounts and enquiries :—

(1) An account of what is due and owing to the Plaintiff and all other the creditors of Isaiah Emmanuel Morter deceased the testator in the Plaintiff's action named.

(2) An account of the testator's funeral and testamentary expenses incurred before the commencement of this action.

(3) An account of the testator's personal estate come to the hands of the Defendants or to the hands of any other person or persons by or for their order or use which may be required by the Receiver.

(4) An enquiry what parts (if any) of the testator's personal estate are outstanding or undisposed of.

AND IT IS ORDERED that the Defendants do file the above accounts within such time as may be reasonably required by the Receiver AND IT IS FURTHER ORDERED that for the purposes of such accounts and enquiries the Receiver may advertise in three successive issues of the Government Gazette the "Clarion" and "Belize Independent" Newspapers for creditors of the above-named testator calling upon such creditors to come in and prove their claims against the estate of the said deceased before the 31st day of March 1943 AND IT IS FURTHER ORDERED that the testator's personal estate be applied in payment of his debts and funeral and testamentary expenses incurred before the commencement of this action and any other necessary expenses in due course of administration AND IT IS FURTHER ORDERED that in case the testator's personal estate should be insufficient for the payment of his debts and funeral and testamentary expenses aforesaid the following further enquiries and accounts be made and taken :

(5) An enquiry what real estate the testator was seized of or entitled to at the time of his death.

(6) An enquiry what encumbrances (if any) affect the testator's real estate or any and what parts thereof and their priority.

(7) An account of what is due to such of the incumbrancers (if any) as shall consent to the sale hereinafter directed in respect of their incumbrances.

AND IT IS ORDERED that the testator's real estate or a sufficient part thereof to make good the deficiency of his personal estate be sold with the approbation of the Chief Justice free from incumbrances (if any) of such of the incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent to the sale

AND IT IS ORDERED that the money to arise from the sale of the testator's real and personal estate be applied by the Receiver in payment of all debts and if any such money or any part thereof shall arise from real estate sold with the consent of the incumbrancers the same shall be applied in the first place in payment of what shall appear to be due to such incumbrancers according to their priorities AND IT IS FURTHER ORDERED that the Receiver shall be paid a commission of five per cent. on all moneys coming into his hands under and by virtue of this order AND IT IS ORDERED that the further consideration of the above-mentioned summons herein be adjourned with liberty to all parties to restore the same to the Chief Justice for further hearing and consideration by two previous days' notice in writing to the Registrar-General AND that all questions of costs be deferred for further consideration.

In the Supreme Court of British Honduras.

No. 15. Order appointing Receiver, 15th December 1942, *continued.*

Dated this 21st day of December, 1942.

By Order,

(Sgd.) A. O. LONGSWORTH,
Registrar-General.

No. 16.

AFFIDAVIT of W. H. Courtenay, dated 18th December 1942.

No. 16. Affidavit of W. H. Courtenay, 18th December 1942.

I, WOLDRICH HARRISON COURTENAY of Eyre Street, Belize, Barrister-at-Law, make oath and say as follows :—

1. I am a solicitor of this honourable court and one of the above-named defendants.

2. In compliance with the Orders of this honourable court dated the 31st day of August and the 14th day of September in the year 1939, in a certain cause in the above-mentioned matter in which the Universal Negro Improvement Association Incorporated (hereinafter referred to as the Association) were plaintiffs and the above-named Arthur Balderamos and Hubert Hill Cain (hereinafter referred to as the executors) were defendants, the residue of the real estate of the testator in the hands of the executors were conveyed by them to the Association by an Indenture dated the 30th day of September, 1939, which is recorded in the General Registry at Belize in Deeds Book 34 at folios 326–30. The major part of the personal estate and effects of the testator were, in compliance with the recited Orders, handed over by the executors to the deponent for and on behalf of the Association and the balance is still to be accounted for by the executors.

3. By two Indentures dated respectively the 3rd and 16th days of November, 1939, which are recorded in the General Registry in Deeds Book 34 at folios 365–368 and 378–380 respectively, the Association conveyed all the said residue of the real estate referred to in the preceding paragraph, excepting three parcels of land, that is to say, the coconut plantation known as Caye Chapel, a coconut plantation and pasture land on the Belize River known as Windsor Bank and the logwood and

In the Supreme Court of British Honduras.

No. 16. Affidavit of W. H. Courtenay, 18th December 1942, *continued.*

mahogany works known as Revenge (hereinafter collectively referred to as the Plantations), upon certain trusts which are not disclosed in the said Indentures.

4. The trusts upon which the said real estate was conveyed to the deponent are set forth in an agreement in writing dated the 16th day of February, 1938, made between the Association of the first part and certain judgment creditors of the Association of the second and third parts. To implement further the terms of this agreement, the Association afterwards by a deed poll dated the 22nd day of November, 1939, which is recorded in the General Registry in Deeds Book 34 at folios 380–3, appointed the deponent to be their agent and attorney with the powers which are therein set forth. The Agreement dated the 16th day of February, 1938, is now produced and marked " W.H.C.1."

5. The trusts hereinbefore mentioned have not all been carried out for the reasons following.

6. While he was in Belize in July and August in the year 1940, Murray Bein, the New York attorney of the Association, instructed me to offer a certain property in the town of Belize also a mortgage for $800.00 to Charles A. Taussig, one of the creditors of the Association, referred to in paragraph (c) of clause five of the Agreement dated the 16th day of February, 1938, to be accepted by him on account of the sum of $5,000.00 payable to him under the said Agreement. The offer of the property which I made to the said Charles A. Taussig, which was at a valuation in excess of the appraised value, and also the mortgage for $800.00 were accepted by him and by his direction I accordingly conveyed the property and made the mortgage in the name of his wife, Damaris Taussig. The said Murray Bein was also offered and accepted another mortgage for $800.00 on account of the sum of $7,000.00 payable to him under the said Agreement. By his direction this mortgage was made in the name of Zelda Jacobs. The said Murray Bein also negotiated the sale of certain other properties and on agreements being reached with the buyers the properties were afterwards conveyed by me to them. These sales were effected at prices below the values at which the properties were appraised in 1939. The said Murray Bein informed me and I verily believed him that he had the full authority of the Association and the other interested parties to make and approve the sales at the prices obtained. The deponent was satisfied that the prices obtained were generally fair and reasonable based upon the best offers which had been received prior to the arrival of the said Murray Bein and taking into account the depreciation of the properties since the appraisal. Also acting on the instructions of the said Murray Bein the order and priority for the payments set forth in clause five of the said agreement were varied but this has since been rectified.

7. The conveyance of the property to Damaris Taussig and the transfer of the mortgages to her and to Zelda Jacobs were questioned afterwards by the above-named defendant Lionel A. Francis in consequence of which I sought and obtained a re-conveyance of the property and a re-transfer of the mortgages to me and I afterwards filed Declarations, which are recorded in the General Registry in Deeds Book 34 at folios 787

and 796–7, that I hold the properties in trust for the Association. The said Charles A. Taussig however claims to be entitled to the rents and profits of the property from the date of the conveyance to Damaris Taussig, and the said Murray Bein also claims to be entitled to the interest on the mortgages, Damaris Taussig having in the meantime transferred her mortgage to Zelda Jacobs.

8. I have been informed by James A. Plummer, R. Howard Price, Mildred I. Cooper, John A. Scott, Murray Bein and Charles A. Taussig, all of New York, that in the month of October, 1940, the above-named defendant Lionel A. Francis was removed as president and deprived of membership in the Association for his attempt to deprive the Association of its assets for his own benefit and the benefit of others. I have also been informed by the said Lionel A. Francis, Lulu Rutter Johnson and others that the said Lionel A. Francis was never removed as president of the Association but that the said James A. Plummer, R. Howard Price, Mildred I. Cooper and John A. Scott have all been expelled from the Association and that Murray Bein was no longer attorney for the Association. The foregoing information reached me in the months of October and November 1940 since when I began to receive conflicting instructions from both factions. To neither faction did I pay heed, and in February, 1941, the said Lionel A. Francis arrived in Belize.

9. In July, 1941, I visited New York and had conferences with both factions but was unable to determine which faction was genuine. I advised both factions to bring action against the other in the courts of New York in order to settle their status.

10. While I was in New York I received information which I verily believed that about four days after my departure from Belize for New York the said Lionel A. Francis attempted to record in the General Registry a document purporting to revoke my appointment as the agent and attorney of the Association and appointing himself in my place and stead. The document was not accepted for recording for reasons which are not known to me. Soon after my return to Belize however the said Lionel A. Francis did record in the Registry a document purporting to appoint himself the agent and attorney of the Association and revoking my appointment. This deed poll is dated the 24th day of June, 1941.

11. By writing dated the 18th day of November, 1940, purporting to be under the hand of Lulu Rutter Johnson as Secretary of the Association and to be under the common seal of the Association I was instructed to withhold further payments to the said Murray Bein in completion of the fee of $7,000.00 payable to him under the said Agreement of the 16th day of February, 1938. At a conference with the above-named Lionel A. Francis and Frans Robert Dragten, esquire, a solicitor of this honourable court and the solicitor on the record for the above-named plaintiff, held in the office of the said Frans Robert Dragten on the 20th day of October, 1941, I suggested that the property which had been conveyed to his wife in 1940 should be reconveyed to the said Charles A. Taussig on account of the amount of $5,000.00 which is due to be paid to him under the Agreement of the 16th day of February, 1938. The said Lionel A. Francis objected to my proposal on the ground that since

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No. 16. Affidavit of W. H. Courtenay, 18th December 1942, *continued.*

owing to the war remittances of foreign exchange to the United States of America may not be allowed, the property should be retained so that the Association will get the benefit of the rents in the meantime.

12. On the 18th day of November, 1941, I received a letter dated the 7th day of November, 1941, purporting to be signed by Lulu Rutter Johnson as Secretary-General of the Association requesting me to transfer to the said Lionel A. Francis all properties which I hold on trust. Subsequent requests have also been received but I have refused to comply with them. On the 25th day of February, 1942, I received from the said Frans Robert Dragten, esquire, a document purporting to appoint the said Lionel A. Francis to be trustee of the properties which I now hold in trust and revoking my appointment, requesting on behalf of the said Lionel A. Francis that I should execute the same. I sent this document to Murray Bein and a copy to Charles A. Taussig requesting them as beneficiaries under the Agreement dated the 16th day of February, 1938, to inform me and to ascertain from the other beneficiaries if it is their wish that I should relinquish my trusteeship in favour of the said Lionel A. Francis. I have been informed that none of the beneficiaries is willing that the said Lionel A. Francis should replace me as trustee.

13. I have been informed that there is now pending in the Supreme Court of the State of New York an action wherein the Universal Negro Improvement Association Incorporated, James A. Plummer, R. Howard Price and Mildred I. Cooper are plaintiffs and the said Lionel A. Francis, Lulu Rutter Johnson, Stanley A. Ming and Arnold H. Maloney are defendants. I have also been furnished with a copy of the Summons and Complaint in this action which, for the better information of this honourable court, is now produced and marked " W.H.C.2."

14. I am informed and verily believe that the only outstanding debts payable by the executors are as follows, namely :—the plaintiff's claim of $641.79, to Messieurs John Harley & Company of Belize the sum of $533.85, the Director of Surveys the sum of $405.33 and the contingent legacy payable to Isabella Lawrence of $2,000.00, amounting in all to $3,580.97. No debts are owing by me in respect of my administration of the affairs of the Association except those remaining to be paid in fulfilment of the terms of the Agreement dated the 16th day of February, 1938.

15. In a letter dated the 5th day of December, 1941, the said Frans Robert Dragten suggested " that arrangements should be made for the realization of certain properties in order to pay debts still owing and the legacy of Miss Lawrence . . . " I am ready and willing to do this.

Sworn at Belize this 18th day of December, 1942, } W. H. COURTENAY.

Before me,

A. O. LONGSWORTH,
Registrar-General.

This affidavit is filed on behalf of the above-named defendant Woldrich Harrison Courtenay.

No. 17.

In the Supreme Court of British Honduras.

No. 17. Agreement dated 16th February 1938 referred to in Affidavit of W. H. Courtenay.

AGREEMENT dated 16th February 1938, referred to in Affidavit of W. H. Courtenay.

THIS AGREEMENT, made the 16th day of February, 1938, by and between the UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INC., a membership corporation organized and existing under and by virtue of the Laws of the State of New York, and having its principal office for the transaction of business at No. 120 West 135th Street, Borough of Manhattan, City of New York, party of the first part; and MAE CRAIG, as Executrix of the Estate of George O. Marke, Deceased, and CLIFFORD S. BOURNE, Judgment-Creditors of the Universal Negro Improvement Association, Inc., parties of the second part; and LIONEL A. FRANCIS, ADRIAN JOHNSON and LUCRETIA JOHNSON and RACHEL JOHNSON-MASSAQUOIS as Administrators of the Estate of Gabriel Johnson, Deceased, Judgment-Creditors of the Universal Negro Improvement Association, Inc., parties of the third part;

WITNESSETH:

WHEREAS, one Isaiah Emmanuel Morter, late of Belize in the Colony of British Honduras, duly made and executed his Last Will and Testament dated the fifteenth day of February, one thousand nine hundred and twenty-four, and thereby gave, devised and bequeathed the residue of his real and personal estate whatsoever and wheresoever situate unto the Parent Body of the Universal Negro Improvement Association for the African Redemption Fund after payment of debts, funeral and testamentary expenses and legacies, and

WHEREAS, by a Judgment of the Supreme Court of British Honduras, dated February 26th, 1931, confirmed by a decision of the Lords of the Judicial Committee of His Majesty's Most Honourable Privy Council on the 30th day of July, 1935, it has been ruled that the words "Parent Body of the Universal Negro Improvement Association" in the said Will were used by the testator as meaning the UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INC., the party of the first part herein, and

WHEREAS, one George O. Marke did on the 28th day of April, 1927, obtain a judgment in the Supreme Court of New York for the County of New York, which judgment for the sum of $32,385.30 was entered therein in his favor against the Universal Negro Improvement Association, Inc., and said George O. Marke having since died and Mae Craig having been appointed Executrix of his Last Will and Testament and letters testamentary having been issued to her as such Executrix by the Surrogate of the County of Kings, New York, and whereas the said Mae Craig as Executrix of the Estate of George O. Marke did thereafter sue upon said judgment aforesaid in the Courts of Jamaica, British West Indies, and a judgment was thereafter entered in said jurisdiction in the year 1930 in her favor as such Executrix and against Universal Negro Improvement Association, Inc., and

WHEREAS, Clifford S. Bourne, one of the parties of the second part, did obtain a judgment in the Supreme Court of New York for the County of New York, which judgment was on the 12th day of March, 1928,

This is the Agreement marked "W.H.C.1" referred to in the annexed Affidavit of Woldrich Harrison Courtenay sworn to this 18th day of December 1942, Before me,

(Sgd.) A. O. LONGSWORTH,
Registrar-General.

In the Supreme Court of British Honduras.

No. 17. Agreement dated 16th February 1938 referred to in Affidavit of W. H. Courtenay, *continued.*

entered in said Court in his favor and against Universal Negro Improvement Association, Inc., for the sum of $7,648.33, and did thereafter sue upon said judgment in the Courts of Jamaica, British West Indies, and did reduce to judgment in said jurisdiction in the year 1930 the said judgment so obtained in the Supreme Court of New York, and

WHEREAS, the said Mae Craig as Executrix of the Estate of George O. Marke and Clifford S. Bourne are now endeavoring to enforce said judgments against the aforesaid legacy belonging to the Universal Negro Improvement Association, Inc., party of the first part, and

WHEREAS, Lionel A. Francis, one of the parties of the third part, did obtain a judgment in the Supreme Court of New York, for the County of New York, against the Universal Negro Improvement Association, Inc., for the sum of $17,681.09 on the 17th day of October, 1936, and did thereafter in the year 1937 cause the said judgment to be sued upon and reduced to judgment in the Colony of British Honduras, and

WHEREAS, Adrian Johnson, one of the parties of the third part, did obtain a judgment in the Supreme Court of New York, for the County of New York, against the Universal Negro Improvement Association, Inc., for the sum of $2,438.50 on the 15th day of January, 1937, and did thereafter in the same year 1937 cause the said judgment to be sued upon and reduced to judgment in the Colony of British Honduras, and

WHEREAS, one Gabriel Johnson did obtain a judgment in the Court of Common Pleas No. 5 for the County of Philadelphia State of Pennsylvania, against the Universal Negro Improvement Association, Inc., for the sum of $9,030.00 on the 9th day of July, 1926, and the said Gabriel Johnson having died since the rendering of said judgment, and Lucretia Johnson and Rachel Johnson-Massaquois as Administrators of the Estate of said Gabriel Johnson having caused the said judgment so obtained to be sued upon and reduced to judgment in the Colony of British Honduras in the year 1937, and

WHEREAS, all of the said parties of the third part are now endeavoring to enforce said judgments against the legacy belonging to the Universal Negro Improvement Association, Inc., party of the first part, and

WHEREAS, a dispute has arisen between all of the parties hereto as to the validity and priority of lien of all of the said judgments against the property of the Universal Negro Improvement Association, Inc., and

WHEREAS, the real and personal property of Isaiah Emmanuel Morter, bequeathed and devised to the party of the first part, Universal Negro Improvement Association, Inc., has since the probate of his Will in the Colony of British Honduras been in the possession, management and control of the Executors and Administrators appointed by the Will of said testator, pending the determination of litigation as to the validity of said Will and rights of the party of the first part herein as residuary legatee which litigation and proceedings have terminated as hereinbefore set forth, NOW this Agreement

In the Supreme Court of British Honduras.

No. 17. Agreement dated 16th February 1938 referred to in Affidavit of W. H. Courtenay, *continued.*

WITNESSETH: That the dispute and controversy between all of the parties hereto is hereby settled and the rights and equities of all the parties hereto fixed and adjusted upon the following agreed terms and conditions:

FIRST: The UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INC., the party of the first part shall immediately upon the filing in the Court at Belize, British Honduras of the order in council in the Isaiah Emmanuel Morter Estate, be deemed to be the absolute owner in fee simple and entitled to the immediate possession and control, free from all liens, encumbrances or claims of any kind as may be claimed or asserted by the parties hereto, of the following described property, which is part of the real property forming a part of the residuary estate of the said Isaiah Emmanuel Morter:

> "The three (3) plantations known as 'Caye Chapel,' 'New Windsor Bank,' Belize River, and 'Revenge,' Belize River, all located in the Colony of British Honduras, together with the buildings and improvements thereon erected and all personal property, chattels, machinery and appurtenances thereon,"

and that William H. Courtenay, the agent, shall be authorized to execute any and all instruments that may be necessary to effectuate full and complete title to said plantations in the name of Universal Negro Improvement Association, Inc.

SECOND: The parties hereto agree to nominate and appoint one WILLIAM H. COURTENAY, an attorney of Belize, British Honduras, as their common agent or attorney in procuring the payment and turning over to him of the assets due the Universal Negro Improvement Association, Inc. excepting the properties mentioned in Paragraph "First" hereof, now in the possession and custody of the Executors and Administrators of the Estate of Isaiah Emmanuel Morter, and for that purpose a Power of Attorney will be executed by the party of the first part, the Universal Negro Improvement Association, Inc., authorizing and empowering the said William H. Courtenay to ask, demand, collect and receive all of such assets, real and personal, and after the collection and receipt by him of all of such assets to distribute and pay over the same in accordance with the terms and provisions of this agreement.

THIRD: The parties of the second and third part to this agreement will execute and deliver to said William H. Courtenay similar powers of attorney or such instruments as may be necessary in order to carry out the terms of this agreement.

FOURTH: The said powers of attorney heretofore provided for to be given to said William H. Courtenay shall provide in addition to the authorization to collect and marshal the assets due to the party of the first part, an authorization and power to sell and dispose of all real and personal property coming into his possession and to reduce the said assets to cash as speedily as may be done without sacrificing the value of said property, but it is to be provided in said instruments that the terms and conditions of all sales or transfers of real property made by said attorney shall first be approved and authorized in writing by Murray Bein, Charles A. Taussig and John J. Hanrahan, attorneys for the respective parties to this agreement.

In the Supreme Court of British Honduras.

No. 17. Agreement dated 16th February 1938 referred to in Affidavit of W. H. Courtenay, *continued.*

FIFTH: That immediately upon the receipt of the said assets and as it is turned into monies, it is understood and agreed that the said attorney of the parties hereto shall pay over and distribute the said monies in the following manner and priority:

(a) To the firm of Douglas, Grant & Dold, British Solicitors of London, England, for professional services rendered in prosecuting the appeal in the Judicial Committee of His Majesty's Most Honourable Privy Council on behalf of the Universal Negro Improvement Association, Inc., the sum of $4,500.00, which shall be made up of $1,500.00 deposited as costs, which sum is to be released to the said attorneys, and the balance of $3,000.00 to be paid out of the assets of the Estate.

(b) After the payment to the British Solicitors, as provided in subdivision "(a)" of this paragraph, the said William H. Courtenay shall pay over the next $7,000.00 to Murray Bein, of 475 Fifth Avenue, New York City, the attorney for the Universal Negro Improvement Association, Inc., for legal services.

(c) After the payment of the amounts provided for in subdivisions "(a)" and "(b)," the next $5,000.00 shall be paid to Charles A. Taussig of 220 Broadway, New York City, the attorney for the Judgment-Creditors, George O. Marke and Clifford S. Bourne, parties of the second part, for legal services.

(d) After the payment of the amounts provided for in subdivisions "(a)," and "(b)" and "(c)," the next $3,000.00 shall be paid to Hanrahan & Isaacs, the attorneys for the Judgment-Creditors, Lionel A. Francis, Adrian Johnson and Estate of Gabriel Johnson, parties of the third part, for legal services.

(e) The balance of the assets, exclusive of the plantations and the payments hereinabove provided for, shall be paid and distributed as follows:

To the Universal Negro Improvement Association, Inc., or its assigns, fifty (50%) per cent of such balance.

To Charles A. Taussig, as attorney for the Judgment-Creditors, the parties of the second part, fifty (50%) per cent of such balance.

SIXTH: The parties of the second and third part hereto are to execute and deliver to Murray Bein, as attorney for the Universal Negro Improvement Association, Inc., satisfaction pieces of all judgments against the party of the first part held respectively by each of them, and any and all instruments that may become necessary in the judgment of William H. Courtenay, or other agent mutually agreed upon, in order to facilitate the collection by him of all of the assets hereinabove referred to.

(a) The execution and delivery of the papers shall be understood to be for the purpose of carrying out the terms of this agreement.

SEVENTH: It is agreed and understood by all of the parties hereto that the party of the first part, the Universal Negro Improvement Association, Inc. shall have the option and right to select three (3) parcels of real estate out of the realty holdings located in Belize, British Honduras, and the said William H. Courtenay, agent under the powers of attorney,

In the Supreme Court of British Honduras.

No. 17. Agreement dated 16th February 1938 referred to in Affidavit of W. H. Courtenay, *continued.*

is authorized and directed to execute such deeds and any and all other instruments necessary in accordance with the laws of the Colony of British Honduras, to effectuate the transfer of the three parcels selected to the said Universal Negro Improvement Association, Inc., or its assigns. Upon the transfer of the said three parcels of real estate to the Universal Negro Improvement Association, Inc. or its assigns, the amount of the appraised value of said selected parcels shall be charged against the half interest of the Universal Negro Improvement Association, Inc.

It is specifically understood, however, that in the event after an appraisal is made of the entire assets, exclusive of the plantations, that the net half interest of the Universal Negro Improvement Association, Inc. shall be less than the value of the parcels selected, then in that event the said Universal Negro Improvement Association, Inc. shall select parcels of property, the appraised value of which shall be not more than their net half interest.

EIGHTH: It is understood and agreed that in the event that the appraised value of the assets, both real and personal, exclusive of the three plantations, shall be less than the sum of $40,000.00, then and in that event the fees of the attorneys, Murray Bein, Charles A. Taussig and Hanrahan & Isaacs, shall be proportionately reduced. (For example: If the appraised value of the assets hereinabove referred to shall be $35,000.00, then it would mean that the reduction of $5,000.00 would amount to 12½% of $40,000.00; then the fees of the attorneys herein referred to should be reduced by 12½%.) However, it is agreed herein that in no event shall the fee of Murray Bein, attorney for the party of the first part, be less than $6,000.00.

NINTH: All of the parties to this agreement shall execute and deliver any and all instruments that may be necessary to fully carry out the terms and conditions of the within agreement.

TENTH: The parties hereto agree that the suit brought by the parties of the second part in the Supreme Court, New York County, entitled "Craig et al vs. Lionel Francis et al" shall be deemed settled and shall be discontinued by stipulation without costs, and that an order be entered in said Court to that effect.

ELEVENTH: It is further agreed that as soon as the power of attorney is executed to William H. Courtenay, or as soon as deemed advisable, there shall be two appraisers appointed to appraise all of the assets, both real and personal, exclusive of the plantations, one appraiser to be appointed by William H. Courtenay and another appraiser to be appointed by Murray Bein, Charles A. Taussig, and John J. Hanrahan.

TWELFTH: In the event any monies are realized through proceedings to surcharge the Executors of the Estate of Isaiah Emmanuel Morter, the net proceeds shall be divided fifty (50%) per cent to the Universal Negro Improvement Association, Inc. or its assigns, and fifty (50%) per cent to Charles A. Taussig, as attorney for the Judgment-Creditors, parties of the second part.

THIRTEENTH: Whereas Caslon Newspaper Press Co. Inc. obtained a judgment against the Universal Negro Improvement Association, Inc.

In the Supreme Court of British Honduras.

No. 17. Agreement dated 16th February 1938 referred to in Affidavit of W. H. Courtenay, *continued.*

in Supreme Court, New York County, and thereafter filed said judgment in British Honduras, and subsequent thereto the Universal Negro Improvement Association, Inc. brought a proceeding to set said judgment aside; it is now understood and agreed that the party of the first part will prosecute the said motion to set said judgment aside, and that all of the parties hereto agree to cooperate in every way feasible. In the event that the said judgment is compromised with the consent of all of the parties hereto, the amount to be paid shall come out of the Estate as a disbursement from the gross assets.

FOURTEENTH: The party of the first part agrees to oppose to the utmost every effort of any persons or corporation to secure further judgments or proceed on judgments already secured, either in the United States or British Honduras or elsewhere, and agrees not to create or recognize any other obligations which might interfere with the collection of the legacy referred to herein or the rights of the parties hereto.

FIFTEENTH: Charles A. Taussig, as attorney for the parties of the second part, hereby agrees to revoke any and all authority heretofore given to William H. Ellis, or his predecessors, Franko & Ellis, and to execute any papers required by the agent herein for that purpose, and it is understood and agreed by all parties hereto that any effort made by William H. Ellis, or said Franko & Ellis, to participate in any manner whatsoever on behalf of Charles A. Taussig or the parties of the second part, shall be opposed by all said parties hereto.

SIXTEENTH: In the event that said William H. Courtenay is unable to act as agent or attorney as provided for herein, then the parties hereto shall mutually agree upon some other party to act, and the parties hereto will issue powers of attorneys and such instruments as may be necessary to the one so designated.

SEVENTEENTH: The fees of William H. Courtenay to be fixed by agreement for acting as agent and attorney pursuant to this agreement shall be paid him out of the funds received by him from the sale of the personal assets and real estate coming into his custody by virtue of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed and sealed the day and year first above written.

(Sgd.) UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

By LIONEL A. FRANCIS President (L.S.)

Seal of the Universal Negro Improvement Ass'n Inc. Parent Body, New York.

Attest
LULU JOHNSON Secretary (L.S.)

MAE CRAIG as Executrix (L.S.)
of Estate of George O. Marke (L.S.)

CLIFFORD S. BOURNE (L.S.)

LIONEL A. FRANCIS (L.S.)

ADRIAN JOHNSON (L.S.)

LUCRETIA JOHNSON and RACHEL JOHNSON-MASSAQUOIS
Administrators of Estate of Gabriel Johnson deceased

by LIONEL A. FRANCIS (L.S.)
Attorney in fact.

In the Supreme Court of British Honduras.

No. 17.
Agreement dated 16th February 1938 referred to in Affidavit of W. H. Courtenay, *continued.*

The attorneys for the respective parties hereby consent to the within written agreement.

MURRAY BEIN (L.S.)

CHARLES A. TAUSSIG (L.S.)

HANRAHAN AND ISAACS (L.S.)

State of New York)
County of New York) SS:

On the 24th day of February, 1938, before me personally came Lionel A. Francis, to me known, who, being by me duly sworn, did depose and say that he resides at 229 West 111th Street, in the Borough of Manhattan, City of New York, and is the President of the UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INC., and Lulu Johnson to me known, who, being by me duly sworn, did depose and say that she resides at 226 West 134th Street, in the Borough of Manhattan, City of New York, and is the Secretary of the UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INC., the corporation described in and which executed the above instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that they signed their names thereto by like order.

Official Seal of
Notary Public.

(Sgd.) ELIAS ISAACS,
Notary Public, New York County
County Clerks No. 12
Commission expires March 30, 1938.

State of New York)
County of New York) SS:

On this 16th day of February, 1938, before me came MAE CRAIG, to me known and known to me to be the Executrix of the Estate of George O. Marke, late of the City of New York, County of Kings, and the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as such Executrix.

(Sgd.) AGNES V. COSTELLO,
Notary Public Kings County.

In the Supreme Court of British Honduras.

No. 17. Agreement dated 16th February 1938 referred to in Affidavit of W. H. Courtenay, *continued.*

State of New York } SS :
County of New York }

On this 17th day of February, 1938, before me came CLIFFORD S. BOURNE, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged that he executed the same.

(Sgd.) AGNES V. COSTELLO,
Notary Public Kings Co.
Kings Co. Clks No. 208 ; Reg. No. 8231 ; N.Y. Co. Clks. No. 752 ; Reg. No. 8c 430 ; Com. expires Mar. 30/38.

State of New York } SS :
County of New York }

On this 24th day of February, 1938, before me came LIONEL A. FRANCIS and ADRIAN JOHNSON, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged that they executed the same.

(Sgd.) ELIAS ISAACS,
Notary Public, New York County
County Clerks No. 12.
Commission expires March 30, 1938.

State of New York } SS :
County of New York }

On the 24th day of February, 1938, before me came LIONEL A. FRANCIS, to me known and known to me to be the individual who executed the foregoing instrument, and known to me to be the individual described in and appointed attorney in fact by a certain power of attorney executed by LUCRETIA JOHNSON and RACHEL JOHNSON-MASSAQUOIS, as Administrators of the Estate of Gabriel Johnson, Deceased, and acknowledged that he executed the foregoing instrument as the act of said LUCRETIA JOHNSON and RACHEL JOHNSON-MASSAQUOIS, as Administrators of the Estate of Gabriel Johnson, Deceased, and as their attorney in fact.

Official Seal of
Notary Public.

(Sgd.) ELIAS ISAACS,
Notary Public, New York County
County Clerks No. 12.
Commission expires March 30, 1938.

No. 18.

SUMMONS dated 7th April 1942 referred to in Affidavit of W. H. Courtenay.

In the Supreme Court of British Honduras.

No. 18. Summons dated 7th April 1942 referred to in Affidavit of W. H. Courtenay.

SUPREME COURT OF THE STATE OF NEW YORK.
County of New York.

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC., JAMES A. PLUMMER, R. HOWARD PRICE, MILDRED COOPER - - - - - Plaintiffs

against

LIONEL A. FRANCIS, LULU RUTTER JOHNSON, STANLEY A. MING, ARNOLD H. MALONEY - - - - - - - Defendants

Plaintiff Designates New York County as place of Trial

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated April 7th 1942.

MURRAY BEIN,
Attorney for Plaintiff,
545 Fifth Avenue,
New York City

SUPREME COURT OF THE STATE OF NEW YORK.
County of New York.

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC., JAMES A. PLUMMER, R. HOWARD PRICE, MILDRED COOPER - - - - - - - - - Plaintiffs,

against

LIONEL A. FRANCIS, LULU RUTTER JOHNSON, STANLEY A. MING, ARNOLD H. MALONEY - Defendants.

Plaintiffs, through their attorney, MURRAY BEIN, respectfully allege:

1. Universal Negro Improvement Association Inc. is a membership corporation, duly organized under the laws of the State of New York, and has its offices at 173–08 108th Avenue, in Jamaica, Queens, New York, and 209 West 125th Street, Borough of Manhattan, City of New York.

2. That James A. Plummer was duly elected President of Universal Negro Improvement Association Inc., and has been acting as such since November 6, 1940. That he has been and still is a member of the Board of Directors of Universal Negro Improvement Association Inc. since 1935.

This is the Summons marked W.H.C.2 referred to in the annexed Affidavit of Woldrich Harrison Courtenay sworn to this 18th day of December 1942,
Before me,
A. O. LONGSWORTH, Registrar-General.

In the Supreme Court of British Honduras.

No. 18. Summons dated 7th April 1942 referred to in Affidavit of W. H. Courtenay, *continued.*

3. That R. Howard Price is the duly elected Treasurer of the Universal Negro Improvement Association Inc. and has been acting as such since 1937. That he has been and still is a member of the Board of Directors of Universal Negro Improvement Association Inc. since 1937.

4. That Mildred Cooper was duly elected Secretary of Universal Negro Improvement Association Inc. and has been acting as such since November 6, 1940. That she has been and still is a member of the Board of Directors of Universal Negro Improvement Association Inc. since 1939.

5. That the plaintiff, Universal Negro Improvement Association Inc. is the owner in fee of three plantations situated in British Honduras and valued at over $50,000.

6. That the plaintiff, Universal Negro Improvement Association Inc. has a one-half net interest in certain properties in Belize, British Honduras, now held in trust by one Woldrich H. Courtenay.

7. That in September 1936, Lionel A. Francis, Lulu R. Johnson and others, entered into a conspiracy to defraud plaintiff, Universal Negro Improvement Association Inc. of the assets hereinabove referred to.

8. That in furtherance of the conspiracy to defraud the plaintiff, Universal Negro Improvement Association Inc. of its assets, Lionel A. Francis, while President and a member of the Board of Directors of Universal Negro Improvement Association Inc. obtained default judgments against the Universal Negro Improvement Association Inc. in New York County Supreme Court in October 1936, totalling $26,711.09; and Adrian Johnson, while organizer and a member of its Board of Directors, in January 1937, obtained a default judgment for $2,438.50, and they proceeded to assert a lien against the aforesaid properties in British Honduras.

9. That in December 1937 proceedings were commenced to set these judgments aside and as a result the said Lionel A. Francis and Adrian Johnson surrendered these judgments by executing satisfaction pieces in February 1938.

10. Upon information and belief that in furtherance of the conspiracy by Lionel A. Francis, Lulu R. Johnson and others to defraud the plaintiff, Universal Negro Improvement Association Inc. of its assets, the said Lionel A. Francis, Lulu R. Johnson and others had a mortgage on the above named plantations executed in the name of the plaintiff Universal Negro Improvement Association Inc. in February 1938 for the benefit of the said Lionel A. Francis and others in the sum of $33,000.

11. That in furtherance of said conspiracy to defraud plaintiff, Universal Negro Improvement Association Inc. of its assets, the said Lionel A. Francis permitted one Lamar Perkins to obtain a default judgment in the Supreme Court, New York County on January 17, 1938 for alleged legal services in the sum of $10,998.98 against the plaintiff, Universal Negro Improvement Association Inc. the summons and complaint having been served on the said Lionel A. Francis.

12. That in October 1940 a motion was made by the plaintiff, Universal Negro Improvement Association Inc. in Supreme Court, New

In the Supreme Coout of British Honduras.

York County, to open this default judgment on the ground that it was obtained in collusion with said Lionel A. Francis its then president. This motion was not opposed and the judgment was vacated.

No. 18. Summons dated 7th April 1942 referred to in Affidavit of W. H. Courtenay, *continued.*

13. That thereafter in August 1941, and in furtherance of the Conspiracy to defraud the Universal Negro Improvement Association Inc. of its assets, Lamar Perkins made a motion in Supreme Court, New York County, to re-instate the default judgment against the Universal Negro Improvement Association Inc. and said motion was supported by an affidavit signed by Lulu R. Johnson, alleging to be the Secretary of the Universal Negro Improvement Association Inc. This motion was opposed by the Universal Negro Improvement Association Inc. through its President, James A. Plummer and on December 17, 1941 the Supreme Court denied the motion.

14. That in furtherance of the conspiracy to defraud the Universal Negro Improvement Association Inc. of its assets, Lulu R. Johnson, alleging to be the Secretary of the Universal Negro Improvement Association Inc. together with one Arnold H. Maloney, alleging to be Chairman of the Board of Directors of the said Universal Negro Improvement Association Inc. executed an alleged Power of Attorney to said Lionel A. Francis on the 24th of June 1941 giving to the said Lionel A. Francis absolute control over the assets of the Universal Negro Improvement Association Inc. (Copy of this Power of Attorney is hereto annexed and marked Exhibit A.)

15. The said Lulu R. Johnson was not the Secretary and Arnold H. Maloney was not the Chairman of the Board of Directors of the Universal Negro Improvement Association Inc. at the time of the execution of said power of attorney and they were not authorised to execute said power of attorney by the said Board of Directors.

16. That in furtherance of said conspiracy to defraud the Universal Negro Improvement Association Inc. of its assets, the said Lulu R. Johnson, alleging to be the Secretary of the Universal Negro Improvement Association Inc. and one Stanley A. Ming alleging to be Second Assistant President General on October 14, 1941, executed a deed of trust of the said three plantations in British Honduras to said Lionel A. Francis and filed said deed in British Honduras thereby fraudulently depriving the Universal Negro Improvement Association Inc. of these substantial assets. (A copy of said deed is hereto annexed and marked Exhibit B.)

17. The said Lulu R. Johnson was not the Secretary and Stanley A. Ming was not Second Assistant President General of Universal Negro Improvement Association Inc. at the time of the execution of said deed.

18. That said Lulu R. Johnson and Stanley A. Ming were not authorised by the Board of Directors to execute said Deed.

19. That neither said Lulu R. Johnson nor Stanley A. Ming had the power to execute the said deed.

20. That the Board of Directors of Universal Negro Improvement Association Inc. did not have the power to authorize the execution of said deed.

In the Supreme Court of British Honduras.

No. 18. Summons dated 7th April 1942 referred to in Affidavit of W. H. Courtenay, *continued.*

21. Upon information and belief, said Lionel A. Francis is now in possession of said plantations and receiving its income.

22. That in furtherance of said conspiracy to defraud the Universal Negro Improvement Association Inc. of its assets, the said Lulu R. Johnson alleging to be its Secretary and the said Arnold H. Maloney alleging to be its Chairman of the Board of Directors on January 5th, 1942, executed a paper purporting to be a deed, deeding over to Lionel A. Francis all of the properties located in Belize, British Honduras and now held by Woldrich H. Courtenay as trustee and thereby attempting to fraudulently deprive the plaintiff Universal Negro Improvement Association Inc. of these substantial assets. (A copy of said deed is hereto annexed and marked Exhibit C.)

23. That the said Lulu R. Johnson was not the Secretary and said Arnold H. Maloney was not the Chairman of the Board of Directors of Universal Negro Improvement Association Inc. at the time of the execution of said instrument.

24. That the said Lulu R. Johnson and the said Arnold H. Maloney were not authorized by the Board of Directors of the Universal Negro Improvement Association Inc. to execute said instrument.

25. That the Board of Directors did not have the power to authorize the execution of said instrument.

26. That neither Lulu R. Johnson nor Arnold H. Maloney had the power to execute said instrument.

27. That the said Lionel A. Francis left the jurisdiction of the State of New York and the United States of America in April 1941.

28. Upon information and belief, said Lionel A. Francis is now in British Honduras and will never return to this State.

29. That the plaintiffs have reason to believe and fear that the defendants will do further irreparable damage to the Universal Negro Improvement Association Inc. unless an injunction against defendants is granted.

Wherefore, the plaintiffs ask for the following relief :

A. That an injunction be issued restraining said Lulu R. Johnson from posing and acting as Secretary of the Universal Negro Improvement Association Inc.

B. That a decree be issued declaring that Lulu R. Johnson was not the Secretary of Universal Negro Improvement Association Inc. in 1941 and 1942.

C. That an injunction be issued restraining Stanley A. Ming from posing and acting as Second Assistant President General of Universal Negro Improvement Association Inc.

D. That a decree be issued declaring that Stanley A. Ming was not the Second Assistant President General of Universal Negro Improvement Association Inc. in 1941 and 1942.

E. That an injunction be issued restraining Arnold H. Maloney from posing and acting as Chairman of the Board of Directors of Universal Negro Improvement Association Inc.

F. That a decree be issued declaring that Arnold H. Maloney was not the Chairman of the Board of Directors of Universal Negro Improvement Association Inc. in 1941 and 1942.

G. That an injunction be issued restraining Lionel A. Francis from posing and acting in any capacity for the Universal Negro Improvement Association Inc.

H. The Power of Attorney executed June 24th 1941 and marked Exhibit A to be declared null and void.

I. That the Deed executed October 14, 1941 and marked Exhibit B be declared null and void.

J. That the instrument executed January 5, 1942 and marked Exhibit C be declared null and void.

K. That a decree be made declaring James A. Plummer the President of Universal Negro Improvement Association Inc.

L. That a decree be made declaring R. Howard Price the Treasurer of Universal Negro Improvement Association Inc.

M. That a Decree be made declaring Mildred Cooper the Secretary of Universal Negro Improvement Association Inc.

N. That damages be assessed against the defendants.

And for such other and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

MURRAY BEIN,
Attorney for Plaintiffs,
Office & P.O. Address,
545 Fifth Avenue,
Borough of Manhattan,
City of New York.

State of New York)
County of New York) SS :

MILDRED COOPER, being duly sworn, deposes and says that she is the Secretary of the UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC., the corporate Plaintiff herein ; that she has read the foregoing complaint and knows the contents thereof, and that the same is true to her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters she believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by the Universal Negro Improvement Association Inc. is because the said Universal Negro Improvement Association Inc., is a domestic corporation, and deponent an officer thereof, to wit its Secretary.

Sworn to before me this
7th day of April, 1942.

MILDRED COOPER.

ALBERT P. SINGMAN
Attorney and Councillor-At-Law
Residing in Queens County
N.Y. Co. Clks. No. 31 Reg. No. 3S220
Queens Co. Clks. No. 80 Reg. No. 58908
Office and P.O. Address 545 Fifth Avenue
Commission expires March 30 1943.

In the Supreme Court of British Honduras.

No. 18. Summons dated 7th April 1942 referred to in Affidavit of W. H. Courtenay, *continued.*

State of New York } SS :
County of New York }

JAMES A. PLUMMER and MILDRED COOPER, being duly sworn, depose and say that they are two of the plaintiffs in the within action ; that they have read the foregoing complaint and know the contents thereof ; that the same is true to their own knowledge, except as to the matters therein stated to be alleged on information and belief ; and that as to those matters they believe it to be true.

JAMES A. PLUMMER.
MILDRED COOPER.

Sworn to before me this
7th day of April, 1942.

ALBERT P. SINGMAN
Attorney and Counsellor-At-Law
Residing in Queens County
N.Y. Co. Clks. No. 31 Reg. No. 3S220.
Queens Co. Clks. No. 80 Reg. No. 58908
Office and P.O. Address 545 Fifth Avenue
Commission expires March 30, 1943.

State of New York } SS :
County of New York }

R. HOWARD PRICE, being duly sworn, deposes and says that he is one of the plaintiffs in the within action ; that he has read the foregoing complaint and knows the contents thereof ; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

R. HOWARD PRICE.

Sworn to before me this
7th day of April, 1942.

ALBERT P. SINGMAN
Attorney and Counsellor-At-Law
Residing in Queens County
N.Y. Co. Clks. No. 31 Reg. No. 3S220
Queens Co. Clks. No. 80 Reg. No. 58908
Office and P.O. Address 545 Fifth Avenue
Commission Expires March 30 1943.

No. 19. Exhibit "A" referred to in Summons dated 7th April 1942.

No. 19.

EXHIBIT " A " referred to in Summons dated 7th April 1942.

TO ALL TO WHOM THESE PRESENTS SHALL COME the Universal Negro Improvement Association Incorporated of 217 West 125th Street in the City of New York State of New York one of the United States of America (hereinafter called the Association) SEND GREETINGS :

WHEREAS by a certain Power of Attorney under the Common Seal of the Association dated the twenty-second day of November One thousand

nine hundred and thirty-nine and duly recorded in the General Registry of Belize in the Colony of British Honduras in Deeds Book 34 at folios 380–2 the Association appointed WOLDRICH HARRISON COURTENAY of Belize Barrister-at-Law to be the true and lawful attorney of the Association with the powers and authorities in the said Power of Attorney AND WHEREAS the Association is desirous of revoking the Powers given to the said Woldrich Harrison Courtenay as aforesaid and of appointing LIONEL A. FRANCIS of New York President General of the said Association to be their true and Lawful attorney in Place of the said Woldrich Harrison Courtenay NOW THESE PRESENTS WITNESS that the Association hereby revoke and make void all and singular the powers and authorities by the said Power of Attorney given or conferred to or upon the said Woldrich Harrison Courtenay Provided always that the revocation hereinbefore contained shall not prejudice or affect anything lawfully done or caused to be done by the said Woldrich Harrison Courtenay or any substitute or substitutes acting under him in the exercise or intended exercise of any such powers or authorities as aforesaid in the interval between such revocation and the time of the same becoming known to him or to his substitute or substitutes AND the Association hereby ratify and confirm everything lawfully done or caused to be done by the said Woldrich Harrison Courtenay or any substitute or substitutes acting under him in the exercise or intended exercise of any such powers or authorities including anything so done or caused to be done in such interval as aforesaid AND THESE PRESENTS FURTHER WITNESS that the Association hereby NOMINATE CONSTITUTE AND APPOINT the said LIONEL A. FRANCIS to be their true and lawful attorney to exercise and execute all or any of the powers and authorities by the said Power of Attorney given or conferred by the Association to or upon the said Woldrich Harrison Courtenay in as full and ample a manner to all intents and purposes as if the name of the said Lionel A. Francis had been inserted in the said Power of Attorney in the place of the said Woldrich Harrison Courtenay AND the Association hereby ratify and confirm and agree to ratify and confirm whatsoever the said Lionel A. Francis or any substitute or substitutes acting under him shall do or purport to do by virtue of these presents AND the Association hereby declare that this Power of Attorney shall be irrevocable for five years from the date hereof IN WITNESS WHEREOF the Association have caused their Common Seal to be hereunto affixed the Twenty-fourth day of June One thousand nine hundred and forty-one.

The Common Seal of the Universal Negro Improvement Association, Incorporated was hereunto affixed pursuant to a resolution of the Board of Directors dated the Twenty-fourth day of June One thousand nine hundred and forty-one in the presence of :

LULU RUTTER JOHNSON
Secretary.

ARNOLD H. MALONEY
Chairman of Board of Directors.

The Common Seal of the U.N.I.A. Inc.

In the Supreme Court of British Honduras.

No. 19. Exhibit "A" referred to in Summons dated 7th April 1942, *continued.*

State of New York
City of New York
County of New York

I, LULU RUTTER JOHNSON of 108 West 111th Street, New York City Secretary of the Universal Negro Improvement Association, Incorporated make oath and say as follows:

1. That I am personally acquainted with Arnold H. Maloney, the Chairman of the Board of Directors of the Universal Negro Improvement Association, Incorporated.

2. That I was present and did see the Common Seal of the said Universal Negro Improvement Association Incorporated duly affixed to the within written document by the said Arnold H. Maloney, Chairman of the said Board of Directors of the said Universal Negro Improvement Association Inc. in pursuance of a resolution of the said Board of Directors of the said Universal Negro Improvement Association Inc. dated the twenty-fourth day of June one thousand nine hundred and forty-one.

3. That the seal affixed to the said document is the proper and Common Seal of the said Universal Negro Improvement Association Inc. and was affixed to the said document by the authority of the Directors of the said Universal Negro Improvement Association Inc. previously given by the said resolution in the pursuance of the articles of the Association or other the instrument of incorporation of the said Universal Negro Improvement Association, Inc.

4. That I was also present and did see Arnold H. Maloney, Chairman immediately thereupon sign the said document as the same now purports to be signed by him.

5. That the signature "Arnold H. Maloney" is in the proper handwriting of the said Arnold H. Maloney.

6. That the signature "Lulu Rutter Johnson" is in my own handwriting.

Sworn to at the British Consulate General New York the fifteenth day of September one thousand nine hundred and forty-one, before me } LULU RUTTER JOHNSON.

Seal of the British Consulate General. New York.

W. F. JAMES,
British Pro-Consul.

For the Contents of this Document His Brittanic Majesty's Consulate General assumes no responsibility.

No. 20.

In the Supreme Court of British Honduras.

No. 20. Exhibit "B" referred to in Summons dated 7th April 1942.

EXHIBIT "B" referred to in Summons dated 7th April 1942.

BRITISH HONDURAS.

THIS INDENTURE is made the tenth day of October one thousand nine hundred and forty-one Between the UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INCORPORATED a corporation organized and existing under and by virtue of the Laws of the State of New York one of the United States of America and having its principal office at number 217 West 125th Street in the City of New York in the State of New York aforesaid (hereinafter called the Association) of the one part and LIONEL A. FRANCIS of New York (hereinafter called the Trustee) of the other part WHEREAS the Association is (under and by virtue of an Indenture dated the Thirtieth day of September One thousand nine hundred and thirty-nine made between Arthur Balderamos and Hubert Hill Cain (therein described) of the one part and the Association of the other part recorded at the General Registry Belize in Deeds Book 34 at folios 326–30) seized of the hereditaments hereinafter assured for an estate in fee simple in possession free from incumbrances AND WHEREAS the Association is desirous of conveying the said hereditaments to the Trustee upon trust to receive the rents and profits of and manage the same and after payment of all rates and taxes and other expenses incidental to the management thereof to pay over the income remaining to the Association to be used by the Association in furthering the aims and objects of the Association according to the rules thereof AND the Trustee has agreed to undertake the said trust NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises and of the sum of One dollar to the Association paid by the Trustee on or before the execution of these presents (the receipt whereof the Association hereby acknowledges) the Association as BENEFICIAL OWNER hereby grants and conveys unto the Trustee ALL THOSE the freehold hereditaments mentioned in the Schedule hereto TO HOLD the same unto and to the use of the Trustee in fee simple IN WITNESS WHEREOF the Association has caused to be affixed hereunto its Common Seal the day and year first above written.

THE SCHEDULE above referred to

ALL THAT bank on the right hand ascending the Belize River known as New Windsor Bank TOGETHER with all buildings and erections thereon more particularly described in Governor's Fiat dated 5th January 1912 (No. 5 of 1912) with plan attached.

ALL THOSE tracts of land or mahogany and logwood works towards Revenge and Northern Lagoon known as Revenge more particularly described in an Indenture dated 27th March 1924 recorded in Deeds Book 27 at Folios 374–5 AND ALL THAT piece or parcel of land known as Old Crooked Tree Bank situate on the Belize River fronting on Northern Lagoon more particularly described in an Indenture dated 15th April 1916 recorded in Deeds Book 24 at Folios 375–6.

In the Supreme Court of British Honduras.

No. 20. Exhibit "B" referred to in Summons dated 7th April 1942, *continued.*

ALL THAT piece or parcel of land containing 293 acres and known as Caye Chapel TOGETHER with all buildings and erections thereon more particularly described in an Indenture dated 26th April 1898 recorded in Deeds Book 13 at Folio 30–31.

The Common Seal of the Universal Negro Improvement Association Inc. was hereunto affixed pursuant to a resolution of the Board of Directors dated the Tenth day of October One thousand nine hundred and forty-one in the presence of

(Sgd.) STANLEY A. MING,
2nd Assistant President
Gen'l.

(Sgd.) LULU RUTTER JOHNSON, Secretary.

The Common Seal of the Universal Negro Improvement Association, Inc.

State City and County of New York SS.

I, LULU RUTTER JOHNSON, residing at 108 West 111th Street, New York City, Secretary of the Universal Negro Improvement Association Inc., make oath and say as follows :—

1. That I am personally acquainted with Stanley A. Ming, 2nd Asst. President General of the Universal Negro Improvement Association, Inc.

2. That I was present and did see the Common Seal of the said Universal Negro Improvement Association Inc. duly affixed to the within-written document by the said Stanley A. Ming, 2nd Asst. President Genl. of the said Universal Negro Improvement Association Inc. in pursuance of a resolution of the Board of Directors of the said Universal Negro Improvement Association Inc. dated the Tenth day of October One thousand nine hundred and forty-one.

3. That the seal affixed to the said document is the proper and Common Seal of the said Universal Negro Improvement Association Inc. and was affixed to the said document by the authority of the Directors of the said Universal Negro Improvement Association Inc. previously given by the said resolution in pursuance of the articles of association or other the instrument of incorporation of the said Universal Negro Improvement Association Inc.

4. That I was also present and did see Stanley A. Ming 2nd Asst. President General immediately thereupon sign the said document as the same now purports to be signed by him.

5. That the signature " Stanley A. Ming " is in the proper handwriting of the said Stanley A. Ming.

6. That the signature "Lulu Rutter Johnson" is in my own handwriting.

In the Supreme Court of British Honduras.

Sworn to at the British Consulate General New York the Fourteenth day of October 1941. } (Sgd.) LULU RUTTER JOHNSON.

No. 20. Exhibit "B" referred to in Summons dated 7th April 1942, *continued.*

Seal of the British Consulate General (New York)

Before me,
(Sgd.) W. F. JAMES,
British Pro-Consul.

For the contents of this document His Britannic Majesty's Consulate General assumes no responsibility.

No. 21.

Exhibit "C" referred to in Summons dated 7th April 1942.

No. 21. Exhibit "C" referred to in Summons dated 7th April 1942.

BRITISH HONDURAS.

THIS INDENTURE made the 5th day of January One thousand nine hundred and forty-two Between the UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INCORPORATED of 108 West 111th Street in the City of New York State of New York one of the United States of America (hereinafter called the Association) of the first part WOLDRICH HARRISON COURTENAY of Belize Barrister-at-Law of the second part and LIONEL A. FRANCIS of Belize Agent of the third part WHEREAS by an Indenture dated the third day of November One thousand nine hundred and thirty-nine made between the Association of the one part and the said Woldrich Harrison Courtenay of the other part and recorded at the General Registry in Deeds Book 34 at Folios 365–8 AND WHEREAS by another Indenture dated the Sixteenth day of November One thousand nine hundred and thirty-nine made between the Association of the One part and the said Woldrich Harrison Courtenay of the other part and recorded at the General Registry in Deeds Book 34 at Folios 378–9 each being an assignment and conveyance by the Association to the said Woldrich Harrison Courtenay of the real estate therein mentioned upon certain trusts therein set out AND WHEREAS part of the said trust has been carried out but certain portion of the real estate therein mentioned remains unsold AND WHEREAS the Association has requested the said Woldrich Harrison Courtenay to assign the balance of the said real estate to the said Lionel A. Francis subject to the said trusts which the said Woldrich Harrison Courtenay has agreed to do on having these presents executed NOW THIS INDENTURE WITNESSETH that in pursuance of the premises and in consideration of the said agreement the said Woldrich Harrison Courtenay as Trustee at the request of and by the direction of the Association directing as Beneficial Owners hereby assigns unto the said Lionel A. Francis and his heirs ALL the real estate and hereditaments conveyed to and vesting in the said Woldrich Harrison Courtenay by virtue of the above-mentioned Indentures SAVE AND EXCEPT such portions thereof as have been sold or otherwise disposed of by him TO HOLD the same unto and to the use of the said Lionel A. Francis in

In the Supreme Court of British Honduras.

No. 21. Exhibit "C" referred to in Summons dated 7th April 1942, *continued.*

fee simple upon the same trusts as the same are now subject to under and by virtue of the two above-mentioned Indentures IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

The Common Seal of the Universal Negro Improvement Association, Inc. was hereunto affixed pursuant to a resolution of the Board of Directors dated the fifth day of January one thousand nine hundred and forty-two in the presence of

(Sgd.) ARNOLD H. MALONEY
Chairman of
Board of Directors.

(Sgd.) LULU RUTTER JOHNSON,
Secretary General.

Signed Sealed and Delivered by the said Woldrich Harrison Courtenay in the presence of

State of New York
County of New York } SS :

I, LULU RUTTER JOHNSON, of 108 West 111th Street New York City Secretary General of the Universal Negro Improvement Association Inc. make oath and say as follows :—

1. That I am personally acquainted with Arnold H. Maloney the Chairman of the Board of Directors of the Universal Negro Improvement Association, Inc.

2. That I was present and did see the Common Seal of the said Universal Negro Improvement Association, Inc. duly affixed to the within-written document by the said Arnold H. Maloney Chairman of the said Board of Directors of the said Universal Negro Improvement Association Inc. in pursuance of a resolution of the said Board of Directors of the said Universal Negro Improvement Association Inc. dated the 5th day of January one thousand nine hundred and forty-two.

3. That the seal affixed to the said document is the proper and Common Seal of the said Universal Negro Improvement Association Inc. and was affixed to the said document by the authority of the Directors of the said Universal Negro Improvement Association Inc. previously given by the said resolution in pursuance of the articles of the Association or other the instrument of incorporation of the said Universal Negro Improvement Association, Inc.

4. That I was also present and did see Arnold H. Maloney, Chairman immediately thereupon sign the said document as the same now purports to be signed by him.

5. That the signature "Arnold H. Maloney" is in the proper handwriting of the said Arnold H. Maloney.

6. That the signature "Lulu Rutter Johnson" is in my own handwriting.

In the Supreme Court of British Honduras.

Sworn to at the British Consulate General New York the fifth day of January one thousand nine hundred and forty-two

(Sgd.) LULU RUTTER JOHNSON
Secretary General.

Before me,
(Sgd.) W. G. JONES,
British Pro-Consul,
British Consulate General,
New York.

No. 21. Exhibit "C" referred to in Summons dated 7th April 1942, *continued.*

For the contents of this document His Britannic Majesty's Consulate General assumes no responsibility.

No. 22.

JUDGE'S NOTES OF PROCEEDINGS, dated 18th December 1942.

No. 22. Judge's Notes of Proceedings, 18th December 1942.

18th December 1942.

ERNEST JOHNSON HOFIUS - - - - - Pltff.

v.

ARTHUR BALDERAMOS and HUBERT HILL CAIN Executors of the estate of ISAIAH EMMANUEL MORTER decd.

7/1942.
10 a.m.
Dragten K.C.
Balderamos (Cain)
Courtenay Hassock.

Dragten.

paras. 3 and 4.

Questions of duplicating a/cs. already filed by executors in the Morter Estate.

Agreed between parties.

3 & 4.

3. Strike out "Arthur to Defendants,"—after "use"—which may be required by the Receiver.

4. "Not later than the 31st March 1943" out—within such time as may be reasonably required by the Receiver.

"do" struck out, "may"

"and Belize Independent" inserted after "Clarion"

"and any other necessary expense" after word "action" "a" (*sic* "s") deleted.

Costs.

In the Supreme Court of British Honduras.

No. 22. Judge's Notes of Proceedings, 18th December 1942, *continued.*

Plaintiff application.

All questions of costs be deferred for further consideration.

Order settled by agreement between parties.

L. Francis not present through illness.

Courtenay

Objects to appointment Receiver so as to protect himself in the matter.

Reads affidavit.

In view of facts related if the Receiver is to be appointed the Pltffs. to the action pending in New York should be served with notice of this action.

No need for expense of Receiver.

Sale of Escalante Hotel would provide such funds to cover outstanding liabilities.

Other question which arose between Mr. Balderamos & myself have to await the action in New York.

Authority of Dr. Francis to represent the Assn. appears to be in doubt.

If a Receiver is appointed Court should exonerate me from any duties I have under the Trust.

Ruling.

The Order having been made on 15th December 1942 the objections now raised cannot be considered by the Court.

C. G. L.

No. 23. Registrar's Notes of Proceedings, 18th December 1942.

No. 23.

REGISTRAR'S NOTES OF PROCEEDINGS, dated 18th December 1942.

Friday 18th December 1942.
At 10.30 a.m.

Action No. 7/1942
Hofius
vs.
Balderamos & Cain
et al.

Appearances as before except Mr. Francis (ill).

After discussions draft order approved as amended.

Mr. Courtenay to Court.

Submission over-ruled.

A. O. LONGSWORTH,
Registrar.

No. 24.

AFFIDAVIT of L. A. Francis, dated 18th January 1943.

In the Supreme Court of British Honduras.

No. 24. Affidavit of L. A. Francis, 18th January 1943.

I, LIONEL FRANCIS of 1159 Pickstock Street, Belize, make oath and say as follows :—

1. I am the President, Attorney and Trustee of the Universal Negro Improvement Association Incorporated (hereinafter referred to as the Association) and one of the above-named defendants.

2. I have been a member of the Association from the year 1918. In August 1932 I was elected President General of the Association, which office by re-elections I still occupy.

3. On the 18th day of December 1942, an Affidavit was filed in the General Registry, Belize, British Honduras on behalf of Woldrich Harrison Courtenay another of the defendants in the above-mentioned matter in which the Association is also a defendant. The Affidavit of the said Woldrich Harrison Courtenay is not an honest attempt to intelligently narrate all the facts absolutely necessary to assist this Honourable Court in dispensing justice. Inasmuch as it appears that one of the reasons for the said Woldrich Harrison Courtenay's Affidavit is to indirectly malign me, and the other to conceal the collusion involving one Murray Bein and Charles A. Taussig, New York Attorneys, the said Woldrich Harrison Courtenay and others in their deliberate and determined attempt to get adjudged in the Supreme Court of New York certain persons, whom they can control, as Officials and Directors of the Association. I make answer to the Affidavit of the said Woldrich Harrison Courtenay in the order set forth in his sworn statement which is as follows :—

(A) No reply is made to paragraphs 1 & 2 of the said Woldrich Harrison Courtenay's Affidavit.

(B) The Indentures referred to in the said Woldrich Harrison Courtenay's Affidavit were executed by the deponent for the Association in the presence of Lulu Rutter Johnson, the Secretary of the said Association. I am, therefore, thoroughly cognizant to their contents.

(C) The deeds by which the said Real Estate were conveyed to the said Woldrich Harrison Courtenay are VOLUNTARY TRUSTS. The deponent is a party to the agreement dated the 16th day of February 1938.

The deed poll referred to in the affidavit of the said Woldrich Harrison Courtenay dated the 22nd day of November 1939 was executed by the deponent for the Association in the presence of the said Lulu Rutter Johnson, Secretary for the said Association. I have, therefore, a thorough knowledge of its contents.

(D) Murray Bein, the New York Attorney of the Association in 1940 had neither verbal nor written authority from the Association to sell, mortgage, arrange for mortgages or otherwise dispose of any of the properties of the Association in British Honduras.

Murray Bein was sent by the Association to British Honduras with a written authority signed by the said Lionel A. Francis to

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No. 24. Affidavit of L.A. Francis, 18th January 1943, *continued.*

arrange with the said Woldrich Harrison Courtenay ways and means whereby the said Association in New York could receive a monthly sum not exceeding Fifty Dollars and not less than Thirty from the plantations. The said Woldrich Harrison Courtenay admitted to the deponent that no authority from the Association was presented to him by the said Murray Bein.

(E) For the reason that the said Association and not Murray Bein appointed the said Woldrich Harrison Courtenay by the two Indentures hereinbefore mentioned and dated respectively the 3rd and 16th days of November 1939 and recorded in the General Registry, Belize in Deeds Book 34 at folios 365–8 and 378–80 respectively " to sell and convert into cash " the properties mentioned in the Schedules of the said Indentures, the said Woldrich Harrison Courtenay having conveyed properties below the appraised value without the proper consent and approval of the BENEFICIAL OWNERS, contravened the TRUST LAW.

(F) Because it is stated in Clause " FOURTH " of the said agreement marked " W.H.C.1." " To reduce the said Assets to cash as speedily as may be done without sacrificing the value of said property," the said Woldrich Harrison Courtenay violated the said agreement to the detriment of the said Association, Mae Craig and Clifford S. Bourne, Judgment Creditors who are mentioned in Clause " FIFTH," paragraph (E) of the said agreement marked " W.H.C.1," and also affected the following :—

" The balance of the Assets, exclusive of the plantations and the payments hereinbefore provided for, shall be paid and distributed, viz. :—

" To the Universal Negro Improvement Association Inc., or its assigns 50% of such balance.

To Charles A. Taussig, an Attorney for the Judgment Creditors, the parties of the Second part, 50% of such balance."

The total sum of the real estate assets being computed on the appraised value of the property is reduced by a sum equal to the loss sustained, by the said Woldrich Harrison Courtenay having conveyed, as admitted in his affidavit, real estate below the appraised value. This must, after distributing the monies as hereinbefore set forth in Clause " FIFTH," paragraphs a, b, c and d affect the balance that is to be equally divided between the said Association and the Judgment Creditors, Mae Craig and Clifford S. Bourne."

(G) Also paragraph " SEVENTH " of the said agreement marked " W.H.C.1 " is affected by the violation of the said portion of Clause " FOURTH " which as hereinbefore mentioned states :—

" The said Woldrich Harrison Courtenay is to reduce the said Assets to cash as speedily as may be done WITHOUT SACRIFICING THE VALUE OF SAID PROPERTY." The three (3) parcels selected by the Association, namely, 972 Queen Street, 930 North Front Street and Morter's Home on Barrack Road

lieu of the 50% will positively be reduced if the loss as hereinbefore mentioned and caused by the said Woldrich Harrison Courtenay is not order rectified by this Honourable Court.

(H) In paragraph 6 of the said Woldrich Harrison Courtenay's Affidavit he stated :—

" While Murray Bein, the New York Attorney of the Association was in Belize in July and August in the year 1940, the said Murray Bein also negotiated the sale of certain other properties and on agreements being reached with the buyers the properties were conveyed by me to them. These sales were effected at prices below the values at which the properties were appraised in 1939."

In the absence of proper authority of the Association the said Woldrich Harrison Courtenay by sacrificing the value of said properties did so deliberately well knowing that he, and not Murray Bein, was responsible to the Association. Proof that this act of the said Woldrich Harrison Courtenay was deliberate the deponent desires to direct the attention of this Honourable Court to the following :—

In the month of November 1940, the Association terminated its business relations with the said Murray Bein at which time the said Woldrich Harrison Courtenay was informed. This is admitted in the said Woldrich Harrison Courtenay's affidavit. On the seventh day of January One thousand nine hundred and forty two the said Woldrich Harrison Courtenay conveyed lot 848 Eve Street, after he was informed by the deponent that the properties were to be immediately re-appraised and received at his request a copy of the said appraisal showing the value to be $2,400.00 to Evelyn Maud Aikman for the sum of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00). This Conveyance is recorded at the General Registry, Belize in Deeds Book 35 folios 21–2.

Also on the 30th day of October one thousand nine hundred and forty two after the estate of Isaiah Emmanuel Morter, deceased, has been ordered administered by this Honourable Court, the said Woldrich Harrison Courtenay conveyed to Evelyn Maud McKoy, Lot No. 849, appraised in 1939 at three hundred and fifty dollars and re-appraised in 1941 at four hundred dollars, for the sum of THREE HUNDRED DOLLARS ($300.00). This conveyance is recorded at the General Registry, Belize in Deeds Book 35 at folios 240–1. The said Woldrich Harrison Courtenay purposely omitted reference to the hereinbefore mentioned Conveyances because they were deliberate acts due to either incompetence or unwillingness to observe that part of Clause " FOURTH " of the agreement marked " W.H.C.1 " as hereinbefore mentioned.

(I) All the properties were appraised in December 1940 and at that time the appraisors stated they were all, except two, badly in need of repairs, many being insanitary. The deponent is a qualified HOUSING ADVISOR with some years of practical experience in the service of the New York City Government. He is, therefore,

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competent to state that depreciation sufficient to affect a change in selling prices such as is mentioned in the affidavit of the said Woodrich Harrison Courtenay is not possible within December 1939 and August 1940. Hence the reason for the re-appraisals as hereinbefore mentioned.

(J) In concluding paragraph 6 of the said Woldrich Harrison Courtenay's affidavit, mention is made of the order and priority for the payments set forth in Clause " FIFTH " of the said agreement marked " W.H.C.1," " That they were varied but this has since been rectified."

This blanket statement of the said Woldrich Harrison Courtenay is a deliberate attempt at evasion if not to mislead this Honourable Court. It does seem expedient to state the facts included in the terms " varied " and " rectified " and which are as follows :—

On the return of the said Murray Bein in New York from Belize the said Association was informed by him that a Deed of Trust for the plantations was in the opinion of the said Woldrich Harrison Courtenay and himself the best way of making the Association self supporting, that the Deed of Trust was made and would be in New York in a few days. When the instrument was delivered all that was necessary was the signature of the President and Secretary and the authentication of the British Consulate General. The names of the Trustees, four out of five, were part of the deed of trust selected by the said Woldrich Harrison Courtenay and the said Murray Bein in Belize. They were Lionel A. Francis, Arnold H. Maloney, R. Howard Price and Woldrich Harrison Courtenay. A fifth person was to be appointed by the Association. A resolution purporting to be made by the Board of Directors was also a part of this Deed of Trust. As President of the Association the deponent strongly resented the chosing of trustees by the said Murray Bein and the said Woldrich Harrison Courtenay and the inclusion of the said RESOLUTION as hereinbefore mentioned. He vigorously opposed the said Woldrich Harrison Courtenay's appointment— First for appointing himself in the dual role of Solicitor and Trustee and Second because he not being a member of the Association, was barred by its rules. This act of the deponent was not well accepted by the said Murray Bein and the said Woldrich Harrison Courtenay. The said Woldrich Harrison Courtenay's appointment as Trustee by himself was supported by Murray Bein before the Association stating—" The Laws of British Honduras provides for a Resident Trustee." This opposition earned for the deponent the hatred of Murray Bein and Woldrich Harrison Courtenay. A report concerning the repair of the Hotel in which the said Murray Bein estimated the cost to be approximately $2,000.00 concluded his report, no mention was made of the sale of property.

(K) After many letters by the Board of Directors to the said Woldrich Harrison Courtenay were disregarded, the Board of Directors of the said Association authorised an investigation of the said Woldrich Harrison Courtenay and the said Murray Bein in Belize by the deponent.

Immediately after the arrival of the deponent in Belize, British Honduras, on the 14th day of February 1941, the said deponent commenced the investigation and found that from October 1939 to February 1941—$19,500.00 exclusive of rents and the sale of produce had been collected but that clause "FIFTH" paragraph (A) of the agreement marked "W.H.C.1" had been violated by the said Woldrich Harrison Courtenay to the detriment of Messrs. Douglas, Grant & Dold, London Solicitors and preference given to the said Murray Bein and Charles A. Taussig. The deponent advised the said Woldrich Harrison Courtenay to immediately remedy the wrong done to Messrs. Douglas, Grant & Dold which he promised to do but did not before he was compelled to.

(L) In August 1941 the said Messrs. Douglas, Grant & Dold commenced an investigation of Mr. Courtenay relative to the Association's affairs in British Honduras and the non-payment of the balance of their fees. This investigation reached the deponent. He being a party to the said agreement marked "W.H.C.1" sent to the said Messrs. Douglas, Grant & Dold a letter, the copy of which is as follows :—

Gran Hotel,
Belize, B.H.
Central America.
28th August 1941.

Messrs. Douglas, Grant & Dold,
502–505 Bank Chambers,
Southampton Buildings,
Chancery Lane,
London, W.C.2.

Dear Sirs,

re P.C. Appeal No. 33 of 1932

Wright & Collins
vs.
Universal Negro Improvement Association Inc.

"Information about your inquiry concerning the unpaid balance of your fee has just been made known to me.

The reason that the full payment of your fee has not been realized is as follows :—

"Mr. Courtenay, Solicitor & Trustee for the U.N.I.A. Inc. for reasons best known to himself violated the agreement dated the 16th day of February 1938 by paying Mr. Murray Bein in full plus disbursements etc. and he also paid Mr. Charles Taussig $4,200.00.

"According to the said Agreement as per the priority clause you should have been paid in full before Murray Bein or Charles Taussig received one cent.

"You will be surprised to learn that an investigation by me revealed sales from 15th November 1939 to February 20th 1941

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amounted to $14,830.00, Sales of 24 shares of Royal Bank of Canada Stocks realised $3,000.00. Sale of Insurance Stock—Pan American Life Insurance Co., New Orleans, La., U.S.A., $549.00. Appeal cost, William A. Campbell and Ella B. Stephen, $1,500.00 making a total sum of $19,879.00. With the collection of rents the sum of which is unknown, the total would exceed $20,000.00.

" Being unable to receive any financial statement from Mr. Courtenay for several months—the U.N.I.A. Inc. Board of Directors through me wrote Mr. Courtenay on May 5th 1940 for a statement and because this request was ignored I, on the Board's instructions visited Belize, B.H. where I found an alarming state of affairs.

" I charged Mr. Courtenay with having violated the agreement to the detriment of Messrs. Douglas, Grant & Dold and the U.N.I.A. Inc. He then blamed Mr. Murray Bein stating, ' On Mr. Bein's visit to British Honduras he forced me not only to violate the agreement but also to convey properties below the appraised value.'

" Mr. Bein, I found was paid partly in Cash.

This is since the Defence Finance Regulations have been in force here—by conveying two parcels of improved real estate to one A. J. Hunter which on the same day was mortgaged to one Zelda Jacobs the said Murray Bein's sister-in-law, residing in New York. The other was mortgaged to one Damaris Taussig, another resident of New York, the wife of Charles A. Taussig.

" Since having shown Mr. Courtenay that his act, in my opinion is punishable ; he in some manner succeeded in getting the said Zelda Jacobs and Damaris Taussig to transfer their mortgages to him. The transactions which are deliberate contraventions of the Defence Finance Regulations are recorded in The General Registry, Belize, British Honduras.

" Charles A. Taussig has received $900.00 in cash." The home of the testator, a beautiful building, was supposed to be sold to Mrs. Damaris Taussig, the wife of Charles A. Taussig for $3,300.00. As a matter of fact, although Conveyance is made to her, I am certain no money passed. Since my sojourn in the Colony, Mr. Courtenay has succeeded in getting Damaris Taussig not to reconvey the property to the trust with the U.N.I.A. as Beneficial Owners but to convey it to Mr. Courtenay. The deed is recorded.

" Inasmuch as Belize is a small place and that I am a stranger here I would appreciate your treating the source of this information as confidential."

Very sincerely yours,

LIONEL A. FRANCIS.

On the 18th June 1942 the deponent wrote to Messrs. Douglas, Grant & Dold on matters arising out of the Privy Council Appeal No. 33 of 1932 and received a reply in which the quoted extract,

paragraph 2, hereinafter mentioned shows the said Woldrich Harrison Courtenay only "RECTIFIED" the "VARIED" priority order of the said agreement marked "W.H.C.1" when he was made to do so. The reply is as follows :—

502–505 Bank Chambers,
Southampton Buildings,
Chancery Lane,
London, W.C.2.
11th July 1942.

Douglas, Grant & Dold,
Privy Council Appeal Agents.
Solicitors

A. W. F. Dold, M.A., B.C.L.
(Oxford) L.L.B.
London

Telephone : Holborn 3266
Cables : Standfast, London
Telegrams : Gildedold
Hold, London.

Dear Sir,

Re P.C. Appeal No. 33 of 1932

Wright & Collins

vs.

Universal Negro Improvement Association Inc.

"We have received your letter of the 18th June and have delayed replying thereto on account of our having to consider the matter in great detail. Our difficulties have been increased by the fact that after the bombing of London commenced all the files of pending matters were removed to Newbury, where our Mr. Dold is now resident. He is not proceeding to Newbury again until the end of this month when he hopes to have a short holiday there.

"We have no recollection of any reply to your letter of the 28th August 1941 but we may say at once that we were extremely grateful to you for the information which you disclosed to us and which resulted in the payment of £610 odd to us in connection with overdue fees in addition to a sum of £375 which we received in June 1940. We still contend that there is a sum of approximately £100 due to us on the first charge and we are in communication with the Chief Justice of British Honduras to press Mr. Courtenay for the balance of our charge," etc., etc., etc.

Yours faithfully,
DOUGLAS, GRANT & DOLD.

Lionel A. Francis, Esq.

(M) In replying to paragraph 7 of the said Woldrich Harrison Courtenay's Affidavit, the deponent, Lionel A. Francis states again that another attempt is made at evasion and to mislead this Honourable Court.

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The truth is, he did not agree and he is still of the opinion, without prejudice, that the said Charles A. Taussig and the said Murray Bein are not entitled to any rents for the following reasons :— " FIRST," the transfer of the properties to the said Charles A. Taussig in an indirect manner, that is to say by sale to Damaris Taussig, his wife, was at that time a deliberate violation of the Priority Clause of the said agreement marked " W.H.C.1." " SECOND,"—To the date of the reconveyance to the said Woldrich Harrison Courtenay, the British Solicitors, Messrs. Douglas, Grant & Dold, were not paid the balance of their fee, that is to say $3,000.00 or thereabout were still unpaid ; and until the complete payment of fees to the said British Solicitors was disbursed as is clearly stated in Clause " FIFTH," paragraphs a, b and c of the said agreement marked " W.H.C.1," the deponent contends that neither Damaris Taussig nor the said Charles A. Taussig is entitled to the rents that accrued from the said Morter's dwelling, for the period hereinbefore mentioned. The deponent adduces a similar contention regarding the said Murray Bein's claim to the interest on Mortgages. " THIRD " —The conveyance of the said Morter's home to Damaris Taussig was an infringement of Clause " SEVENTH " of the said agreement marked " W.H.C.1 " in which provision is made for the selection by the said Association of " three (3) parcels of real estate out of the realty holdings located in Belize, British Honduras and the said Woldrich Harrison Courtenay, agent under the Powers of Attorney, is authorised and directed to execute such deeds and any and all other instruments necessary in accordance with the laws of the Colony of British Honduras to effectuate the transfer of the three parcels selected to the said Association or its Assignee."

" The parcels selected are the said Morter's dwelling, Lot 972 Queen Street, known as the Escalante Hotel and Lot 930 North Front Street. It is for this reason that an Indenture made the sixteenth day of November 1939 and recorded at the General Registry, Belize, in Deeds Book No. 34 at folios 378–380 is separate and distinct from the Indenture made the third day of November 1939 and recorded at the General Registry, Belize, in Deeds Book No. 34 at folios 365–368.

(N) In answer to paragraph 8 of the said Woldrich Harrison Courtenay's affidavit, it is sufficient to state that a lengthy affidavit by Lulu Rutter Johnson, the Secretary of the said Association, and authorised by its members, contained the minutes of a meeting at which James A. Plummer, R. Howard Price, Mildred I. Cooper and John A. Scott were deposed and the deponent given a vote of confidence. The affidavit was received in the office of the said Woldrich Harrison Courtenay by one G. August. The deponent is in possession of the receipt returned by the Postal Authority of the United States of America.

(O) In answer to paragraph 9 of the said Woldrich Harrison Courtenay's affidavit the deponent again observes another attempt to conceal facts that should be made known. That being so, it is now expedient to give such information which is as follows :— " From the 1st day of October 1939 to the 14th day of February

1941, the day of the deponent's arrival in British Honduras, the said Woldrich Harrison Courtenay and the said Murray Bein ignored requests from the said Association for a financial statement of its affairs in British Honduras. The said Murray Bein stated that in the absence of financial reports from the said Woldrich Harrison Courtenay he could not comply with the Association's request. In discussing the said matter with the said Woldrich Harrison Courtenay he stated that he gave the financial report to the said Murray Bein. Having been informed from the said Association and in Belize that the said Woldrich Harrison Courtenay is alleged to have sold the 24 shares of Royal Bank of Canada Stock, a part of the Personal estate of Isaiah Emmanuel Morter, deceased, to his wife, below the Market value, the deponent insisted on a report and the handing over of all Sales Documents relative to the said Royal Bank of Canada Stocks to which the said Association is entitled. This resulted in the said Woldrich Harrison Courtenay visiting New York to make a two years' financial report at a cost of more than $500.00 to the Association. To date the said Sales Documents of the Royal Bank of Canada Stocks are not as yet given to the said Association.

An extract from the certified copy of the minutes of a meeting dealing with the said Woldrich Harrison Courtenay's report to the said Association in New York, U.S.A., reads as follows :—

> " At the conclusion of the above, Mr. Courtenay stated that he had received communications from James A. Plummer's organization in Long Island requesting him to meet with them. He also stated that a Committee from a group in question called to interview him at the ' Theresa Hotel,' which group was composed of one Mr. McDougal and others. Mr. Courtenay stated he did not have any appointment with the group and therefore did not see them. Mr. Courtenay stated that he is in New York reporting to the Universal Negro Improvement Association, Inc. on its affairs in British Honduras, and also as the Executor of the Universal Negro Improvement Association, Inc. He further said that it was his plan to write Mr. Plummer at the conclusion of his work with the Universal Negro Improvement Association, Inc., in New York and inform him that he would meet with Mr. Plummer's organization at his (Mr. Plummer's) request for which a fee would be charged."

The above quoted minutes is a direct contradiction to paragraph 9 of the said Woldrich Harrison Courtenay's affidavit.

(P) In answer to paragraph 10 of the said Woldrich Harrison Courtenay's affidavit, the deponent says :—

The said Woldrich Harrison Courtenay's POWER OF ATTORNEY executed by him for the said Association in the presence of its Secretary, Lulu Rutter Johnson, on the twenty-second day of November 1939 states in the twelfth clause the following :—

> " AND IT IS HEREBY DECLARED that this Power shall be irrevocable for one year from the date hereof."

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The said deed poll was revoked on June 24th, 1941. The said Woldrich Harrison Courtenay abused the Powers and authority given him under this Deed Poll by disregarding two years overdue land taxes on the City properties and Plantations in the sum of $1,100.00. By continuing to keep all the City properties in an insanitary and dilapidated condition. Unexplained discrepancy in the repair of the Escalante Hotel. The abuse of the said agreement marked " W.H.C.1 " favouring the said Murray Bein and the said Charles A. Taussig to the detriment of others. The sales of the Royal Bank of Canada Stocks rumoured to be sold to Mrs. Courtenay, his wife, below the market value and the refusal of the said Woldrich Harrison Courtenay to deny it and to deliver the documents to the said Association. The removal of personal property and drift wood from Caye Chapel. No record of the sale of the cocoanut oil made at Caye Chapel.

An extract of a meeting of the Board of Directors held August 4th 1941 at the New York Headquarters of the said Association and attended by the said Woldrich Harrison Courtenay is as follows :—

> " Mr. Courtenay thanked the Committee for the vote of Thanks. In so far as the plantations, he will be happy to assist Dr. Francis if he desires his aid. Mr. Courtenay offers to relinquish his POWER OF ATTORNEY and expresses his willingness to assist in the future transactions. He also agreed that if at any time the Association desires to again employ him as Attorney, he will be willing to serve."

The deponent was appointed Agent under the said POWER OF ATTORNEY to replace the said Woldrich Harrison Courtenay. The deed poll is recorded at the General Registry, Belize, in Deeds Book No. 34 at folios 798–800.

(Q) In answer to paragraph 11 of the said Woldrich Harrison Courtenay's affidavit, the deponent objected to the sale and transfer of the property mentioned therein because it is one of the three (3) properties selected by the said Association in accordance with Clause " SEVENTH " of the said agreement marked " W.H.C.1." The deponent further objected because on other occasions the said Woldrich Harrison Courtenay is alleged to have involved the said Association by paying monies to the said Murray Bein and the said Charles A. Taussig in contravention of the DEFENCE FINANCE REGULATIONS, Statutory Rules and Orders 1940, No. 19.

(R) In answer to paragraph 12 of the said Woldrich Harrison Courtenay's affidavit the deponent states that on the 29th day of September he informed the said Woldrich Harrison Courtenay that in accordance with the provisions of the Power of Attorney dated the 22nd day of November 1939 and recorded at the General Registry, Belize, in Deeds Book No. 34 at folios 380–382, also in accordance with the deed poll dated the 24th day of June 1941 and recorded at the General Registry, Belize, in Deeds Book No. 34 at folios 798–800 he intended to receive the rents and profits of and manage all the messuages belonging to the said Association. That

he would notify the tenants as to the payments of rents to him. On the sixth day of October 1941, letters from the said Woldrich Harrison Courtenay to the tenants as hereinafter mentioned were delivered :—

W. H. Courtenay
Solicitor & Notary Public,
Belize,
British Honduras.

8th October 1941.

Dear ——

"Dr. Lionel A. Francis has advised me that he has instructed you that as from 1st October instant the rent of the premises you now hold of me as tenant should be paid to him.

"I wish to remind you that I am the legal owner of the premises occupied by you and your landlord, notwithstanding any Power of Attorney which Dr. Francis may hold. I must therefore warn you that I am the only person to whom you are under any legal obligation to payment, and payment must be made into my office as heretofore. If you choose to disregard this notification you will render yourself liable to the penalties of the law; and I should regret very much if I were compelled to invoke the aid of the law against you to protect the interest I represent."

Yours faithfully,
W. H. COURTENAY.

A copy of this letter was immediately forwarded to the Board of Directors of the said Association in which letter their attention was directed to the minutes of the meeting of the said Board of Directors as hereinbefore mentioned.

On the 18th day of November 1941 the copy of a letter entrusted to the deponent to deliver to the said Woldrich Harrison Courtenay was received and is as follows :—

Universal Negro Improvement Association, Inc.
Parent Body,
108 West 111th Street,
New York, N.Y.
7th November 1941.

Mr. W. H. Courtenay,
Solicitor,
Belize.

Dear Sir,

"I am directed by the Directors of the Universal Negro Improvement Association, Inc. to request you to cause all properties now standing in your name UPON TRUST TO SELL to be transferred to Dr. Lionel A. Francis. From and after the receipt of this letter the Association does not propose to ratify any act done by you under the Trust Instrument.

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You are also requested to prepare an account of all your dealings with the properties and moneys of the Association and to hand over any balance of moneys to Dr. Lionel A. Francis."

Yours truly,
(Sd.) LULU RUTTER JOHNSON,
Secretary General.

On the 7th day of January 1942 the hereinabove mentioned letter was disregarded by the said Woldrich Harrison Courtenay who defiantly sold the said lot 848, Eve Street as hereinbefore mentioned. This disregard, if not defiance, of the said Woldrich Harrison Courtenay to instructions given by the said Association, donors of the voluntary trusts, resulted in the revocation of his appointment as Trustee. The instrument revoking the appointment of the said Woldrich Harrison Courtenay was presented to him by Frans R. Dragten, Esquire, a Solicitor of this Honourable Court. The instrument was neither executed nor returned, but instead was forwarded to the said Murray Bein and Charles A. Taussig, New York Attorneys, and therefore was not recorded. The deponent was informed and verily believed that the return of the said instrument was on many occasions requested by the said Frans R. Dragten, Esquire, before the expiration of the filing date. The said Woldrich Harrison Courtenay admits having used the property of the said Association for a purpose he knew it was not intended for. The purpose of the instrument being sent to him was for its execution and the termination of the trusteeship of the said Woldrich Harrison Courtenay.

The purpose for which the said instrument is being used is the participation of the said Woldrich Harrison Courtenay in collusion with the said Murray Bein, Charles A. Taussig, Attorneys and others to have adjusted certain persons whom they can control as Officials and Directors of the said Association in order that they may be able to continue their nefarious deeds such as the violation of the said agreement marked " W.H.C.1 " attached to the affidavit of the said Woldrich Harrison Courtenay ; the receiving of monies of the said Association by misrepresentation, the infringement of the Defence Finance Regulation, Statutory Rules and Orders 1940 No. 19, unexplained discrepancies and the utter disregard of the undertaking given by the said Woldrich Harrison Courtenay relative to the payment of a legacy to one Isabella Lawrence, a legatee in the Probated Will of Isaiah Emmanuel Morter. The said Association, and not the remaining beneficiaries under the agreement of the 16th day of February 1938, is the donor of the voluntary trusts. The beneficiaries never were a part of the Association and they are still not a part.

The said Woldrich Harrison Courtenay is the agent to collect for the beneficiaries, all except the said Association who has dispensed with his services.

The said Association after being informed and verily believed that the said Woldrich Harrison Courtenay had disregarded its

instruction to execute the instrument, dated the 5th day of January, 1942, terminating his trusteeship, issued a publication in the Belize Independent under dates of March 4th, 11th, 18th and 25th, 1942, to the effect that the said Association had severed its business relationship with the said Woldrich Harrison Courtenay and that its now agent and Trustee for the entire Morter's estate was Dr. Lionel A. Francis, 1159 Pickstock Street, Belize, British Honduras. After this Notice the said Woldrich Harrison Courtenay continued to dispose of the properties of the said Association under their appraised value.

(S) The deponent makes answer to the 13th paragraph of the said Woldrich Harrison Courtenay's affidavit by stating it is not germane to any of the issues arising out of the matter of the estate of Isaiah Emmanuel Morter, deceased, now before this Honourable Court. Its only seeming importance is to support the deponent's contention of a dangerous collusion implicating the said Woldrich Harrison Courtenay, Murray Bein and Charles A. Taussig, New York Attorneys and others.

The said Woldrich Harrison Courtenay who admits in the 12th paragraph of his affidavit that he sent to the said Murray Bein and the said Charles A. Taussig an instrument, the property of the said Association sent to him for execution which they are now using in an attempt to remove the Officials and Directors of the said Association, is the said Woldrich Harrison Courtenay who received from the said Murray Bein and others a Summons and Complaint marked "W.H.C.2," he now has the effrontery to present to this Honourable Court though not relevant to the matter presented thereto.

(T) The deponent makes answer to the 14th and 15th paragraphs of the said Woldrich Harrison Courtenay's affidavit by stating, the said Woldrich Harrison Courtenay informed the deponent that he had no intention of paying debts mentioned therein because the Executors, Arthur Balderamos and Hubert Hill Cain had a Cash balance of $1,075.22 not turned over to him. The deponent disagreed and advised that the debts be paid because the said Arthur Balderamos and Hubert Hill Cain could not pay the outstanding debts, viz.: $3,580.97 from $1,075.22. The honest opinion of the deponent is that the said Woldrich Harrison Courtenay never intended paying voluntarily anyone in full except the said Murray Bein, the said Charles A. Taussig and himself.

The deponent arrived in Belize, British Honduras on the 14th day of February, 1941. To that date approximately $21,000.00 had been collected from various sources and approximately $15,000.00 disbursed. In disgust and shame the deponent commenced to pay the debts mentioned in the 14th paragraph but had to cease for the reason that the rents, after taxes, insurance and maintenance had been provided, that would have been used for this purpose continued to be collected by the said Woldrich Harrison Courtenay in defiance of the revocation of his Power of Attorney. Because the debts could have been paid and were

In the Supreme Court of British Honduras.

No. 24. Affidavit of L. A. Francis, 18th January 1943, *continued.*

intentionally not paid it is difficult to understand why the said Woldrich Harrison Courtenay stated : " I am ready and willing to this," well knowing that he, in the city of New York, United States of America, in August, 1941, advised the Board of Directors of the said Association to form the plantations, viz. : Caye Chapel, New Windsor and Revenge into a British Honduras Ltd. Corporation, as a protection from attachment by creditors. It is also difficult to understand the said Woldrich Harrison Courtenay's readiness and willingness to pay the debts hereinbefore mentioned after the Order of this Honourable Court appointing an Administrator to administer the Estate hereinbefore mentioned was made.

Sworn at Belize this 18th day of January, 1943 } LIONEL A. FRANCIS.

Before me,

A. O. LONGSWORTH,
Registrar General.

This affidavit is filed on behalf of the above-named Defendant Lionel A. Francis, who resides at 1159 Pickstock Street, Belize.

No. 25. Queries of Receiver, 21st September 1943.

No. 25.

QUERIES OF RECEIVER dated 21st September 1943.

P. O. Box 76,
Belize, B. H.
September 21, 1943.

Sir :—

re Estate of I. E. Morter, dec'd.

I have the honour to submit herein :—

(1) Statement of claims received.

(2) My report re the various claims submitted.

(3) Statement of Real Estate.

(4) Mortgages outstanding.

(5) Receiver's Cash Account for 15.12.42 to September 1st, 1943.

I also apply for permission to sell the properties to meet outstanding debts and to engage the services of Counsel to argue on the claims which I refuse to admit.

Yours truly,
(Sgd.) J. C. THOMSON,
Receiver, Estate of I. E. Morter, dec'd.

The Registrar General,
Belize.

"ESTATE OF I. E. MORTER DEC'D."

STATEMENT OF CLAIMS RECEIVED BY ME AS RECEIVER AS AT THE 31ST MARCH 1943.

CLAIM #1 :—			
Hofius & Hildebrandt—			
Goods supplied as per Statement ..	$616.79		
Interest charged on the above to 28th February 1943 @ 8% ..	$141.75		
Total claim ..	$758.54	$758.54	
CLAIM #2 :—			
John Harley & Company—			
Goods supplied as per Statement ..	$533.85		
Interest charged on the above to 31st March 1943 @ 8%	134.95		
Total claim ..	$668.80	$668.80	
CLAIM #3 :—			
Director of Surveys—			
Land Tax on Windsor Bank 1 yr. ..	$6.74		
,, ,, ,, Caye Chapel 1 yr. ..	4.39		
,, ,, ,, Revenge Lagoon 4 yrs. ..	1,576.80		
Total claim ..	$1,587.93	$1,587.93	
CLAIM #4 :—			
Miss Lawrence—			
(submitted by Dragten & Woods) ..	$2,000.00	$2,000.00	
See Clause 7 I. E. Morter's Will February 15th, 1924. Interest to be decided by the Court.			
CLAIM #5 :—			
Balderamos & Cain Executors—			
Balance shown by Mr. Balderamos's S/Ment July 25th, 1942, as filed at Registrar's office	$6,914.33	$6,914.33	
CLAIM #6 :—			
Arthur Balderamos—			
Tax Bill of Costs 14.7.41	$41.29		
,, ,, ,, ,, 23.3.43	74.86		
Total claim ..	$116.15	$116.15	
CLAIM #7 :—			
W. H. Courtenay Solicitor—			
as per Statement 31.3.43	$4,416.30	$4,416.30	

In the Supreme Court of British Honduras.

No. 25. Queries of Receiver, 21st September 1943, *continued.*

CLAIM #8 :—		
Charles A. Garrett—		
Salary as caretaker for three mos. at $20.00 per month	$60.00	$60.00
CLAIM #9 :—		
Lewis Sabido—		
Goods supplied as rations for labourers to 31.3.43—Total claim	$149.27	$149.27
		$16,671.32

Attached is a further claim from Luke Dinsdale Kemp which I do not think has anything whatsoever to do with the Estate.

25th January, 1943.

J. C. Thomson, Esq.
Receiver of Estate I. E. Morter, deceased,
Belize.

Sir :

As the survivor of a party of one part in an agreement made on behalf and for the benefit of the Negroes of Belize, I am hereby serving notice of the following claim for the Negroes of Belize on the Morter's Estate.

Following a letter written by me to Mrs. Amy Jacques Garvey about the Morter's Estate, Miss Henrietta Vinton Davis, then an officer of the U.N.I.A. Inc., came to Belize and signed a written agreement for the U.N.I.A. Inc., with the late Maurice Young and myself (then President and Executive Secretary respectively of the Belize Division of the U.N.I.A.) to the following effect.

(1) The Belize Division of the U.N.I.A. was not to be informed that the Parent Body of the U.N.I.A. had not the necessary funds to prosecute the Morter's Will Case.

(2) In consideration of the necessary funds being raised in Belize to pay the expenses of Miss Davis' stay in Belize for the case, the amount needed for the Solicitor's retainer of U.N.I.A., Inc., all the out of pocket expenses called for by the Solicitor for the U.N.I.A. Inc. (then Mr. F. R. Dragten, K.C.), and providing any bond necessary to fight the case to a successful issue, the following were to be given the Negroes of Belize :—

(A) $2,500.00 to establish a clinic under the care of the Black Cross Nurses.

(B) All out of pocket expenses to be refunded.

(C) The property alongside Liberty Hall to be joined to the Liberty Hall property for the benefit of the Clinic.

(D) That the Morter's residence at Lovers Point be held for the Negroes of Belize, and to be known as " Black House."

(3) That the widow of the testator be given an allowance during her lifetime.

That the document was not to be revealed until the issue was concluded.

Mr. Marcus Garvey, then head of the U.N.I.A., Inc., approved of the arrangement in a letter. Mrs. C. E. Douglas was the witness to the document.

The out of pocket expenses include $1,500.00 paid by the estate of the late Ella Blande Phillips (nee Stephen).

The Solicitor of the U.N.I.A. ,Inc. (Mr. W. H. Courtenay), is aware of these claims. These claims are also in conformity with the intentions of the testator.

(Sgd.) L. D. KEMP,
LUKE DINSDALE KEMP,
605 George Street, Belize.

MY REPORT REGARDING CLAIMS MADE ON THE ESTATE OF I. E. MORTER DECEASED.

Claim 1.
Hofius & Hildebrandt—Goods supplied—Interest to be decided by the Court .. .. .. $616.79 Agreed.

CLAIM 2.
John Harley & Co.—Goods supplied—Interest to be decided by the Court .. .. .. $533.85 Agreed.

CLAIM 3.
Director of Surveys—Taxes outstanding .. .. $1,587.93 Agreed.

CLAIM 4.
Interest to be decided as from what date on Legacy for Miss Lawrence for $2,000.00.

CLAIM 5.
Messrs. Balderamos & Cain.
See attached statement with my findings.

CLAIM 6.
Arthur Balderamos.
Taxed Bill of Cost .. .. $116.75 Agreed.

CLAIM 7.
W. H. Courtenay, Esq.
See attached statement with my findings.

CLAIM 8.
See Mr. L. Francis' letter objecting to this Claim.

CLAIM 9.
Goods supplied for Labourers' rations .. .. $149.27 Agreed.

(Sgd.) J. C. THOMSON,
Receiver,
Estate I. E. Morter, Desc.

ESTATE OF I. E. MORTER, DECEASED.

CLAIM #5.

BALDERAMOS & CAIN—EXECUTORS.
Balance in their favour as per account filed July 25th, 1942, with Registrar $6,914.33

In the Supreme Court of British Honduras.

No. 25. Queries of Receiver, 21st September 1943, *continued.*

My findings are, and for which I desire to have the Court's ruling regarding items to be allowed and not allowed.

ITEMS WHICH I AM QUERYING :

(1) A charge of 5% on the gross value of the Estate— $150,003.01 .. .. $7,500.15
(Executors' commission)

(2) A charge in the accounts for a Book-keeper and General Clerk. This charge has been made from April 17th, 1924, to August 16th, 1939, at $240.00 per annum .. 3,680.00

(3) A further charge is made from August 17th, 1939, to October 16th, 1939—2 months at $20.00 per month .. 40.00
and from October 17th, 1939, to October 17th, 1942— 36 months at $10.00 .. .. 360.00

The management of the Estate was taken away from Balderamos & Cain in 1939.

The executors have received 5% on all cash receipts from 1924 to date of handing over, also 10% on all rents collected.

(4) Mr. Hubert Cain, one of the executors, has arrears of rent amounting to 1,382.75
made up as follows :—

Balance rent due 28.2.35	$	7.75
Rent from 28.2.35 to 30.9.39 ..		1,375.00
		$1,382.75

This rent is due on a property which has two buildings, one was destroyed by Hurricane 1931. The property was leasehold land for which the Executors paid $25.00 per month.

(5) Mr. Balderamos has in his office one Iron safe which is the property of the Estate. Value as per Inventory 1924 .. .. 75.00

Total amount in dispute $13,037.90

To the above has to be credited two sums which I took over when appointed Receiver—

Cash in Bank—Current Account ..	$	94.77
„ „ „ —Savings Account ..		165.04
		$259.81

ESTATE OF I. E. MORTER, DECEASED.

CLAIM #7.

In the Supreme Court of British Honduras.

No. 25. Queries of Receiver, 21st September 1943, *continued.*

Mr. W. H. COURTENAY.

Balance in his favour as per statement 31.3.43		$4,416.30

RECEIPTS.

I have checked and analysed his statements and the only comments I have to make on amounts received are that in 1935 all properties were appraised by two appraisers at a certain value. Most of the properties were sold under these values, but I understand from Mr. Courtenay the reason for this was that there was very little demand for properties at time of sale, plus depreciation since 1935.

DISBURSEMENTS.

The following items I am querying, and for which I would like to have the ruling of the Court.

Mr. Courtenay has charged on his statement salaries paid to his staff as follows :—

A Mr. H. E. Westby, his clerk, has been paid a salary for 3.11.39 to 31.3.41 amounting to		$734.00
Miss Codd, his clerk, from April and May 1941		35.00
Mr. A. Slusher, his clerk, to 31.10.41		152.88
		$921.88

I may mention that Mr. Courtenay also charged commission on rents and sale of properties, amounting to $2,633.45.

A further item, December 1940.—Commission is charged at 10% on $3,500.00.—Morter house and ½ adjoining lot transferred to C. A. Taussig to account his fees. This property is still part of the Estate therefore this amount must be disallowed	350.00
Mr. Courtenay claims a fee as Attorney Managing Plantation which he states was agreed by the Board of Directors. I have been unable to see this authority. The sum claimed is 2 yrs. at $800.00 p.a.	1,600.00
(I cannot see how the plantation could possibly pay this amount as they were run at a loss.)	
	$2,871.88

In the Supreme Court of British Honduras.

No. 25. Queries of Receiver, 21st September 1943, *continued.*

LEGAL FEES.

July 31, 1940.

Fee agreed to be paid in respect of Plantations retained by U.N.I.A. free from any trust or lien	$500.00

July 31, 1940.

Fee agreed to be paid in respect of Judgement obtained in British Honduras Supreme Court against U.N.I.A.	375.00

Sept. 30, 1940.

Fee agreed in re dismissal of motion of appeal to Privy Council by R. L. Felix	400.00
Fee for services on retaxation of Balderamos' Bill of costs and appeal thereon to Supreme Court	900.00
	$2,175.00

As I have seen no authority for these fees I suggest to the Court that Mr. Courtenay be asked to submit all his legal fees so that they may be taxed.

Belize,
British Honduras,
21st September, 1943.

Mr. J. Claude Thomson,
Receiver, Estate I. E. Morter, Dec'd.
Belize, British Honduras.

My dear Mr. Thomson :

It is for me to inform you that Mr. Austin Garrett was never employed by the Universal Negro Improvement Association, Inc. on wages. I am asking that the claim be not entertained until the said Mr. Garrett presents proof of his employment with the understanding that he was to receive any money consideration.

For your information, Mr. Garrett has been a handicapped person for many years, unable to provide himself with proper means of subsistence. He was permitted to sleep in the Liberty Hall of the local U.N.I.A. because of his incapacity to earn his living. At his request, he was sent to the Windsor Bank to relay instructions and report the time worked by two men. His remuneration for such as orally agreed was food, a place to sleep and the privilege of consuming anything and to any amount for his personal use including milk. My part of the oral agreement was kept.

While at the Windsor Bank Mr. Garrett caused our best cow in fold to die through sheer neglect. Mr. Campbell and others will testify to this. Also a calf, supposedly, went astray and has never been since seen.

Mr. Garrett was regularly supplied with food fortnightly. Mr. Garrett took ill and was taken to the hospital by Mr. Campbell who out of U.N.I.A. funds clothed him for hospitalization. After his discharge from the hospital he returned to the U.N.I.A. Liberty Hall where he lived under

strange conditions. During his period of convalescence I allowed him $1.00 per week for three weeks. For the reason that he has grown children and other relatives in Belize, $1.00 weekly for three weeks was ample.

I reiterate, no money is due to Mr. Garrett and I must protest his claim.

Very respectfully yours,
(Sgd.) LIONEL A. FRANCIS.

"ESTATE OF I. E. MORTER DESC'D."
"REAL ESTATE."

The following properties were handed over to me as Receiver on the 15th December 1942 and are still the properties of the estate. The Values of which are taken as made by two appraisers in 1935—L. A. Jeffery and Fred Wesby.

1. 930 North Front Street :—	
Used as Union Jack Club with dwelling upstairs.	
Annual Rental $520.00.	
Value	$4,000.00
2. 972 Queen Street :—	
Used as Escalante Hotel. This property has been greatly improved in the last two years.	
Annual rental $1,200.00.	
Value	12,000.00
3. 1213 Victoria Street :—	
Three small houses low lying in very bad repairs. Rents difficult to collect.	
Annual rental $114.00.	
Value	700.00
4. 868 Craig Street :—	
Two houses of 2 storeys cut up in rooms. Six tenants. Rents difficult collect.	
Annual Rental $264.00.	
Value	1,700.00
5. 1056 Barracks Road :—	
Building in bad condition.	
Annual Rental $144.00.	
Value	1,200.00
6. Barracks Road adjoining Morter's Home :—	
Two houses.	
Annual Rental $180.00.	
Value	1,500.00
7. Wilson Street :—	
Two small houses on property.	
Value	700.00
8. Barracks Road—Morter's Home :—	
This is a good property.	
Annual Rental $336.00.	
Value	4,000.00
	$25,800.00

In the Supreme Court of British Honduras.

No. 25. Queries of Receiver, 21st September 1943, *continued.*

"THE ESTATE HAS THREE PARCELS OF LAND."

1. REVENGE LAGOON—26,280 Acres :—
This land has some chicle but it has not been a paying proposition.

2. NEW WINDSOR—448½ Acres :—
This is a bank on the Belize River about 18 miles from the city. Has a small house and a few cattle, also cocoanut trees. The property could be made to pay if properly looked after.

3. CAYE CHAPEL—293 Acres :—
This caye is about 14 miles from Belize. Has a large house and is planted with cocoanut trees. It was badly damaged in the hurricane of 1942 but should be producing within the next months and then become a paying concern.

I should not care to place a valuation on these properties but from what I am led to understand their approximate value is roughly $25,000.00.

"ESTATE OF I. E. MORTER DESC'D."

MORTGAGES OUTSTANDING :—

F. D. Westby :		
On 867 Craig Street	$300.00	
Interest at 6%		$350.00

Interest collected annually and paid to 31.12.43.

J. C. THOMSON, RECEIVER.

"ESTATE I. E. MORTER DESC'D."

CASH ACCOUNT.

From 15.12.42—1.9.43.

"RECEIPTS."

Cash in Bank—Savings A/c 15.12.42	$165.04	
„ „ „ —Current „ 15.12.42	94.77	
Interest on Mortgage to 31.12.42	21.00	
Rents collected to September 1st 1943	1,687.75	
		$1,968.56

"PAYMENTS."

Repairs to Buildings	73.85	
Insurance on Buildings	105.50	
Rent Receipt Book	.40	
One Cheque Book—Royal Bank of Canada ..	.75	
Belize Property Tax—1943	124.32	
Belize Fire Rate—1943	61.43	
Advertising :—		
Government Gazette	5.00	
Clarion	10.50	
Independent	6.25	
Commissions paid to Rents collected to 31.8.43 ..	157.37	
Advance for upkeep plantation	70.00	
Fee for guaranteeing bond $10,000.00—¾% ..	75.00	
		690.37
Cash on Hand ..		$1,277.19

No. 26.
Notice of Registrar, 24th September 1943.

No. 26.

NOTICE OF REGISTRAR, dated 24th September 1943.

TAKE NOTICE that the accounts having been filed by the receiver the further hearing of this Action has been fixed for Wednesday the 29th September, 1943, at 9.30 o'clock in the forenoon.

Dated this 24th day of September, 1943.

(Sgd.) A. O. LONGSWORTH,
Registrar General.

To

Messrs. Dragten, Woods & Co.
Arthur Balderamos, Esquire.
W. H. Courtenay, Esquire.
Hon. S. A. Hassock.
Mr. Hubert Hill Cain.
Mr. Lionel A. Francis.

No. 27.
Registrar's Notes of Proceedings, 29th September 1943.

No. 27.

REGISTRAR'S NOTES OF PROCEEDINGS, dated 29th September 1943.

Action No. 7/1942

Hofius

vs.

Balderamos & Cain Exors. I. E. Morter decd. et al.

Wednesday, 29th Sept. 1943.
At 9.30 a.m.

Adjd. from 18/12/42.
Appearance as before.
Mr. Dragten appears for Receiver.
Receiver's accounts read.
Ordered that Receiver do sell by private sale the following properties :—

930 North Front Street—Union Jack Club	$4,000.
#6 Lot adjoining Morter's home	1,500.
#1056 Barrack Road	1,200.

at not less than appraised values within 30 days, otherwise by public auction (same reserve).

Conveyances to be signed by Mr. Courtenay and Mr. Francis.

Debts agreed upon to be paid by Receiver as soon as properties are sold—

Hofius & Hildebrandt $616.19 and interest
Harley & Co. $533.85 & $134.95 interest
Director of Surveys $1,587.93
Miss Lawrence $2,000. & interest at 6% from 30/7/35
L. Sabido $149.

Adjd. to 8/X/43 at 9.30 a.m. Mr. Balderamos's items to be dealt with.

A. O. LONGSWORTH,
Registrar.

In the Supreme Court of British Honduras.

No. 28. Judge's Notes of Proceedings, 29th September 1943.

No. 28.

JUDGE'S NOTES OF PROCEEDINGS, dated 29th September 1943.

29th September 1943.

In the matter of estate of Emmanuel Morter decd.

Ernest Johnston Hofius - - - - - - - Pltff.

and

Arthur Balderamos and Hubert Hill Cain Exors.
Universal Negro Imp. Assn.
W. H. Courtenay
Lionel A. Francis - - - - - - - - Defts. 10

Mr. Thompson Receiver
Dragten. Hofius. Harley.
Courtenay. Hassock.
Dr. Francis U.N.I.A.
Balderamos Exors.

Court informs Counsel that provisional authority to the Receiver to appoint a legal adviser.

No objection.

Authority made clear.

Hofius & Hildebrandt 20

A/c. 616.19.

Interest at 8% paid on the date.

Harley & Co.

Land Tax.

$1587.93 to be paid.

No interest on contingent legacy.

Privy Council Judgment.

Interest to be paid from 30th July 1935 at 6%.

Sabido agreed.

Total of agreed items—approximately— 30

6244.54
1300.00

$4944.54

930 North Front St.	$4000.
Two houses adjoining Morter House	$1500.
1056 Barrack Rd.	$1200.
	$6700.

Receiver authorized to sell by private treaty at not less than the appraised value within 30 days.

If not sold by then Public Auction. Same reserves. 40

Advertised in two papers.

Agreed debts paid as money become available.

Costs to be left until the end of the case.

Friday week 8th Oct. 9.30 a.m.

C. G. LANGLEY.

In the Supreme Court of British Honduras.

No. 29. Registrar's Notes of Proceedings, 11th October 1943.

No. 29.

REGISTRAR'S NOTES OF PROCEEDINGS, dated 11th October 1943.

Action No. 7/1942

Hofius

vs.

Balderamos & Cain Exors. I. E. Morter decd. and others

Monday, 11th October, 1943.
At 9.30 a.m.

Adjd. from 29/9/43.
Appearance as before.
Mr. Phillips appears for Messrs. Balderamos & Cain.
Mr. Phillips to Court—Claim #5.

Ex "A" Valuation d/- 4/x/24
Ex "B" Copy of Will.

Arthur Balderamos, sworn.
Xd. by Mr. Phillips.
Mr. Phillips re commission.
Cites—*Singleton* v. *Tomlinson* 3 A.C. pp. 404 & 415
24 Geo. II Ch. 19
Denton v. *Davy* 12 E.R. p. 722
Grant v. *Meak & Campbell* 12 E.R. pp. 726 & 729
Henckell v. *Daly* 12 E.R. p. 730
McSweanie vs. *Rosado*—Decree Book 2, 23/2/84.
Mr. Dragten in reply—
Williams on Exors. Vol. II, 10th Ed. p. 496
Straughan 5th Ed. p. 168.
Mr. Phillips—Items 2 & 3 of Report.
(Books kept by Mr. Trejo to be produced.)
Item 4
Mr. Cain to Court.
Adjd. to Wednesday 13th inst. at 9.30 a.m.

A. O. LONGSWORTH,
Registrar.

No. 30. Judge's Notes of Proceedings, 11th October 1943.

No. 30.

JUDGE'S NOTES OF PROCEEDINGS, dated 11th October 1943.

11th October 1943.

In the matter of the estate of Emmanuel Morter decd.

Ernest J. Hofius - - - - - - - - Plff.

and

Arthur Balderamos, H. H. Cain Exors.
Mr. Thompson Receiver
Dragten K.C. Legatee
Universal Negro Imp. Assn. Inc.
W. H. Courtenay
L. A. Francis - - - - - - - - - Defts.

Phillips for Exors.
Arthur Balderamos bds.

In the Supreme Court of British Honduras.

No. 30. Judge's Notes of Proceedings, 11th October 1943, *continued.*

I produce a valuation dated 4th Oct. 1924 made by William Pilgrim, William Campbell of the real estate in Belize.

The intrinsic value	92,300
Market ,, ...	$66,800
Meant as a reserve	
Personal estate	$31,503.51
Other ppts. outside Belize	
Very doubtful	25,000

Reward by way of commission is based on same principle as allowed in other countries.

Conversion of importance.

Whole estate sold.

On the assumption that there would be out and out conversion

" I direct. 10th line . . .

Singleton vs. *Tomlinson.*

3 Ap. Case p. 404 p. 415 L Chancellor.

Direction which pre-supposes that the real estate will have been converted into money.

Should good reason prevent sale or lack of necessity to sell.

Forced to carry on the estate by the tactics of those who claim to be the beneficiaries.

Quantum meruit allowance.

Being in a foreign country.

Denton Davy 12 Eg. Rep. 722.

For the worth of these services.

Not limited to percentage.

Jamaica Act.

Statute Geo. II 24—Chap. 19.

The old law is that for a jury. That provides precedent for Court to exercise his discretion.

Grant vs. *Campbell.*

Meek vs. *Campbell.*

12 Eng. Report 726–729.

Act reduced commission true standard of fixed percentage.

Henckell vs. *Daly*—12 Eng. Rep. p. 730.

This Court entitled to use its discretion.

Court ordered case to be tried by a Jury.

Question of law—Jamaica.

Question of fact here.

If White had actually sold the estate.

5% not sufficient to recompense for work done.

Decree Book 2, p. 5.

McSweaney vs. *Rosado*—Sheriff C.J.

23rd Feb. 1884.

5% on receipts. 5% on payments.

Definitely settled. 5% on receipts.

Open right in this Colony.

Formal submission.

5% mere fact estate not realised that does not prevent them from coming to the Court and ask for one.

Matter open. Grave serious worry and work.

Dragten.

Will itself.

Realization for specific purposes.

After all my directions are carried out.

I devise.

In Singleton question whether will to go to heir at law or residuary legatee.

Was there a total conversion.

Headnote Singleton.

Held

not for special purpose only.

No virtue in word "not."

Trustees not directed to sell the whole estate.

Residuary legatee could call on them to hand over the estate in specie.

2. Practice in the Colony 1884.

He was not prepared to depart from it. Exors entitled 5% money which reach their hands.

Until money reach their hands they are not entitled to commission.

Savery. 10% Jury.

Practice too old to be disturbed.

Exors did not convert:—condition precedent money did not reach their hands.

Trustee is not permitted to do any act whereby he will personally benefit to the detriment of the estate.

Remunerated for their trouble. Usual professional charges.

Commission amounts to 5% $5,600.

10% on rents. 5% on other receipts.

Length of time provides extra commission.

Laid down what they shall get for their trouble as Exors.

At Common Law no commission chargeable.

Is that applicable to the Colony.

Principle.

No discretion in the Court.

Not a question of fact.

No discretion in the Court to give commission on money which has not reached the hands of the Court.

Grant vs. *Campbell* 12 Eng. Rep. 726.

Henckell vs. *Daly* 12 Eng. Rep. 730.

Sale actually made completed in Jam. and not England.

In the Supreme Court of British Honduras.

No. 30. Judge's Notes of Proceedings, 11th October 1943, *continued.*

If practice open to the Court then that is an exceedingly bad practice.

Trustees here same position as those in England.

If practice is not good as at Common Law Trustees not entitled to commission.

1. Com. only payable on money reaching hand of Exors.

2. No commission payable on monies which do not reach their hands.

On property unconverted is not monies reaching their hands.

3. The will is clear and unambiguous that conversion was only directed for specific purposes. No general conversion.

Courtenay : Nothing to say.

Francis : Phillips stressed Exors could not sell merely because beneficiaries keeping the (?case).

Exors could have sold between 1935-1939.

All work has been done.

Very little work done since.

Phillips : Common Law.

Not allowed at England but the Courts of Chancery say that law does not apply.

Book-keeper and General Clerk.

Has been inserted in the Probate A/cs up to the 15th Aug. 1939.

Book-keeper $20 a month—kept for keeping the books. Books to be produced.

Book-keeper wanted to go to Panama money paid to him against the enquiry—as a material witness.

Same man collecting rents at 10%.

Item 4.

Phillips :

Says debt due from Executors.

Started as tenant of Morter—continued occupancy of Exors.

Paid $20 a month.

Did not pay after the hurricane of 1931.

I feel claim against the estate in commission satisfied that if that amount recovered it would be ample to meet 5% on whole estate.

All power to realize it.

In the event of not receiving that commission. I could settle the debt in the ordinary way.

Testator meant I should benefit from the estate.

Dragten.

Land leased $10 a month. Year to year could have ceased 6 months' notice.

Exors made arrangement to lease land on higher rental. Paid more.

Balderamos Cain jointly liable.

9.30. 13th Oct. 1943. C. G. LANGLEY, C.J.

No. 31.

AFFIDAVIT of A. Balderamos, dated 12th October 1943.

In the Supreme Court of British Honduras.

No. 31. Affidavit of A. Balderamos, 12th October 1943.

Affidavit of A. Balderamos.

By Order dated the 15th day of December, 1942.

I, ARTHUR BALDERAMOS of Belize Barrister-at-Law a practising Solicitor of the Supreme Court of British Honduras and Solicitor for the Defendants, Executors herein, make oath and say as follows :—

1. I and Hubert Hill Cain, who is a Newspaper Proprietor in Belize are the Executors and Trustees of the above estate under the Will of Isaiah Emmanuel Morter deceased dated the 15th February 1924, who died at Belize on the 7th day of April 1924 and whose Will was duly proved on the 8th day of September 1924.

2. I was informed and verily believe that Percy Trejo was employed by the late Isaiah Emmanuel Morter as a rent and debt collector at a commission of 10% and after Mr. Morter's death the Executors employed the said Percy Trejo as a rent and debt collector at a commission of 10%.

3. I was informed and verily believe that the said Percy Trejo also attended to other business of the late I. E. Morter for which he was paid extra amounts. He had a good knowledge of the affairs of the late Isaiah Emmanuel Morter.

4. Soon after the death of the late Isaiah Emmanuel Morter the Executors employed the said Percy Trejo as a Book-keeper and for making out labourers' accounts and General Clerk at $20.00 per month but before doing so they tried to obtain the services of the late Otto Meyer as an Accountant but he wanted a salary of $100.00 monthly. I am informed by the said Percy Trejo and believe that the estate carried about 10 labourers before the Hurricane of 1931 and afterwards about 6 throughout every year.

5. Soon after the Judgment of this Honourable Court of the 31st August 1939 and the Order of the 14th September 1939 the said Percy Trejo wanted to leave the said Executors and go to his plantation and sometime afterwards to go to Panama, but the Executors were compelled to keep him in Belize which was necessary on account of his knowledge of the Estate and its accounts, the rendering of further accounts and in the handing over and winding up of the estate.

6. I believe from the conduct of the beneficiaries that the accounts would be disputed but the said Executors have never received any formal queries and were not in a position to know what was disputed in the accounts. The only formal queries delivered to the Executors are the recent queries by the Receiver of the said Estate.

7. I crave leave to refer to the Order of this Honourable Court of the 18th of April 1941 for the examination and inspection of available

In the Supreme Court of British Honduras.

No. 31. Affidavit of A. Balderamos, 12th October 1943, *continued.*

accounts, books, inventories, vouchers and other papers (called the estate's accounts) from 1924 to 1941 in which the said Percy Trejo did a great deal of work and gave material assistance.

Sworn at Belize this 12th day of October 1943 } (Sgd.) ARTHUR BALDERAMOS.

Before me,

(Sgd.) A. O. LONGSWORTH,
Registrar General.

This affidavit is filed on behalf of the Defendants, Executors, by Arthur Balderamos of North Front Street, Belize, Solicitor for the said Defendants, Executors.

No. 32. Registrar's Notes of Proceedings, 13th October 1943.

No. 32.

REGISTRAR'S NOTES OF PROCEEDINGS, dated 13th October 1943.

Wednesday, 13th October, 1943.
At 9.30 a.m.

Action No. 7/1942.

Hofius
vs.
Balderamos & Cain Exors. I. E. Morter decd. & others.

Ex " C " Cash Book No. 4.
Ex " D " Ledger.

Appearance as before.

Mr. Phillips to Court.

Percy Trejo, sworn.

Xd by Mr. Dragten.

Mr. Dragten to Court—

Cites : *Weiss* v. *Gill* 40 E.R. p. 10.
Henderson v. *McIver* 56 E.R. p. 510.
Wilkenson v. *Wilkenson* 57 E.R. p. 337.
Rowe v. *Seed* 66 E.R. p. 773.
Hailsham 14 p. 423.

Mr. Phillips to Court—

Cites : *Freeman* v. *Freeley* 36 E.R. p. 16.
Bonethorne v. *Heckman* 23 E.R. p. 492.
Hopkin v. *Roe* 48 E.R. p. 909.

Adjd. to Thursday 21st inst. at 9.30 a.m.

A. O. LONGSWORTH,
Registrar.

No. 33.

JUDGE'S NOTES OF PROCEEDINGS, dated 13th October 1943.

11/1939.
7/1942.

13th October 1943.

In the matter of the estate of Emmanuel Morter dec.

Ernest J. Hofius - - - - - - - Pltf.

and

Arthur Balderamos & others.

All counsel present.

Phillips: Judgment Privy Council not filed until 1939.
Cause of delay reported to the Court 15th Aug. 1939.
Answer to Mr. Francis delay.
Affidavit filed by Mr. Balderamos 12/10/43.
No book keeping since the pptes. were handed over.
Mr. Courtenay says he started a/cs. as from 1st Oct. 1939.
Agreed certain payments & receipts be included in Defts. a/c. after Mr. Courtenay took over.
See para. 9 Afft. dated 27/2/41. 11/1939. Not denied by Mr. Courtenay.

Percy Trejo bds.

Also employed as clerk to Mr. Balderamos from 1924 and kept his books.

Performed all duties of a solicitor's clerk in his office. He had another clerk. $15 from 1924 until 1939. Also as rent collector paid 10% as rent collected from this estate. $20 from Morter estate. From 1924–1931 the commission amounted to $40–$50.

I have not been paid anything since Oct. 1939 in respect of the Morter estate.

I was paid by cheque Exors a/c Morter estate. 31 Aug. 1938 240.
31 „ 1939 240.

Dragten.

Collection of rents not part of solicitors' professional work.

Mr. Balderamos.

Asst. in solicitors' office over 25 years. I did the whole of the a/cs.

Solicitors do collect rents numerous clients. Employ rent collector who is paid 10%.

Maxwell, Lyons, Engleton Price & Franco and Lucas. Had salary.
Solicitor paid clerk 5% in addition to salary.

McKinstry Ag. C.J.

Decided rent.

I collected other rents but did not pay 10% on those to the collector.
Paid a salary to my rent collector but did not give him commission.

Phillips.

A/cs. of estate not individual a/cs. of (?)

Weiss vs. *Bill* 40 Eng. Rep. p. 10.

Not allowed to employ agent except under special circumstances.

No legacy to exors.

Collected debts 5% agency 2½%.

In the Supreme Court of British Honduras.

No. 33. Judge's Notes of Proceedings, 13th October 1943, *continued.*

Perform those duties they have taken on themselves.
Henderson v. *McIvor* 56 E.R. 510, Accountant charges admitted.
(i) *Wilkenson* vs. *Wilkenson* 57 E.R. 337.
Annuities to Trustees. Weekly rents. Trustees justified in paying rent collector.
Paid Exor. different to unpaid Exors. Exors. here are paid. Unpaid trustee more favourable position than a paid trustee.

Roe vs. *Seed* 66 Eng. Rep. 773
If exors. cannot keep a/cs.
Not entitled to employ someone to keep them. Hailsham 14 p. 423–4.

Phillips.
Separate a/cs. estate.
Freeman vs. *Farrly* 36 E.R. 16.
He has no separate a/c.
Bounden duty Exors. to keep separate books.
Bonithon vs. *Hockmore* 23 E.R. 492.
Hopkinson vs. *Roe* 48 E.R. 908.
Salary for debt collector.

(i) See *Muffett Jones* vs. *Mason,* L.J.N.S. Ch. 56, p. 601.

(ii) *Dragten.*
Receiver points out no a/c. of arrears of rent. Book produced handed over to Receiver. Rent collector was his clerk.
9.30 a.m. adjourned 21.10.43.

C. G. LANGLEY,
C.J.

(ii) Messrs. Dragten and Courtenay came into my Chambers after hearing and Mr. Dragten called my attention to Judge's Decision Book "F" folio 116. Estate Lucy Cushman whether probate duty on personal estate payable when real estate converted under will. Held not.

No. 34.

JUDGE'S NOTES OF PROCEEDINGS, dated 29th October 1943.

11/1939
7/1942. 29th October, 1943.

In the matter of the estate of Emmanuel Morter.

Ernest Hofius - - - - - - - - - Pltff.
Balderamos and others - - - - - - Deft.

Dragten K.C.
Balderamos
Cain
Francis
Hassock
Courtenay
1056 Barrack Rd. ppty. reserved reduced to $800. (or better if that be got).
The items of payments to Trejo after estate passed to Mr. Courtenay.
The items being
56. 16th Oct. 1942 $40.
17th Aug. to 16th Oct. 1939
57. 17th Oct. 39—16th Oct. 1942 $360.
Sixteenth Statement of A/c filed 25th Nov. 1942 by the Exors.
Accuracy sworn to at that date by Arthur Balderamos and Hubert H. Cain.

No. 34. Judge's Notes of Proceedings, 29th October 1943.

In the Supreme Court of British Honduras.

No. 31.
Judge's Notes of Proceedings, 29th October 1943, *continued.*

Claim 7.

Salaries $921.88

*Power of Atty. dated 22 Nov. 1939
Power shows need for assistance recognise & contemplated Clause 1 P/A.
Question of fact of staff employed.
Clause 10 P/A.
Clause 12.
Necessary to have accountant with experience.
In practice 2 years.
Westby died.
Miss Codd engaged.
A/cs. never questioned by his clients. U.N.I.A. in New York Registered Office through Mr. Murray Bein their solicitor. Person who retained Mr. Courtenay on behalf of Assn.
Sale of Properties $868.
Comms. under agreement between Mr. Courtenay and his clients.
Instructed in a letter dated (12/3/38) Solicitors.

*Deeds Book 31 380-383

Dragten.
Original agreement between U.N.I.A. and its debtors in New York (16 Feb. 1938).
Filed. 7/1942.
This P/A. appointment as Att. to carry out terms of agreement. This agreement wholly with the ppty. in Belize.
Plantations specifically exempted P/A must be read with Agreement 16th Feb. 1938.
Clause P/A. Agreement
Excepting ppty. mentioned para. 1 hereof.
Premises in Belize.
For that fixed for agreement commission payable by the U.N.I.A. to Mr. Courtenay
7% on 1st $1,000
5% on any subsequent.
This only relates to Belize ppties.
Duty to turn over title to U.N.I.A. of the plantations.
When agent appointed and paid by commission for sale of ppties. It is his duty to keep the a/cs without charge to the client.
Mr. Courtenay has charged payable to himself commission 10% on all monies reaching his hands.
None of which paid to Agent or Bailiff.
Keeping of receipts & expenditures reaching his own hand for own benefit are not charge which can be made on principal.
Nor is it justified under clause 1. P/A.
Had he delegated & paid that would have been correct by the P/A.
A/c being kept his own a/cs as agents.
$921.88 not justified.
Total receipts from 1st Oct. 1939 to 31 Dec. 1942. $29,090.71. 27 months.
Sale of ppty. amounting $21,000 about approximately $8,090 approximately $800 in addition $2,100 sale of ppties.
Remuneration provided ample to provide clerical assistance.
P/A. cannot be stretched.

In the Supreme Court of British Honduras.

No. 34. Judge's Notes of Proceedings, 29th October 1943, *continued.*

Employment management of premises.
Does that include clerk who kept his a/cs. ?
Courtenay draftsman of the P/A. himself.
Clause 17. Agreement and creditors.
Fees of W. Courtenay for acting as agent from sale etc.
Excludes Plantations.
Mr. Balderamos & Cain Mr. Francis nothing to add.
(Hassock) Courtenay.
P/A. not drawn to implement that agreement.
Conveyances dated 3/11/1939.
" " 16/11/1939.
Both from U.N.I.A.
(2) On trust to sell same.
These are the documents to enable me to carry out the agreement.
P/A. dated the 22/11/43.
Reason for P/A. Plantation excepted from Agreement. Main purpose of giving P/A. to deal with Plantations.

Agreement 1938.

Clause 3 provides other parties to grant powers of Attorney. They were not granted, not necessary in view of conveyances.
U.N.I.A. desired me to act as their General Attorney & Legal Rept.
Letter 14th Sept. 1939.
Direct Legal representative of the U.N.I.A.
No necessity for Power it was overriding necessity to deal with the Plantations. Never questioned before by the clients.
Discussed with Board of Directors.
W. Petioni Chairman Director ? Presided.
Mabel Justice Sec. M. Henderson.
Mrs. Morrel Adrian Johnson Dr. Shepherd Mrs. Rutter Johnson.
I met them as directors. These persons met several times. All business managed as a whole all charges relate to their entire business.

Dragten.
Ridiculous submission.
Clause 3. Accept.
5. Plantations (?)
Redundant. Two conveyances.
Draftsman would deal with ppties outside.
Distinctly stated were not to be sold. Handed over to Ass.
If ppties conveyed in 1939 by Exors. and U.N.I.A. say they do not wish them sold.
No a/cs. received by U.N.I.A. Want to report.

Courtenay.
Clause 5. Real or *personal ppty.*
Always includes power to sell in general power of A.
I was engaged first by Murray Bein. All correspondence with him. Except 3 letters.

189	Statement	30th April 1940
207	"	17th July 1940
210	"	8 Aug. 1940

Presented by me in person to the Board	294	Statement	10	July	1941
	295	,,	15	,,	,,
	296	,,	,,	,,	,,
	304	,,	17	Oct.	1941

That was after I had been told by Dr. Francis that Mr. Murray Bein had not turned over my previous statements to the U.N.I.A.

To Murray Bein dated 10th May 1940 sending statements. 1st Oct. 1939—31st March 1940 (189).

That was only dealing with the plantations.

dated 20th Aug. 1940.

210. of all the transactions. Also 207 under 30th June 1940.

294–6. Presented in person.

When Mr. Bein there was a split in the Assn. I was informed by Dr. Francis through Sec. Telegram 11.11.1940. Accept no instructions Murray Bein.

Francis Pres. Johnson Sec.

24th Oct. 1940. Just before letter from U.N.I.A.

J. A. Plummer stating Dr. Francis has been removed. Followed by correspondence both sides. Sit tight.

After I went to New York when July 1941.

Carried those a/cs with me.

Hassock *Commission* 350.

Under agreement dated 16th Feb. 1938 Charles A. Taussig entitled to be paid $5,000.

Morter ppty. sold $3,500 paid payment of $5,000. Above appraised value.

Having sold it entitled to commission. Afterwards re conveyed because question arose as to transfer of ppty.

No commission on re transfer.

Dragten.

Explanation.

Mr. Taussig entitled to $5,000.

Only one buyer in Belize at appraised value.

Bein suggested it be offered Taussig for $5,000.

Bein ceased to be legal adviser.

Dr. Francis Being right to transfer ppty.

Order of privity of payments no agreement had been varied without authority.

I remitted money Bein to meet London debts which he did not send.

On being told that the transfer should not have been transferred I obtained a re transfer.

At that time Mr. Bein came as the representative of U.N.I.A. and I paid Mr. Bein his fees.

Dragten.

Agreement set out Order of payment.

Solicitors. London.

Murray Bein

Taussig.

Three ppties in Belize exempt from sale.

Para. 7. 3 parcels in Belize.

In the Supreme Court of British Honduras.

No. 34. Judge's Notes of Proceedings, 29th October 1943, *continued.*

Power of selection exercised.
16th Nov. 1939.
Three exempted ppties.
Taussig. Dec. 1940.
Conveyance typed in New York does not emanate from the U.S.A. No U.S.A. commences with " This Indenture." Language used. English conveyancing language.
This is a mystery.
Morter house $3,000. adjoining $250.

Courtenay.
All ppties convey U.N.I.A.
I draw the conveyance. transferred all the ppties except the plantation and the three ppties excepted 1 3.11.1939.
After execution.
First Indenture.
Heading. 3rd Nov. 1939 Attested 1st Nov. 1939.
Second Indenture
16th Nov. 1939 ,, 1st Nov. 1939

Francis Lionel Athanase.
31st Oct. 1939. I received telephone call from Mr. Bein. I have just received from Mr. Courtenay two documents. Very urgent. Please meet me Consul General Office 9 a.m. tomorrow and Secretary. Bring with you seal of Assn. We went. At the Consul Office those two conveyances signed by Sec. and me.
I am referring to these two conveyances. The affidavits were taken at the same time.
My recollection is on the 3rd Nov. I was at it. I affixed the seal. I did not sign the affidavit.
10th Oct. 1942.
Murray Bein.
Shows on conveyance only.

13*th Oct.* 1939.

To add Morter Home.
I had omitted the conveyance from the 1st letter.
2nd para.
Murray Bein. 18 Oct.
Conveyance omitted.
Bein 24th Oct. 1939.
They must call a meeting.
I would be prepared to prepare a deed here.
Cable Nov. 4th.
Conveyance
Nov. 3rd 1939.
Enclosing deed executed before the B.C. First conveyance.
Letter Bein *Nov.* 17*th* 1939.
Cable *Nov.* 22*nd.*
Morter conveyance & P/A air mailed.
Nov. 24th
Bein Nov. 22nd 1939.
Enclosing P/A.

Also deed covered three parcel.

Not to dispose without instruction from me.

12 noon. Adjournment.

2 p.m. Resumed.

Mr. Francis.

Signed both conveyances together in Consulate office 1st Nov.

I knew nothing of the document before I signed the conveyance prepared by Mr. Courtenay dated 3rd Nov.

Board of Directors did not have a meeting to decide to sell these properties.

The documents never went before the Board of Directors.

To my knowledge the Board of Directors never passed a resolution confirming those actions.

Mrs. Johnson said—about three months after—that those two documents we signed in the Consulate never went before the Directors.

I did nothing about it.

These two documents were signed by Mrs. Johnson and myself at the Consulate the same day between 9 and 10 in the morning.

These are my signatures.

Courtenay.

Telegram 10th Jan. 1940.

Letter Jan 5th etc. Accept $3,500. Morter home.

Letter Jan. 20th 1940 (– 26th Feb.).

What offers you can receive etc.

Hope you will have disposed of the ppties. (22nd Apr.).

17*th April* 1940.

Have you

$1,600.

Hassock. Not solicitors fee.

Two years 1st Oct. 1939 to 30th Sept. 1941.

Agreed to by Board of Directors at Meeting—attended by Mr. Courtenay —11th Aug. 1941. Never fixed prior to that date.

Dr. Francis Letter Assn. 8th Oct. 1940.
14th Oct. 1940.

Last para. (1) Executive { Local Director of / Plantation or plantations.

Certified copy of the Minutes of that Meeting.

Hassock.

Formal objection to production of certified copy of Minutes of the Board Meeting purporting to be signed by the Chairman of the Board Dr. Petioni.

Mr. Courtenay states that the Minutes are inaccurate in that respect. Therefore as the evidence is questioned it will be necessary to produce original and also any note made when they were confirmed.

Original letter undated reed. 31.12.1941 from U.N.I.A. Johnson Sec. Gen.

4th para. Demand for fees.

vetoed. The $1,600 was vetoed by Mr. Francis.

To S.G. Copy 9th Jan. 1942.

Wrote draft first—then typed three copies.

At the meeting these items were discussed.

In the Supreme Court of British Honduras.

No. 34. Judge's Notes of Proceedings, 29th October 1943, *continued.*

When approved was handed in after certain items were entered and one amendment made.

Dragten.

No record in the Minutes of the arrangements made.

Several arrangements made by Mr. Bein.

Not the same as those set out.

Letter to Murray Bein 5th April 1938.

Para. 3.

Letter 4th & 16th March 1938 from Mr. Bein.

Letter 1.

Hanlan & Isaac's payment of your fees come out of your home. 7%. 5% on any balance.

Sale of personal & real ppty. 10% rents collected.

From Murray Bein to Assn.

Advising writing to say satisfactory.

Letter from Bein. 14th April 1938.

Not necessary confirmation. Plantations.

I disclosed the arrangements with Bein 14th April 1938 to the Board on the 11th Aug. 1942.

The Board agreed to change the basis of remuneration. I don't remember if I produced the actual letters. I have them with me. I produced the a/cs. prepared on the original basis and we discussed.

I considered it reasonable. One plantation New Windsor had to be managed. Caye Chapel also required extensive management.

Man in charge $20 per month.

Sent down cocoanuts. Buy supplies in Belize. I don't remember how much (Receiver shows total $1,642.00 two years). Arrange sale of nuts. Dealing with damaged trees. Revenue 2,000. Nett balance 300 odd. Caye Chapel. Revenge Estate. Nothing spent. Contracts for Chicle. Renting land (21.50) $621. Never went to Revenge. Offer leasing C.C. Turned down. Thought it good offer then.

Francis. 14th Oct. 1940.

Local Director. I understood Manager local affairs in this Colony.

I think I answered that to Mr. Murray Bein. No reply direct to Mr. Francis. I now cannot find any reply to Mr. Bein.

I now find by a telegram 11th Nov. I know that Mr. Francis and Mr. Bein I did not reply to either of them.

For 6 months I did not reply to either party.

I have never dealt with any one except the body Dr. Francis purports to be the representative.

Dragten. Submits.

Unless he can clearly prove that he placed before the members of the Assn. with whom he dealt and with full knowledge of their contents charged it to the memorandum basis.

That Memo. shows that there was no record. Arrangement between the parties cannot stand for the reason.

No body of persons could extract an account from the a/cs.

I do not agree that this is not a professional charge. Mr. Courtenay was appointed in his capacity as a solicitor to do the work for his clients. Any agreement made is open to review.

Was amount reasonable in view of work which had to be done.

Balderamos.

My bill costs for visiting Caye Chapel and amount was struck off opposed by Mr. Courtenay.

Mr. Francis.

Board Directors was a new Board. No knowledge of the arrangements of 7% and 5%. I saw Directors lately and referred them to certain documents. I made arrangements with Bein.

New Board elected 6th Jan. 1940.

Mr. Courtenay did not tell me he was making change of arrangements either before going or when he came back.

He went to N.Y. to make financial statement for 2 years. Agree to pay full expenses ($500).

Management plantations.

I came 14th Feb. 1941–June 1941.

Under P/A commenced operation 1st Oct. 1941. With sanction of the Bd. Directors I employed Wm. Campbell nephew of testator, who knows whole estate to visit and report on conditions of estate.

Hassock (Courtenay).

Letter 18 Oct. 1938. Same Sec. Petioni, he presided at every meeting. A. Johnson president.

I produce two sets a/c. Some prepared in Belize, others amended in N.Y. after the Board Meeting. There were other showing details of Plantations. I brought that carbon copy back.

The first two pages of A/cs. amended group marked (1) and (2) in red.

Mr. Dragten asserts that word " Assets " shows that both were made with same typewriting machine and that the second page (marked by Mr. Courtenay as amended in New York) was prepared in Belize by the same machine as page (1).

Courtenay sworn at his own request.

The two sets of statements were not both made in Belize.

The figures are different on page (1) 9 on page (2).

They were typed in New York.

Professional service. 259. Law Relating Solicitors Cordery. 3rd.

To bring a case

Management not necessarily calling for Solicitor.

Court will take time to consider.

Thursday 9.30 a.m. 4th Nov.

C. G. LANGLEY.

No. 35.

JUDGE'S NOTES OF PROCEEDINGS, dated 4th November 1943.

11/1939
7/1942

4th November 1943.

In the matter of the estate of Emmanuel Morter.

Ernest J. Hofius - - - - - Pltff.

and

Balderamos and others - - - - Defts.

Thompson
Dragten

In the Supreme Court of British Honduras.

No. 35. Judge's Notes of Proceedings, 4th November 1943, *continued.*

Balderamos
Cain
Hassock
Courtenay
Francis

Dragten.

Courtenay's contention correct.

Withdraws suggestion re typewriters and that both those a/cs. were typed in New York.

Hassock.

Claim 7 contd. $500.

Made by U.N.I.A. in letter dated 14th July 1938. (Murray Bein) before his services were dispensed.

Last para.

Plantations not included.

$500 offered.

Dragten.

Asks for letter of the 1st July 1938.

copy. Last para.

Letter 5th April 1938.

Outlines arrangement as to fees and Courtenay's acceptance.

This $500 not included.

14th April 1938 Bein.

Courtenay asks confirmation of the acceptance.

14th April 1938 Bein to C.

Acceptance of letter confirms Courtenay letter of the 5th April 1938.

Plantations probably most valuable part of the assets. Submits they are the least.

Always definitely excluded from any arrangements.

1. Court must be satisfied that the amt. of Solicitors lump sum charges are fair and reasonable.

2. Solicitor cannot bind his client unless the authority of the client is produced.

Bein writes to Assn.

First agreement between U.N.I.A. and several parties. English Solicitors. Fees agreed. Bein had no further authority to bind the U.N.I.A.

Francis says never any question of the matter having been referred by Mr. Bein to the Assn.

Agreement arrived in April 1938.

No change of position from month of April & July to justify this demand.

Mr. Francis.

Supports statement all transaction between Mr. Bein and Assn. was made with me as their representative—President of the Corp.—up to the 9th Feb. 1941.

All communications from Mr. Bein received by me. All communication sent to Mr. Bein by the Sec. were directed by me.

This is the first moment that I have received any knowledge concerning claim for $500.

Hassock. Courtenay.

Original instructions to collect against the Exors. After that other instructions came. These question of fees were raised. That a/cs. for change of circumstances.

Solicitors cannot bind his client unless authority produced.

That was one of the strong overriding reasons which compelled me to get the Board to confirm my arrangements. Cordery. Solicitor p. 89.

Only prudent to get their confirmation.

Lump sum charges.

Not solicitors work. Not contentious business.

Dragten.

Plantations excluded from the first. Not a new discovery.

Courtenay.

Excluded from trust for creditors not from the whole transactions.

Compensation for commission on ppty. I expected to sell.

This item was shown on the statement confirmed by the Board.

One of the items vetoed by the President.

Hassock $375.

Beginning of Mr. C. connection with Assn.

Acting on behalf of Messrs. Hanrahan and Isaacs against the U.N.I.A. in March 5, 1937. To execute judgment $30,000.

Mr. Courtenay fees agreed by his client at 7% 1,000. 5% 1,000. $1,500 approximately (?).

Just when he was going to have execution they had entered into an agreement with U.N.I.A. whereby Mr. Courtenay was to be their common representative in Belize.

For work done 75, disbursement plus $300 that he expected to get.

That was in letter dated 14th April 1938 Murray Bein para. 4.

Dragten.

Agreed to do the work for $75.

Work to Hanrahan & Isaacs taken Mr. Thomsons practice and he would take

Costs in litigation
Agreement in writing between client and himself
Fair & reasonable.

Administration action. Costs against the estate. If client disputes he is entitled to have it referred to the Taxing Master. Particularly as no litigation.

2. Work done for U.N.I.A. work done for persons Hanrahan & Isaacs. (3 creditors default action.)

Fees he expected to get was $1,500. If client instructs you to take action and you have taken action in judgment. If client subsequently instructs not to proceed further.

In the Supreme Court of British Honduras.

No. 35. Judge's Notes of Proceedings 4th November 1943, *continued.*

Francis.

Under oath.

I was one of three creditors with Hanrahan Isaacs (Attorneys in New York). Case given Leopold Thompson for obtaining three judgments $30,000. Entering judgments. Two creditors in new 4,000 Taussig They threatened to place in Receivership. Salaries 3 officers. Would obtain these judgments as that of Receivership we would be considered.

After death Thompson Mr. Courtenay write to H.I. informing me of the death. Also stated that he had taken over Mr. Thompson practice and was prepared to do the work at same rate of pay as agreed with Mr. Thompson.

Three slips of paper. One for each creditor to sign. Adrian Johnson I signed for Gabriel Johnson.

Courtenay.

Hanrahan Isaac letter Mr. Thompson 5 Nov. 1936. Agreement terms.

Cheque sent to Thompson.

I did not get it.

March 5, 1937.

Nothing Thompson death.

Judgments assigned to Mr. Thompson.

Handle matter for Mr. Thompson.

Assigned by deed.

Dragten.

Reciprocal Foreign Judgments Act.

To enable Thompson I get judgment here. Obtained judgment here. $30,000.

Next slip.

Did not issue Writ of Execution because of the agreement mentioned above and I was instructed to hold my hand.

Balderamos.

Has no recollection of being approached by Mr. Courtenay on this matter of the assigned judgment.

Courtenay.

Does not press that aspect.

Later I entered satisfaction, as it had been entered in the U.S.A.

I am not claiming this against the estate of Morter but the U.N.I.A. Items shewn in Boards approval.

Hassock $400.

Agreed to be paid Murray Bein whilst in Belize. 6th Aug. 1940. Work done in obtaining dismissal of R. L. Felix.

Lump sum fee.

Dragten.

Costs in litigation. To justify lump sum charge. It must be proved fair and reasonable.

Balderamos.

Felix represented Marcus Garvey C.J. decided his authority was not sufficient. No appeal. No leave to appeal to Privy Council. Motion dismissed. J.14.9.1939.

Bill of costs taxed and paid by Mr. Felix.
If that was ?

Courtenay.

After that Felix set down a motion to apply for appeal. Filed on 25th Sept. 1939.

Courtenay.

Says motion dismissed 29th Sept. Judges note that petition dismissed and Felix ordered to pay taxed costs personally.

No bill of costs was filed as taxed.

Not in position to bill client unless you have filed bill against unsuccessful client.

Felix man of straw.

As time I got new instruction.

Had no time to get new agreements.

Had it got through hold up 3 years.

Fee offered by U.N.I.A. after work done by Murray Bein in Belize.

From Murray Bein Oct. 11 1939. Letter not answered.

Dragten.

From Murray Bein. Dec. 26th 1939.

Murray Bein. March 6 1940.

Full power make up the order.

Hassock. $900.

Agreed to by Board of Directors to be paid to 2 Consuls Court certified Rec. 31.12.1942.

Agreed by clients after the work was performed. Fully satisfied with cash.

On this three items. 375 – 400 – 900.

Dragten.

My argument the same as on last item. Costs in litigation. Lump sum agreed. Nothing to go by. No information. Board in New York did not know law & circumstances in this Colony.

Client must have information in order to accept his judgment.

Courtenay.

I met Directors all papers taken with me. Detailed verbal report given to them. Shewn in copy of judgment. All matters fully discussed.

Parties extremely grateful. Treated me very well indeed. Never charged for supervising reconstruction of Escalante Hotel. Not interest charged in advance.

At this stage to tax bill is unfair to me. Because matter we excluded agreed that I should be furnished with a copy of the minutes.

Dragten.

Must contain all terms of agreement.

Receiver to give analysis of item on Claim 1.

Courtenay.

Mr. Westby was not employed by me as my clerk. He worked for me. Partly in my employ. I paid nothing for my work he did. There were other clerks.

These a/cs were incorporated in my a/cs for a few months. Later they were transferred to separate a/cs. I think May or June 1940. *Miss Codd* was employed as my clerk after Westby employment began. Mr. Slusher became my clerk in May 1941. $20 a month.

In the Supreme Court of British Honduras.

No. 35. Judge's Notes of Proceedings, 4th November 1943, *continued.*

Courtenay.

When I became Att. for U.N.I.A. my only clerk ex Policeman. $15 a month. Office boy $2 a week.

When I took over U.N.I.A. I engaged Mr. Westby former Govt. Treasury Acct. I was magistrate. Private work little or nothing.

I had Miss Codd typist and a junior clerk instead of office boy. I paid these salaries myself. They all did work for U.N.I.A. U.N.I.A. only paid for one at any time.

Dragten. Of Thompson.

Monthly payments made to staff 921.88. In the a/c. shows A/c to be filed.

Analysis showing monthly transaction from Aug. 1939–1942.

New York Memorandum.

First sheet balance.

Receipts and Expenditure all lump sums. No detail shewn except at back for Caye Chapel. New Windsor. Some people might get something from them.

I received a statement of a/c. from Mr. Courtenay. I had to ask for detail. I have made various analysis.

Courtenay.

Question of detail is matter of what persons wants. Submitting a/c one wants details. Details are given to Directors before a/cs. published. I asked first for details of ppties. The first lot I did not see until 31.3.1943. After that I asked for details.

I have seen a/cs alleged to have been submitted to New York. They contained details. Caye Chapel summary a/c for period in one lump sum and for cash estate. Show income and expenditure.

Details given in schedules. Cocoanuts.

Court adjourns until 2 p.m.

Court resumes.

Dragten.

Law of Engd. (Chap. 153. Sec. 26). Applicable to this Colony.

1. 259 *Cordery.*

Charges not. Business employed as solicitor. Not employed if he had not been a solicitor.

Allen vs. *Aldridge.*

49 Eng. Rep. 633.

Steward of Manor. p Court says.
Petition is presented . . . It may be perhaps.

Where position created as between solicitor & client all charges come under Solicitors.

Solicitor employed to collect rents does not act in a professional capacity.

Shilson Bood & Co. 1904. 1 Chan. p. 37. Absence of agreement solicitors cannot charge lump sum.

Solicitors Act 1870–1881.

Regulate the law on subject.

Cordery 260.

Sec. 4 (Repealed non contentious business 1881).

Not until bill allowed by taxing master.

Agreement not fair & reasonable.
submit to Court.
These provisions imperative.
Agreement signed by party to be charged.
Necessary both parties but record one party to be charged.
Agreement should contain all the terms and identify the costs.
Essential in examining these provisions unless it was understood by the client reasonable in amount paid.

Re Stewart ex parte Cathcart.
1893 2 Q.B. p. 200. (Wrong reference)
Solicitor cannot undertake to take lump sum unless it is made.

West ex parte Clough.
1892 2 Q.B. p. 102.
Partly contentious partly non contentious. After work solicitor and client settled verbal agreement.

Discuss cases.
Submits memo. submitted by a solicitor to a client, and verbally accepted is no agreement which can be enforced.
Bd. of directors agreed. Not binding.
Letter said under constitution of the Co. had been vetoed by the proper authority.
This letter was not a confirmation of the verbal agreement.
The fact that this letter was written does not place previous verbal agreement as an enforceable basis.
Even if the previous agreement had been accepted still does not get over the fact which done in litigation or action or suit payment shall not be received by the Solicitor until taxation.
Administration action Court will refer it to the Master.
Agreement must be stamped to be enforceable (Comp. Unethical).
Baker v. *French* 1907 2 C. 215.
Memo signed by client.
Must be referred to Master for examination.
Warrington J. 219.
Not business to which Solicitors Act applies.
(only one party necessary.)
In re Frace 1893 2 C. 284.
Signed by person charged. (On 1881 Oct.).
North J.
Taxation of all bills.
Very different.
p. 291.
It is suggested . . .
Want of definiteness.
Principle to be derived . . .
p. 292. In the present case . . .
Appeal.
Lindley. Case A. L. Smith JJ.
All agreed.
Cordery. Receiver/S 259.
Sale of ppties is not Solicitors business but estate agent. Estate agent gets a larger fee than Solicitor. Fee definitely laid down.

In the Supreme Court of British Honduras.

No. 35. Judge's Notes of Proceedings, 4th November 1943, *continued.*

Schedule 1. 1881.

Negotiating a sale. 1%.

Schedule 2.

Abortive negotiations. Charges in items.

Hailsham. Vol. 31. p. 139.

1939 brought in. Principles the same.

Contentious business p. 166.

p. 169 par. 202. Fair & reasonable.

Summarizing.

Except item clerical services. All items come within term work done by solicitor.

First agreement between parties in which they state (?) to carry out between them Mr. Courtenay shall be employed.

Plantations excepted.

Agreement for management of plantations made because Mr. Courtenay had already been employed as a solicitor.

S. employed in his professional capacity to perform work for a client cannot charge him the salaries of clerks employed by him. They are his clerks. His a/cs.

If $1,600 allowed for management.

Extravagent charge.

Dragten only acting under compulsion.

Client may make a gift if very grateful.

3 p.m.

Tuesday 9.30 a.m.

Adjournment to enable Mr. Courtenay to collect his cases etc.

No. 36.

No. 36. Judge's Notes of Proceedings, 10th November 1943.

JUDGE'S NOTES OF PROCEEDINGS, dated 10th November 1943.

10th November 1943.
9.30 a.m.

Thompson
Dragten
Balderamos
Cain
Hassock
Courtenay
Francis.

Hassock.

Courtenay creditor proving debt in administration in the Thompson satisfy *bona fide* claim.

That is why he

Analogous. Trustee

Van Laun 1907. 2 K.B. p. 29.

Cozens Hardy 3rd para.

Not solicitor.

Examine proof on grounds of debt.

Laws relating Solicitors in this Colony.

Chap. 153 Sec. 26.

? Ensuing at time of Chap. 153. 1st Jan. 1880 or at the time Consolidated Law.

Then 1881 Solicitors Act not applicable.

Chap. 2 Sec. 4. Only applies Common Law.

" Laws of England " literal—existing at the time the matter is brought before the Courts here.

If not then there would be no laws to apply. White Book 1941 Ed. 2346 (Solicitors Act 1932) Repealed. Therefore 1932 Act now in force.

Sec. 2. *Chap.* 2.

1. Non contentious business.

2. " "

1. Non contentious work.

(1) Professional work. (2) Non Professional work.

1. (2) Non professional work.

re Inderwick 1883, 25 Chan. 279.

When an agreement has been made cannot obtain common *ex parte* *re Fanshaw* 1905. Weekly notes p. 64.

1. Clerical services. Power of Attorney 22/11/39.

Non questioned $921.88.

2. Salary $1,600—(Allen & Aldwich 49 Eng.R. p. 633.)

Fees of Steward of Manor. Not taxable 6–7 Vic.

Man may be solicitor and at same time entitled to remuneration for other capacities.

3. $350 & $500.

Similar payable to Solicitors other than Solicitor.

Local practice whereby such commission is accepted.

Collection not ordinary work of Solicitor.

re Deverene (1902 Solicitors J. p. 320).

White Book 1936 p. 2294.

If charge for non professional work.

Shilson & Co. 1904 1 Ch. 837.

4. Commission which would have been earned.

Not professional work for U.N.I.A. Assn. Creditor.

Work done for J. Creditors.

Since agreement between creditors and U.N.I.A.

Should not repudiate agreement under the letters between Hanrahan and Isaacs and U.N.I.A. (Murray Bein letter).

Professional Work.

(1) Felix Appeal $400.

(2) Balderamos $900.

All Dragten submission can only apply to these two items.

Covered by agreement. If considered.

Contentious business Sec. 60 Solicitors Act 1932 applies (6)

New Matter.

White Book 1941. 2313.

When the amount agreed paid by or behalf person making payment within 12 months.

Amount $400 pd. 30th Sept. 1940 paid on that date.

Amount $900 30th Sept. 1941.

Payment terms agreement 16 Feb. 1938.

Professional order Order should have been sent to Court.

In the Supreme Court of British Honduras.

No. 36. Judge's Notes of Proceedings, 10th November 1943, *continued.*

17th Clause. Paid out of funds received by him by virtue of this agreement.

Murray Bein 4th March 1938.

Payment fees satisfactory. Hanrahan Isaacs letter.

Re Webb 1894 1 Chan. p. 73.

Mere absence of notice right for taxation alone not sufficient.

Harman Sons 1912 W.N. p. 11.

Costs during life time. One of four trustees. Salaried partner. Other trustee clerk 14th Ap. 1939.

Bill paid 14th. No taxation.

R. G. Thompson 1894 1 K.B. 462.

Settlement of action.

Equivalent to the abatement.

Agreement between Solicitor & client.

Previous reference.

In re Van Laun 1907 2 K.B. 25.

Bingham in ? not overruled.

Held.

Equivalent to payment. No special circumstances.

Solicitors Act 1843 deals with rights of clients, in absence of agreement.

Solicitors Remuneration 1870–1881.

Agreements made under these Acts. In the absence of agreement that Act deals with (Sect. 62—1932 excludes taxation where there is agreement).

Even if professional services not subject to taxation. 62–1932. Nor are the agreements subject to be opened since they have all been paid much longer than 12 months ago.

No special circumstances shewn which would justify the Court to re-open the matter.

As to the agreements.

Whether letters Murray Bein accredited agent of U.N.I.A. or letter from U.N.I.A. 31st Dec. 1941. All terms of agreement are stated and the costs clearly identified.

Previously cited.

In re Freke 1893 2 *Ch.* p. 285 " by agreed costs £80."

Held to be sufficient description all costs up to the date of agreement.

Sufficient if signed as agent.

Sec. 57 *Sub.* 3 *S.A.* 1932.

In re Thompson 1894 1 *Q.B.* 462.

Byg and French 1907 2 Ch. 215.

Memorandum referred to in letter.

Sec. 4, 1870 Solicitors Act, Imp.

Form does not go to existence of agreement.

Anson Contract 17*th Ed.* 75.

(Last para.) It may even happen.

Unvetoed items accepted by letter from U.N.I.A.

Re Palmer 1890 45 *Ch p.* 291.

p. 298 *Cotton J.*

There it is said Argument unsupported by affidavits or facts.

In re Freke 1893 p. 295.

Lindley.

No evidence of being unfair or unreasonable. Argued unreasonable not unfair.

In this case no allegation that a/cs are unfair nor unreasonable.

No evidence against the agreements or the amounts.

Dragten onus on Solicitor. Not so onus on client who asserts unfairness and unreasonableness. Mere overcharge.

Bernard 42 *Eng. Rep.* 911.

No special circumstances except mere overcharge.

After the prescribed time.

No evidence of special circumstances are rather against the client than in favour of the solicitor.

In every case amounts were fixed by the client or their agent after the work was done and they were in a position to judge all the benefits they had received.

Their agent—trained lawyer.

Ratification not by one man but by a whole Board of Directors.

Present attitude now most surprising not only agreements made by their accredited agents but by agreements made by themselves.

Dragten K.C. Reply.

Consol Law C. 153.

Consolidation takes the laws down to 1924.

Most that can be said. Statute Law may be applicable. Cannot bring any enactment in subsequently.

Re enactment by Local Legislature.

Brings thing up-to-date but account go beyond that.

. 1932 Act cannot possibly apply

. . all references are out of consideration by this Court.

Bernard.

Special facts. Client not indebted.

Judge gave order all bills. Thought it better withdraw remaining.

Necessary consequence.

After final judgment.

endeavoured to re-open taxation.

Old act—after Verdict (1843)

Overcharge merely incidental.

Freke.

Agreed costs. Proper agreement.

Referred to Taxing Master to see whether agreement was fair and reasonable.

Lump sum charges are taxable.

gave client no opportunity whether fair & reasonable.

Difference between whether the agreement is used before work is undertaken or after the work has been done.

Client has option of refusal.

Solicitor to refuse to work.

Inderwich. 25 Chan. 279.

Shows clearly position Common Order not applicable. That question must be decided by Ct. Mere assertion by Solicitor not sufficient.

Anson.

Statute of Frauds—Sufficient memo. signed by party to be charged. Nothing to do between Solicitor & client.

In the Supreme Court of British Honduras.

No. 36. Judge's Notes of Proceedings, 10th November 1943, *continued.*

If they are agreed does not prevent the Court enquiry into the terms. Van Laun. 2 K.B.

Trustee in Bankruptcy entitled to go behind the a/cs. Court ordered examination of a/cs.

Creditor refused to supply date etc.

Trustee entitled to reject his proof.

Other cases.

Lump sum items charged in Bill rendered to a client. No payment until final settlement and receipt given. When receipt given is paid.

Mr. C. has produced memo. what he has alleged to have been made in 1941.

Produced as such. Hassock confirms. Letter written accepts. Submission no agreement. Only thing can be construed as agreement can be the letter. That repudiates.

Mistaken objection to $350.

Property conveyed to Taussig $3,500.

Solicitor charged 10% for conveyance. Commission on sale of ppty.

He Taussig himself for reasons best known to himself reconveyed the property to the Assn. Therefore no sale. No settlement of the debt.

Non professional ? $375. $500. Dragten cannot understand.

Stands at $1,600.

16*th Feb.* 38. *Agreement.* Clause 2.

Turned over as Attorney. Cannot understand why necessary to have conveyance.

No. 37. Judgment, 18th September 1944.

No. 37.

JUDGMENT, dated 18th September 1944.

BRITISH HONDURAS, 1924.

In the Supreme Court. 7/1942
Probate Side. 11/1939

18th September, 1944.

IN THE MATTER of the MORTER ESTATE and other actions involved therewith.

Arthur Balderamos and Hubert Cain Exors.
U.N.I.A. Inc. W. H. Courtenay
Lionel A. Francis.

Mr. Thompson—Receiver.
Dragten K.C. (Thompson).
Mr. Francis.
Phillips.
Balderamos.
Cain.
Courtenay.
Hassock (Rep. Courtenay).

1. I regret having to take such a very extended period to record this decision on the application made by the Receiver on the 29th Sept. 1943 for instructions as to the disposal of certain items claimed by creditors of

this estate. My decision has involved very considerable research into the multitudinous papers filed in the several actions involved in this matter. Even now it is only possible to record an interim judgment, as many matters have arisen during my researches which must be investigated further before they can be dealt with justly by the Court.

2. On the 28th September 1943 the Receiver made an *ex parte* application to me for permission to engage Counsel to advise and represent him. This application was granted and is now confirmed. It was approved by the parties.

3. *Claims* 1, 2 and 9. Hofius and Hildebrandt, $616.19, Harley and Co. $533.85, Sabido $149.27.

These claims were accepted by all parties. I verbally ordered payment in full, plus the usual commercial charges here of interest from the date of the account at the rate of 8 per cent. This verbal order is now confirmed.

4. *Claims* 3 and 6. Director of Surveys $1,587.93. Balderamos $116.75.

These claims were also accepted. The Court verbally ordered the former to be paid in full, and the latter to be held to the credit of Mr. Balderamos, pending the final settlement of his account with the estate. These verbal orders are now confirmed.

5. *Claim* 4. Miss Lawrence. Legacy. $2,000.00.

(1) The first question to be settled here is when were the Executors first in a position legally to deal with this contingent legacy. The testator died on the 7th April 1924. The Executors filed their Petition for Probate of his Will on the 28th April 1924.

(A) The first of several caveats was filed by A. R. Morter—widow of the testator—on the 10th April 1924.

Proceedings to set aside the Will were started by several claimants, involving lengthy litigation, which culminated in two appeals to the Judicial Committee of His Majesty's Privy Council. Final judgment was given by that Court on the 13th August 1935, in the last of those suits.

Until that date, the Executors exercising an abundance of caution, may be said to have been justified in not paying this legacy, lest the Will be set aside. I say "abundance of caution" because after the appeal of A. R. Morter was dismissed by the judgment of the Privy Council on the 24th February 1928 and L. Beeks failed to find the necessary security to proceed with her appeal early in 1931, as the issues remaining then only involved the identification of one of several associations, there was but the most remote likelihood of the Will being set aside.

When the judgment of the Privy Council, delivered on the 13th August 1935, came to the knowledge of the Executors, they then knew that this had been accepted by the Highest Court, and they could and should have carried out the instructions it contained. They had been paying themselves and some creditors of the estate for many years.

(B) No proper reasons have been advanced by the Executors for the long delay in filing the last mentioned judgment, which was not filed until the 20th June 1939; nearly four years after it was delivered. It

In the Supreme Court of British Honduras.

No. 37. Judgment, 18th September 1944, *continued.*

was their duty to file this judgment, when the Appellants failed to do so after a reasonable period. It is no valid excuse for them to say that they were waiting for the Appellants to carry out their duty.

For the sake of their own reputation it was unfortunate, as their action was bound to create the impression that this delay was continued in their own financial interests. Mr. Cain lived in estate property without paying rent for four years. Both Executors benefitted from commissions on rents received and very considerable estate funds in their hands.

(C) The answer to my question is that within a reasonable period of August 1935 the Executors could safely have commenced to wind up this estate.

(2) The next question is this. Knowing that they could now act what action should they take. Obviously to convert the assets of the estate, so that they could be certain that the estate residue would in fact exceed $50,000.00.

(A) In my opinion there are clear and unmistakable instructions of the Testator in his Will directing his Executors to convert the whole of his real and personal property at once—with the exception of certain lands subject to a life interest and from the proceeds carry out the several purposes set out in that document. The land subject to the life interest was to be sold ultimately and the proceeds paid into the same fund as that to which the balance of cash proceeds from the other assets realized was to be paid, after the testamentary debts had been paid.

(B) In the opening paragraph the testator says " I direct my said Executors and Trustees as soon as possible after my death to call in all monies outstanding under mortgages or otherwise and also to sell and convert into money all my real and personal estate wheresoever and whatsoever which are not specifically devised and bequeathed for paying out the sums herein directed——." Then follows seven specific legacies and the contingent legacy now being considered. Superficially some doubt might be said to arise from the inclusion of the words " after all my directions are carried out I give devise and bequeath the residue of my real and personal estate——." In my opinion the words " real property " in this phrase constitute a general description of the property of the testator at the time he made his Will. A Will must be read as a whole and it would be wrong to interpret it by allowing a subsequent ambiguity or generalisation to contradict a direction so clearly expressed as in this case. The scheme directing sale of all the real property continues in the sentence following the last cited sentence, which provides for the contingent legacy created should the residue exceed $50,000.00.

(C) The seven legacies totalled approximately less than $15,000.00. Had the intention been to sell only so much of the real and personal property as would satisfy these legacies, no question of the residue exceeding $50,000.00 could have arisen. The Executors could have realised a sum within a few dollars of the necessary amount required for the legacies. The estate was made up of many small and large assets. The testator was a business man who had sufficient knowledge and ability to build up this not inconsiderable estate of which he died possessed.

(D) If we contemplate on what was in his mind when he made provision for this contingent legacy, it must be assumed that he was not sure that he had sufficient to pay it. He must have considered that the estate as a whole might realise $50,000.00, or he would not have been likely to fix that limitation. The estate realised more than twice that amount, if real property is included, but not that sum otherwise; so that in construing this Will one is forced to the conclusion that the testator intended what he in fact said, when he instructed his Executors to convert the whole estate into cash and carry out the several purposes set out.

(E) Mr. Phillips, on behalf of the Executors, submitted that they did not pay this legacy earlier because they felt that the many claims arising as a result of the litigation might absorb considerable sums. I am of opinion that there is little substance in this submission, but will give the Executors the benefit of the doubt. I directed verbally, and hereby confirm, that this legacy be paid forthwith, together with interest at the rate of 6 per cent. on the amount of the legacy from the 30th July 1935.

6. *Claim* 5, *Sub-para.* I. Executors $6,914.33.

(1) This claim represents the balance in the Executors' favour shown at the end of their Sixteenth Account, filed on the 25th November 1942. Their joint affidavit alleges that it was a true account of their dealings from the 1st September 1939 to 16th October 1942.

(A) The Receiver has queried five items and the review of these by the Court has entailed an examination of the accounts for the last mentioned period. I will deal with those several items as far as I can, but no final balance can be struck until the Receiver has provided the Court with further evidence on several matters which arise.

The Executors claim a commission of 5 per cent. on the alleged gross value of this estate, which for this purpose is alleged to be $150,001.00. The Court is disallowing this claim, so there is no need to comment as to the accuracy of this sum.

(B) Mr. Phillips submitted two principles of law in support of this claim. Firstly, that where a will directs that real property shall be realised, it must be treated as so converted. It should be noticed that in putting forward this submission, Mr. Phillips assumes that the Will, in this case, directed that all the real property should be converted. In support of this principle Mr. Phillips cited *Singleton* vs. *Tomlinson* (3 App. Cases p. 404). In that case the question of the devolution of a portion of the real estate was in issue. That matter rested on the consequences resulting from a separate paper—which contained a schedule of the real property of the testator—not being admitted to probate for lack of evidence that it was written and attached to the Will at the time that document was executed. That judgment has no bearing on the issue here as I see it. The question here is are the Executors entitled to an extra 5 per cent. commission on moneys which have not reached their hands, as part of the gross value of the estate. Such commission to be remuneration for their services as Executors. Had the Executors obeyed the expressed instructions of the testator and converted the whole of the real property of this estate into cash as soon as possible, under the local practice of this Court, which has been in force for nearly one hundred years, they would have been entitled to a commission of 5 per cent. on the moneys obtained from the

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sale of such properties, when it reached their hands. This practice they adopted in all cases where they sold real property. Mr. Phillips also cited *Denton* vs. *Davy* (12 English Reports, p. 722) which is a Jamaica judgment governed by the laws of that Colony. Little comment need be made on the facts of this case. The Vice-Chancellor at p. 725 states the principle upon which the Court of Chancery had acted up to that time, and which it still adopts. This statutory commission was in the nature of remuneration of a Trustee and is allowed only when he is discharging duties which create the right to the commission. The sale of the property had taken place; the money had passed into the hands of the Trustee of that estate. The issue there was whether Mr. Denton, who neither qualified nor acted as Executor and had left Jamaica before the purchase consideration was received, was entitled to a share in the commission. The Court held that he was not. There were other issues which were irrelevant to the matter before us. Those facts were entirely dissimilar to those in this case, and, apart from the principle that an Executor must earn his commission, is of little help to us as the question of commission was governed by statute. Mr. Phillips cited *Grant* vs. *Campbell* and *Meek* vs. *Campbell* (12 English Reports, p. 726). Here the issue was whether a qualified trustee, who had offered to, but had not acted in that office, was entitled to a share in the commission. This case Mr. Phillips submitted supported his second principle that this Court has a discretion as to the remuneration payable and could approve this extra 5 per cent. on the gross value—or some less sum—according to what it was felt that the Executors had earned.

(C) I am unable to agree that this judgment gives any authority for a discretion resting in this Court in this matter. The Jamaican law created a statutory commission and the Court decided whether a certain Trustee was entitled to a share in it. Both cases, however, do support indirectly the crux of this question. They show clearly that the Executors are paid a commission by way of remuneration for their services. Should they not perform those services and cause the cash of the estate to pass through their hands they do not earn it.

(D) The Executors had certain duties to perform in connection with this estate. They did not fully carry out those duties. The prolonged litigation between the claimants had been offered for the delay until approximately July 1935. After that period the position was plain and their duty clear. Had they performed their duty then they would have been entitled to payment for their services under the local practice of this Court.

Henckel vs. *Davy* (12 English Reports, p. 730) was cited by Mr. Phillips to point out that the Commission was statutory in Jamaica and a question of practice within the discretion of the Court here. Passing to local decisions: *McSweaney* vs. *Rosado* (Decree Book No. 2 p. 5) definitely approved the practice of paying 5 per cent. commission on the actual receipt by the Executors.

(E) The inferences to be drawn from all these judgments are very simple. Unlike England—except in unusual cases—where work is done by Executors in this Colony they may receive remuneration. In my opinion that is the principle which supports the practice in this Colony. A practice too long established to be disturbed except for strong reasons.

I agree with Mr. Phillips that this practice of paying Executors for their services is within the control of the Court. It could certainly be withheld by the Court for good and sufficient reason.

(F) The Court disallows this claim for $7,500.15 which has been made without the shadow of right or precedent to support it. The Court deems it essential that another aspect of this claim should be set out in this record. For over fifteen years the Executors mishandled this estate. They regularly credited themselves with the 5 per cent. commission—which the practice allows—on cash of the estate received by them. From the evidence given at the hearing it appears that no verbal claim was made by them to this extra 5 per cent. until after Mr. Courtenay was given a Power of Attorney (dated the 22nd November 1939—Deeds Book No. 34 pp. 380–382) and the Court had ordered the Executors to hand over to him the estate. The 13th, 14th and 15th Estate Accounts, as required by statute, were filed by the Executors after that date, but this very large claim now made was not included in them.

(G) Reluctantly I am forced to the conclusion that this wholly fictitious claim, which has no precedent nor authority to support it was made in the 16th Estate Account solely to cover a deficiency of cash which should have been in the hands of the Executors. Presumably it was not available. Possibly because it had been drawn in anticipation of costs claimed by Mr. Balderamos, which had not been taxed. In that case such costs were not a lawful debt due from the estate moneys. The Executors during the administration of the estate took over and made partial use of several Bank Accounts. The Pass Books indicate that all moneys received by the Executors were not paid directly into those accounts, as they should have been. Neither were all payments made directly from Bank or subsidiary accounts fully shown. In other words it is now difficult if not impossible to trace the actual cash transactions.

(H) The Courts have indicated in many cases that this system is wrong. Such a defective system of accounting by an experienced accountant like Mr. Balderamos, which has the effect of depriving any investigator of these accounts of the all essential check made possible by comparison with the independent Bank Accounts, in my opinion, is not without its significance.

7. *Claim* 5, *Sub-para* (2) $3,680.00.

(1) Justification for the employment of a book-keeper rests on several considerations. Mr. Phillips cited *Weiss* vs. *Dill* (40 Eng. Reports p. 11) where it was held that such an employment must not be made a charge on the estate unless in exceptional circumstances. The issue there was the collection of a tailor's trade debts. Rent and miscellaneous income receipts might, or might not, present less difficulty than that position. Mr. Phillips also cited *Henderson* vs. *McIver* (56 Eng. Reports p. 510). This report discloses few facts. Vice-Chancellor Sir John Leach held that "from the nature of the accounts 'an Executor was justified in employing an accountant'." Of what the a/cs. consisted we are not told. This authority helps but little, excepting that does support Mr. Phillips' submission that the Court has a discretion in the matter. In *Wilkinson* vs. *Wilkinson* (57 Eng. Reports p. 337) the Executor received a legacy of five guineas as a small recompense for the care and trouble which attended the due

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execution of his office. Vice-Chancellor, on this occasion, held that a provident man might well employ a rent collector, and being consistent with the due execution of their office, the Executors were entitled to employ a rent collector and retain their legacies. I am quite sure that, inadvertently, Mr. Phillips failed to notice and cite the judgment in the Court of Appeal of the case of *In re Charles Muffett, Jones* vs. *Mason* (L.J. (N.S.) Chan. 56, p. 60) where, in 1887, the judgment in *Wilkinson* vs. *Wilkinson* was distinguished from the other case in a very material aspect affecting the matter now before this Court. The reference to the latter case was cited in the earlier case. In the latter case the testator gave the executors a specific sum to collect the rents. They employed a rent collector. The Court of Appeal held that they were entitled to do so, but could not also receive the legacy which was their remuneration for carrying out that duty.

Therefore in England there is a distinction between a general discretion exercisable by Executors to employ a rent collector where the circumstances justify that course, and where provision is made in the Will to give Executors remuneration specifically—by way of legacy—for carrying out that duty. In the latter case the Executors are put to their election as to whether they will employ a collector and charge his salary to the estate, or take their legacy and arrange for the work to be done at no cost to the estate. Mr. Phillips cited *Freeman* vs. *Farlie* (36 Eng. Reports, p. 16) where unusual circumstances arose and were not in line with the facts under review in this case. It is authority, however, for the obvious duty of executors to keep separate and proper books of account of the estate transactions. He also cited *Bonethon* vs. *Hochmore* (23 Eng. Reports, p. 492) as an English authority for the employment of a paid bailiff. *Hopkinson* vs. *Roe* (48 Eng. Reports, p. 908) provides authority for the payment of a collector of a tailor's outstanding debts. Again this case was influenced by special facts. The Executor was a surviving partner and it was held that he had an interest in moneys due, adverse to the deceased tailor's estate, because for the prospect of future custom of the debtors, he might have compromised his late partner's debts on unduly easy terms. It should be noted that this authority recognised this adverse influence as justification for allowing payment to another for carrying out the executors' duty.

(2) I am of opinion, that with a paid rent collector, the work involved in accounting for this estate did not justify the employment of a book-keeper.

Mr. Phillips cited *Wroe* vs. *Seed* (66 Eng. Reports, p. 773). In that case the executors misconducted themselves seriously. They were not educated and unable to keep accounts. In this case Mr. Balderamos has told the Court that he was the accountant in a solicitor's office for twenty years. With that experience the accounts for this estate would provide little difficulty to him.

I think that the real issue here is was there sufficient bulk of work connected with the estate to justify the employment of a clerical staff. The books produced show the accounts to have been kept on a receipt and payment system, the most simple form of accounts. There can be no doubt that any ordinary clerk could have kept these accounts, under the supervision of Mr. Balderamos—with his special training—at much less cost than that paid to Mr. Trejo. The justification, if any, was the quantity

of house property, with many rents, repairs and maintenance items, which meant that the book-keeping did not constitute all the clerical work involved.

(3) (A) This matter has a personal aspect. Mr. Trejo was employed by Mr. Balderamos, in his personal practice, as clerk in his office at a wage of $15.00 monthly. It appears that this was much less than a clerk of Mr. Trejo's standing would have been paid, except in the earlier years of this employment. In addition Mr. Trejo earned approximately $20.00 monthly for collecting the rents of this estate. Further he was paid $20.00 monthly as book-keeper of the estate. He was so well paid, in fact, for his condition in life, that he could afford to draw his wage as book-keeper ($240.00) annually. Surely a state of financial beatitude to which few of us attain. I am of opinion that Mr. Balderamos, had he used an honest discretion, could have arranged far more economical terms for doing this estate work. I should consider it reasonable for the Executors to employ a rent collector and pay him a commission basis, as that would provide an inducement for him to be diligent in his work. The cases give authority for this system.

(B) A primary duty rests on every Executor to perform any reasonable duty which may arise during the course of his administration of an estate for which he has accepted office. It is important to remember that that acceptance of office is optional as no one is compelled to accept an executorship. I have cited cases giving authority for the principle that when Executors pay other people to carry out duties they could and should perform—as they are justified in doing in some circumstances—they must not charge twice for the same work. That would be unjust. The Executors are entitled to 5 per cent. commission on funds of the estate which they may collect, but if they employ a rent collector to collect a part of those funds they must not claim their commissions on those funds collected for them. Not only have the Executors done that in this case, but they have collected their commissions on the gross rentals paid to them by Mr. Trejo. This system has been employed from 1924 until 1939 and it will necessitate a complete rewriting of the accounts to remedy this matter and ascertain the true amount to which the Executors are entitled. It will be necessary for the Receiver to examine this position of the accounts.

(4) (A) A further aspect has arisen in the evidence of Mr. Balderamos. He said that he collected some of the larger rents himself. The Court is loth to think that such a thing is probable, but if he has charged 10 per cent. for this rent collection, it must be disallowed. Such collections would attract only the Executors' 5 per cent. commission, and no question of election would arise.

The Receiver will investigate this whole matter and report to the Court. He will file such affidavits from the Executors and Mr. Trejo and anyone else as he may deem necessary and requires in reporting fully to the Court. This additional work of the Receiver in the preparation of this and other reports required by the Court to remedy the unsatisfactory nature of these estate accounts, and all other expenses involved in their preparation, is to be regarded as special employment for which the Receiver will render a separate account to the Court for approval from time to time.

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(B) I wish to make this matter quite clear. For the Executors to credit themselves with 5 per cent. commission on gross rentals, when paying Mr. Trejo 10 per cent. commission for collecting them and paying him $20.00 monthly for keeping the books of the estate—of which the items for rentals formed the bulk of the entries—was an unjustifiable overcharge. If Mr. Trejo kept and furnished the Executors with proper accounts of his rent collections—and there are many charges for rent books —Mr. Balderamos with his extensive experience must have been capable of carrying out his obvious duty of either keeping the accounts himself or employing a low grade clerk to do so at a small wage under his supervision. The Court stresses the urgency of this special work and directs that the report be filed as soon as possible. Copies will be served on the parties appearing before the Court in this matter, together with four clear days' notice to attend Chambers when the reports will be reviewed by the Court. Should exceptional circumstances arise the Court will extend these four days upon application of the party affected, supported by affidavit setting out the grounds for that application.

(5) The Court directs the Receiver to prepare and file a special report showing whether the various items charged in respect of clerical staff by Mr. Balderamos against the estate were duly entered as out of pocket expenses in the Annual Returns of Income Tax submitted to the Income Tax Commissioners. The details of this report should be supported by certificates from the Income Tax Commissioners, that due allowance was made in assessing the tax due from this estate for these outgoings.

The court will record no decision on the Claim 5 (2) until the full facts of that matter are available.

8. *Claim* 5 (3) *Trejo* $400.00.

(A) No. 56. Mr. Trejo, wage 17th August 1939—16th October 1939—$40.00.

(B) No. 57. Mr. Trejo, wage 17th October 1939—17th October 1942 —$360.00.

(1) The reason for these two periods being shown is that the Executors handed over the estate to Mr. Courtenay in August 1939, but there were few matters outstanding which were completed by the 16th October 1939. There were a few financial transactions dealt with by the Executors during that period of one month.

Item (A) No. 56 $40.00 is disallowed as an unnecessary payment for services which could and should have been performed by the Executors. The special employment of a book-keeper was unjustified.

Item (B) No. 57 $360.00 need not be considered on the basis of justification for employment of a book-keeper. A far more serious aspect was disclosed during the hearing of the case. There is certainly *prima facie* evidence that both Executors have been guilty of filing, and supporting by their affidavit, an account which to their certain knowledge was false and fraudulent. So serious is this matter that I propose to set it out in detail.

(A) Although it has been the accepted practice for nearly a century to remunerate Executors for diligent work in administering and winding up estates of deceased persons, that practice in no way interferes with the

older and firmly established practice—both in England and the British Empire—of the Courts to examine very closely the administration of an estate by a solicitor appointed as an Executor of a will; whether sole or otherwise. I should refuse probate to a solicitor appointed sole Executor under a will prepared by himself; I should appoint a Receiver. (*Hamilton* vs. *Girdlestone*, 11 Weekly Rep. p. 202, Malin V.C.) The history of this Morter estate provides many examples of the possibilities of such administration, and the reason for the Courts in the past having taken such strong action. The position must have been clear to Mr. Balderamos.

(B) The position of Mr. Balderamos—and Mr. Cain who collaborated with him throughout—was dealt with by me at considerable length in my judgment reviewing a Bill of Costs payable by this estate, dated the 14th July 1941. I incorporate that judgment herewith as it shows clearly that his position was brought to the notice of Mr. Balderamos, and his actions since that date were taken with full knowledge. It shows also very clearly that the overcharges against the estate were most reprehensible. Therefore with this knowledge in his mind when Mr. Balderamos filed this sixteenth account of the Morter estate containing the items 56 and 57 on the 20th November, 1942, he had been warned by my predecessor in office and myself. Whatever may result from the investigation of his actions in this matter, it must be plain that the inclusion of these two items was deliberate. Some oral evidence supports these items but more documentary was produced in this Court. I clearly explained to Counsel present that the established practice that Counsel giving evidence would not be sworn would be respected. In some instances Counsel requested that they might be allowed to give their evidence on oath to emphasise their sincerity in dealing with controversial matters. My notes of evidence and documents produced disclose the following facts. In compliance with my order dated the 18th April, 1941; on the 25th November, 1942, the Executors filed the Sixteenth Annual Account, which purported to show all their cash transactions in the administration of the estate during the period 1st September, 1939, to the 16th October, 1942. On the 25th November, 1942, both Mr. Balderamos and Mr. Cain swore that those accounts contained " a true account of all their dealings."

(C) When Claim 5 (3) in the Receivers Report dated the 21st September came for review and instructions of this Court on the 13th October 1943, Mr. Balderamos, after being sworn, told the Court of his 25 years' service in a solicitor's office as accountant. With that experience there can be no doubt Mr. Balderamos must have understood the account he was filing, and as a Barrister-at-Law he must have realised the sanctity of the oath by which he verified its accuracy. The false item is set out as follows:—

(D) No. 57. Percy Trejo for keeping books and general clerk, from 17th October, 1939, to 16th October, 1942. 36 months at $10.00 per month $360.00

On the 11th October, 1943, Mr. Balderamos gave evidence that the book-keeper—Mr. Trejo—" wanted to go to Panama (and this) money was paid to him (to keep him in Belize) against the enquiry as he was a

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material witness." This explanation was plausible, as Mr. Trejo had handled the estate affairs for many years and it might well have been impossible to anticipate every issue which might have arisen in Court on the estate accounts. Had anticipation been possible the Court might have directed his evidence to be taken prior to departure. On the 11th October, 1943, I adjourned the hearing until the 13th October, 1943, and ordered the production of the books of account and the attendance of Mr. Trejo, who was still in Belize. On the 13th October, 1943, Mr. Trejo appeared and gave sworn evidence. He supported the accounts up to the handing over of the properties to Mr. Courtenay. He then said " I have not been paid anything since October, 1939, in respect of the Morter estate." It should be noticed that, by inference, he accepted item $56 which the Court has disallowed on the grounds already set out. Mr. Phillips, representing Mr. Balderamos, Mr. Balderamos and Mr. Cain were then present but did not question this statement, although they had ample opportunity. The Court queried this evidence and Mr. Trejo confirmed that he had had no such sum paid him since October, 1939.

(E) Mr. Balderamos later amplified his evidence and position of the employment of Mr. Trejo, but offered no explanation and did not offer further support for $360.00. It might have been submitted in the cross-examination of Mr. Trejo that he had been promised these amounts, but not paid them. In the same way it might have been submitted that the Executors were only claiming the $7,500.15 referred to earlier, subject to the approval of the Court. Although the circumstances made it essential that some explanation should have been offered to the Court, in neither case was one forthcoming. These accounts filed should be a record of the cash position of the estate. Other outstanding accounts were stated to be so. These items were entered in the accounts as payments made on the 16th October, 1942. Had they not been entered a very substantial balance of cash would have been shown to have been in the hands of the Executors, and the Court had ordered that balance to be paid to Mr. Courtenay.

I am forced to the conclusion that this is yet another attempt to fill the gap in the cash balance of the estate which should have been available to hand over to Mr. Courtenay, but was not. I should like to record that, although I doubt the wisdom of his action in trying to support the additional commission, on behalf of the Executors. There is no doubt in my mind that Mr. Phillips had neither part nor knowledge of the true facts of his client's actions.

9. *Claim* 5 (4) *Mr. Cain. Rent arrears.* $1,382.75.

The accounts disclose that the Executors first paid rent on this property occupied by Mr. Cain in May, 1924, after the death of the testator, at the rate of $10.00 monthly. In November, 1927, this rent was increased to $20.00 monthly, and in November, 1929, to $25.00 monthly. It remained at that rate until Mr. Courtenay terminated that lease in September, 1939. The Accounts showed that the Executors charged $10.00 for August, 1925, twice (see Items 365/1925 and 196/1926). From such data as is available to the Court it seems that Mr. Cain paid, or owed, approximately the amount of the rent paid from the estate funds to the owners of this property. He paid no rent between the 28th February,

1935—when he was $87.75 in arrear—and the 30th September, 1939, when the lease was terminated. It seems clear that the Executors paid from the estate funds, repairs, insurance (hurricane and fire), commission to rent collector for rent collected from Mr. Cain Executor and the usual executor's commission on the rent that Mr. Cain did pay in connection with this property as well as the rent. In other words it seems clear that Mr. Cain's tenancy was a continuous expense to the estate.

(2) The Executors were paying themselves all moneys due to them with a punctuality they did not achieve in the case of other creditors of the estate. In fact garnishee proceedings were taken against the Executors on two occasions. Resulting in profit costs to Mr. Balderamos.

(3) Whilst Mr. Cain was living in this property without paying any rent on it, he was still receiving the 5 per cent. commission as Executor on other moneys paid into the estate funds. Then there was no question of the fictitious claim for 5 per cent. commission on the gross value. That claim was not made until the Executors were forced to account and pay over the cash balance of estate moneys which should have been in their hands in August, 1939. Probably Mr. Cain has been receiving this 5 per cent. commission on his own rent, during the period he paid such rent as was due from him. The Receiver must investigate that. There can be no question that both he and Mr. Balderamos should have seen that Mr. Cain's rent was paid punctually; and most certainly, if for some reason it was in arrear, they were both responsible for seeing that such arrears were set off against any payments accruing in respect of commissions due to this debtor of the estate.

(4) Mr. Phillips submitted that in the event of there being no balance due to Mr. Cain from the estate, he would have to settle as an ordinary debtor of the estate. This issue is not so simple as that. I am of opinion that Mr. Cain was dishonest when he paid himself or accepted payment from Mr. Balderamos of commission moneys due to him from the estate funds, well knowing that he owed the estate considerable sums in rent. At the least, it was the grossest negligence on the part of Mr. Balderamos, if not equally dishonest, to take part in or approve these transactions. The whole leasing of this property for the benefit of Mr. Cain, without any justification, would appear to have been a breach of trust. The accounts disclose that during this rent-free occupancy by Mr. Cain, whilst his debt of $1,382.75 was accruing, he was paid $593.75 in commissions from the estate. Mr. Balderamos was a party to these wrongful payments and the wrongful leasing or continuance of the lease of this property for the benefit of Mr. Cain from the estate funds without any justification. I hold that both Executors are jointly and severally responsible for any loss the estate has sustained in this matter.

(5) The Receiver will prepare a special report accounting for the whole period of this tenancy of Mr. Cain, after he became an Executor. This account should show Mr. Cain's gross rent payments against which must be set off all the outgoings mentioned above, together with any other expenses the accounts may disclose in connection with the renting of this property, including legal costs. The Receiver will file this account showing the net amount due to the estate so that right may be done.

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10. *Claim* 5 (5). *Mr. Balderamos. Iron Safe.*

Mr. Balderamos admits possession of an iron safe the property of the estate. The Court directs him to hand it over to the Receiver within seven days. The Receiver will deal with it in such way as he deems best in the interests of the estate.

The Court directs Mr. Balderamos to prepare any further Bill of Costs to which he may think himself entitled in respect of legal work done for this estate before the 15th October, 1944. The Receiver will attend the taxation himself, or by his legal representative, and Mr. Balderamos will supply the Receiver with copy of the taxed bill within seventy-two hours of taxation, so that any moneys due may be placed to the credit of Mr. Balderamos's account with the estate.

11. *Claim* 7. *Mr. Courtenay* $4,416.30.

(1) This claim raises many very difficult issues. The first of which is to decide what precisely is the position of Mr. Courtenay in his relationship with the U.N.I. Association (hereinafter called the "Association"). There is no doubt that Mr. Courtenay has been engaged in performing services for the Association, and was appointed—by formal Power of Attorney—as its Attorney. The first issue here is, has there been any binding agreement made between Mr. Courtenay and the Association; in my opinion, there has not been. That does not alter the fact that Mr. Courtenay has carried out substantial work for the Association, both as its legal adviser, and in other work which may not come within the scope of a solicitor's practice in the strict sense of the word. In other words he has performed many duties for the Association for which he is entitled to a reasonable remuneration at commercial rates, but for which his clients may not be entitled to insist on taxation as professional fees. In addition many of his charges are for professional work, subject to taxation under the scales set out in the Imperial Solicitors Acts which are applied to this Colony by the provisions of s. 26, c. 153.

(2) Taking the aspect of Mr. Courtenay's professional work first. Mr. Courtenay is a barrister-at-law of England, but the services he undertook to carry for the Association go far beyond those to which a barrister-at-law in England would commit himself. As a solicitor of this Court Mr. Courtenay combines both branches of the legal profession as it practises in England. For example, it is a well established custom, or practice, for solicitors in the British Colonies to supervise and collect rents of estates for owners, but that fact does not make it the professional work of a solicitor technically. It was not irregular for Mr. Courtenay to agree to do so in this case, and claim remuneration. Normally such work would be governed by a contract, or less formal agreement, of service; the charges would not be subject to taxation, as would ordinary professional fees and costs. As to what can be called strictly professional work Mr. Dragten cited *Allen* vs. *Aldridge* (49 Eng. Rep., p. 635). In that case Lord Langdale said the business must be business connected with the profession of a solicitor, business in which the solicitor was employed because he was a solicitor, or in which he would not have been employed if he had not been a solicitor. Obviously both parties, in this matter, will be placed at a disadvantage in having thought for such a long time that some of these transactions were closed. In some cases Mr. Courtenay may not be able

to produce vouchers which would be available to him in more normal circumstances. The Court directs the Taxing Master to exercise the widest discretion in dispensing with missing vouchers, where there is sufficient evidence forthcoming justifying the Taxing Officer to consider items legally unsupported—according to the standards usually insisted upon—as reasonable charges. This is a general instruction in this case, and in no way limits the right of either party to appeal to the Court in any particular instance on this or any other aspect of such items.

(3) Mr. Hassock, during the course of his case, submitted that the limitations of the application of Imperial Laws to this Colony—now appearing in Section 4 of the Imperial Laws Extension Ordinance, c. 2 Consolidated Laws of British Honduras, 1924 (hereinafter called "c. 2" and "Laws 1924" respectively) referred only to the Common Law of England. He also raised the issue that The Supreme Court Ordinance, c. 153 (hereinafter called "c. 153") Laws 1924, commenced on the 1st January, 1880, and that it could not be held that the Imperial Solicitors Act, 1881 (hereinafter called the Act 1881), controlled the solicitors of this Colony in the fees they charged for professional work. Unfortunately the Court was not given the advantage of hearing these issues argued fully by all Counsel at the hearing. I have made far reaching research into these issues, thereby causing the most serious delay, but the results are not without interest.

C. 153 came into operation on the 1st January, 1880. By s. 26 it provided that "the laws of England relating to Solicitors and to the taxation and recovery of costs shall extend to the Colony." This is a general application of the English law, which at that date was contained in a number of separate Imperial statutes, as opposed to a specific application of named statutes, a course which might have been adopted. The general nature of this wording would seem to provide grounds supporting an implied principle that any further amendment, or other relevant legislation, introduced into England would automatically come into force here. Had this not been the intention, surely the draftsman would have named the several statutes then existing, thus creating some limitation to meet the circumstances which must change from time to time in such a matter. That point of law might well be argued either way.

(4) As soon as one examines the position as to whether the continued application of Imperial legislation governing solicitors' practice and procedure may be inferred safely, the question arises has any subsequent Colonial legislation created a limitation of that subsequent Imperial legislation in its application here? To deal with this matter I have had to go much further back into the laws of the Colony, and trace out a very complicated path up to the present time. It is interesting to record that our Colonial Legislators—in principle—anticipated this difficulty with the general nature of the wording of s. 23, c. 153. It provided, but for Imperial criminal law only, as applied to the Colony, in s. 6 of 18 Vic. c. 22—

> ". . . and all future acts of the Imperial Parliament, of like effect and under the same qualifications shall become laws of this Settlement on and from the first day of January after the passing thereof."

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(5) This extract discloses two purposes. Firstly, any subsequent Imperial amendments or relevant new legislation, passed in the Imperial Parliament, to laws already applied to this Colony, were made equally applicable. Secondly, a commencing date was fixed for the new legislation here. If this first principle could be extended generally to Imperial Legislation, one of our troubles would have been met. Unfortunately, it has not been possible for me to say that it has. The second purpose obviously did not allow sufficient time for Imperial Legislation, made applicable here, to arrive in this Colony—under the transit facilities of that period—if it was passed late in the year in England.

(6) I now pass to the first collection of laws in this Colony which came into force on the 5th December, 1888 (hereinafter called "the Law 1888"). They are described as a "revision and consolidation, and which supersede all laws in force in the Colony on the 1st January, 1887." (See s. 4, No. 7–1888.) It is necessary to pause here to distinguish between a "revision" and a "consolidation" of laws.

In his judgment in the action *Hill* vs. *Lodge* (No. 33–1932) the Hon. C. W. W. Greenidge, C.J., reviewed the application of Imperial Laws to this Colony at some length. He upheld the submission of Mr. Dragten, K.C.—who appeared for the defendant in that case—that a consolidation re-enacts every statutory provision contained in the consolidated statute. That principle was based on a decision of L.J. Scrutton, in the case of *Gilbert* vs. *Gilbert and Boucher* (1928), 43 T.L.R. p. 589), in which it was said that: "The presumption with which one starts is that a consolidating Act is not intended to alter the law."

(7) I now advert to the Act which provided for the revision which produced the Laws 1888. I have been unable to procure a copy of this Colonial statute, but I have seen a copy of the Bill, published in the B. H. Gazette on the 11th October, 1884.

That Bill proposed to empower the Lieutenant-Governor in Council to select and list the Imperial Laws applicable to this Colony at that date.

Subclause 10 (*a*) provided, amongst other things, as follows:—

> "10. (*a*) Select such Imperial Acts, or parts of Acts, which in his opinion should be printed for more extended information, and directs that the same shall form part of the new compilation, being annexed by way of Appendix."

(This Ordinance repealed No. 16–1883.)

(8) I am unable to say whether this Bill passed the Council without alteration, but assent was given to the consequential Ordinance on the 11th November, 1884. Unfortunately the Executive Council Minutes and the files with the list of Imperial Legislation applicable to this Colony at that time as chosen by the Lieutenant-Governor in Council are alleged to have been destroyed by a fire in a public building comparatively recently. Whether amendments were made to this Bill, or not, the delegated power to compile a list of Imperial Legislation was exercised and is set out in the Third Schedule to the Laws 1888, and given the force of law. This fact the Commissioner who compiled the Laws 1914 does not appear to have appreciated. He naively remarks in his Preface that

the list in the Third Schedule being neither complete, nor accurate, he thought it better not to attempt a list in his edition. I can find no record in the relevant Ordinance of any authority from the Legislature to repeal this Third Schedule of the Laws 1888. The Commissioner had no power to repeal a material part of the law, by omitting it from the Laws 1914.

By the provisions of s. 6 the Consolidated Laws (Revised Edition) Ordinance 1913 (No. 9–1913) (hereinafter called "Ord. 9, 1913") such a material alteration of the law required the preparation of a Bill by the Commissioner, and that Bill would have dealt with it in the ordinary way by the Legislative Council. This Third Schedule was not included in the list of instruments which had had their effect, or been repealed; they are set out in Ord. 9, 1913.

(9) It might be suggested that the provisions of s. 9, Ord. 1913, would remedy the effect of this illegal alteration of the law. That section reads—

> "9. Immediately on the publication of the said proclamation (i.e., the proclamation bringing the Laws 1914 into operation) the new edition shall be deemed to be and shall be without any question whatsoever in all Courts of Justice and for all other purposes whatsoever the sole and only proper statute book of this Colony up to the date of the latest of the ordinances consolidated or contained therein;—"

(10.) (A) The Legislature by s. 6 of Ord. 9, 1913, had created a definite procedure by which the Commissioner was directed to deal with any necessary alterations of material effect in the Law. The fact that a list of the legislation so repealed is contained in an Ordinance passed by the Legislature shows clearly that that body intended to deal with and did deal with matters involving repeal. The omission of the Third Schedule to the Laws 1888 was not within the scope nor the authority of the Commissioner.

(B) I am in no doubt that this material alteration which was made contrary to the scheme of the Ordinance, from which the Commissioner derived all his authority, cannot be a matter to which s. 9 of 1913 was intended to apply. The provisions of that section cannot be interpreted as intending to defeat the purposes of the legislation in which it is included.

(C) Assuming for the moment that the Third Schedule of Laws 1888 is still in force here; how would it affect solicitors to-day?

It sets out the following Imperial Solicitors Acts—

1843. 6 & 7 Vic. c. 73, ss. 12, 13, 28, 31, 32, 37–41, 43 and 48.

1860. 23 & 24 Vic. c. 127, ss. 27–29 (s. 29, rep. 13 Vic. c. 5, s. 342).

1875. 38 & 39 Vic. c. 79, ss. 1 and 2 (amending the 1843 Act above).

Clearly those were the Imperial Acts governing solicitors in this Colony on the 5th December, 1888. Did they limit the effect of the provisions of s. 23 Supreme Court Ordinance 1879 (No. 14–1879) which has come down to us unaltered and is now s. 23 of c. 153.

(D) It is interesting to note that the Solicitors (Remuneration) Act 1881 (44 & 45 Vic. c. 44) was omitted from the Third Schedule of Laws 1888.

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That Act was passed to meet the new circumstances created by the Conveyancing Act 1881 (44 & 45 Vic. c. 41) which was applied to this Colony, almost wholly, in the Third Schedule. If it was necessary to augment the legislation governing solicitors there, it is very difficult to understand why the 1881 Solicitors (? Act) should not have been similarly applied. I understand that it had been applied in practice. The Court has made search, but in the destruction of the official records, which is alleged, the solution of this last problem has been buried.

12. (A) Unfortunately our path is strewn with further obstacles and I propose to place them on record before attempting to arrive at the present position which they create. Sections 3 and 4 of c. 7, laws 1888, re-ordained sections 5 and 6 of 18 Vic. c. 22. In this new law the above recited provision applying subsequent criminal Imperial legislation to this Colony was omitted from the new section 4 of c. 7 Laws 1888. Whether this omission was in error or not is not clear, but the next section 5 creates an inference, in my opinion, that it was an error.

(B) This section 5 provides that no Imperial Act shall have effect in this Colony within twelve months of its coming into operation in England. The effect of this alteration of the law is material and curious. Firstly, it provided no definite date of commencement of Imperial Acts in this Colony, there had been one before; secondly, it remedied the difficulties created by transit delays, which I have mentioned; thirdly, it swept away the machinery which had made the position of amending Imperial legislation clear. The record does not disclose any authority for this material alteration of the law.

If the position can safely be said to be that section 9 of Ord. 9–1913 provides this alteration with validity, without any authority from the Legislature as is provided by the scheme of that Ordinance, then no amendments of Imperial legislation can have been applied to this Colony without the authority of a local instrument to that effect, unless such legislation was specifically applied to this Colony by the Imperial Legislature.

Turning now to the Laws 1913. c. 8. Laws 1913 is alleged to reproduce c. 7 Laws 1888. The latter was amended by Ord. No. 14–1899.

It is short enough to cite at length—

> "1. Notwithstanding anything contained in c. 7 of the Consolidated Laws (1888) no Imperial Statute passed on or after the 1st day of January 1899 shall under and by virtue of that chapter come into force within this Colony."

(C) An examination of c. 8, Laws 1913, however, discloses that this 1899 amendment was not made general to that whole chapter but was included in it twice in such a way as to restrict the scope of sections 3 and 4 only. In the former it restricted the scope of the Common Law, as applied to this Colony, and in the latter the Imperial Criminal Law is similarly restricted. This drafting error, involving a material alteration of the Law by the Commissioner, without any authority from the Legislature, was reproduced in section 4 c. 2, Laws 1926. Being an error of a draftsman and not the will of the Legislature, it will be rectified in the next edition

of the Laws, but section 1 of No. 14–1899 must be regarded as the law in force to-day. My previous comment on the effect of section 9 of 9–1913 applies with equal force to the similar provisions contained in Ord. 31–1913.

(D) Further, section 5 Laws 1888 disappears. What is the effect of this omission? Counsel cited the judgment in the case of *Sosa* vs. *Castillo* (67–1894) Decree Book E, dated the 11th December, 1894) but I cannot see that that judgment helps us in this matter. With regard to any legislation coming within the scope of sections 3 and 4 Laws 1913, as at present restricted, obviously the preliminary period of twelve months, created by section 5 of Laws 1888, would have had its effect. No Imperial Laws passed after the 1st January, 1899, would be applicable to this Colony.

(E) A perusal of the third schedule shows that many Imperial Statutes were in force in this Colony for a long time that form no part of the body of law applied by c. 2 (i.e. Imperial Criminal Laws and the Common Law of England and all statutes of the Imperial Parliament in abrogation or derogation, or in any way declaratory of the Common Law). To cite an example the Conveyancing Act, 1881, cannot be said to form that body of law which has been judicially evolved from the General Custom of the Realm.

Chapter 2, Laws 1926, reproduces, without alteration, c. 7, Laws 1913. The Consolidated Laws (New Edition) Ordinance 1923 (No. 31–1923) reproduces sections 6 and 9 of Ord. No. 9–1913.

13. (1) One more aspect of this matter remains to be dealt with before I arrive at my decision as to the present position of the Solicitors Act 1881.

(2) The Imperial Statutes governing the remuneration of solicitors in England "regulate" that profession and, in my opinion, have always been excluded from the scope of the Imperial Laws Extension Ordinances. They are now by the provisions of section 6, c. 2, Laws 1924.

The powers delegated to the Lieutenant Governor in Council, which resulted in the introduction of the third schedule into the Laws 1888 were rightly exercised over a far wider field. The Imperial Solicitors Acts were definitely excluded, by the provisions of section 6, c. 7, Laws 1888, from that chapter, but that does not render the position in conflict with their inclusion in the third schedule. There was no reason why laws excluded from the one should not be included in the other either way. Prior to the creation of the third schedule to the Imperial Solicitors (? Act) were made applicable to this Colony by the provisions of section 24, Ord. 6–1880, then by section 24, Laws 1888, and the third schedule, and now by section 26 and the resuscitated third schedule, which finds no place in the present edition of the Laws but is in force.

The amendment made in section 1 of Ord. 14–1899, though general in wording, was definitely restricted to such Imperial legislation as by virtue of that chapter comes into force with this Colony. In other words that restrictive legislation did not affect the third schedule, which was on the statute book when it was ordained.

14. (1) I will now try and find a path through these legislative irregularities and omissions. Taking the wider issue first, it seems clear

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that the third schedule of the Laws 1888 is still part of the law of this Colony and must be regarded as such. When that third schedule was ordained, in the laws 1888, no provision was made to vary it by adding prior legislation or subsequent amendments or relevant new Imperial Legislation; except such instruments as came within the provisions of section 6 of 18 Vic. c. 22, no new Imperial Legislation could be applied automatically to this Colony. In these circumstances it is difficult for me to hold that by virtue of the third schedule there is precise statutory authority for the application of the Solicitors (Remuneration) Act, 1881, to this Colony.

(2) Taking the special aspect with which we are dealing, it has been the practice here for very many years to apply this 1881 scale of fees, and I am of opinion that the general nature of the wording of section 26 c. 153 may be said to provide the necessary legal authority. Such an interpretation of that section introduces the principle that later Imperial statutes governing solicitors passed at any time from the 1st January, 1880, until the present day may be accepted as applicable to this Colony. If that principle is accepted in one case, then logic demands that it may be in other cases, unless only special circumstances have warranted the inclusion of the 1881 Act. I am of opinion that that is precisely what has occurred in that instance. There can be no question that the Solicitors (Remuneration) Act, 1881, was passed to meet the situation created by the passing of the Conveyancing Act, 1881. They bore a reciprocal relationship. Therefore if the Colonial Legislature thought fit to apply the Conveyancing Act, 1881, to this Colony, I feel justified in holding that the consequential Imperial Legislation governing solicitors' scale fees for work done under that Act may be brought within the general wording of section 6, c. 153, and that the latter Act is in force here. In giving this ruling I am confirming the practice of many years.

15. (1) I turn now to Mr. Courtenay's position. As a solicitor, he must be assumed to have been in a favoured position through his legal training, able to safeguard his own interest and to realise the proper parties with whom he should negotiate in making any agreement for his own remuneration. He had many difficult problems to solve in that matter, and from the correspondence with the Association, it would appear that he failed to realise the many pitfalls that existed. The Association was no ordinary Incorporation. It is necessary for me to examine that aspect before going further.

(2) Apparently the Association was incorporated under the Company Laws of the State of New York, in the United States of America, as a normal company. In the place of the usual Articles of Association, this company has a " Book of Laws," which has been filed in this Court. From this Book, it appears that the Board of Directors has no absolute or final power to make decisions or agreements, as behind and above them looms a somewhat ominously named official of the Association called the " Potentate." Moreover, the Directors are not authorised agents—in the legal sense of that term—because the power conferred on the Potentate personally to exercise the final discretion is a power he cannot delegate. Therefore the Directors were never competent finally to bind the Association completely by contract. So unusual is this position that I am of

opinion that in equity the Directors have an implied duty to disclose this fact in all negotiations. Does this failure on their part to do so on this occasion when negotiating with Mr. Courtenay outweigh his assumed knowledge as a solicitor? This aspect is immaterial, because if Directors lacked the capacity to contract on behalf of the Association no binding agreement could be made by them, without the confirmation of the Potentate, as I have said already. I hold that no agreements between Mr. Courtenay and the Association with reference to services rendered by him to the Association have been proved. He was never in agreement, or even negotiation, with the Potentate who is the only person who could have executed an agreement binding on the Association. It is true that some few items claimed by Mr. Courtenay were ratified by the Potentate —if the correspondence with the Secretary to the Association is accepted— but parties to an agreement must be mutually cognisant of all the facts involved, and here there seems little doubt that Mr. Courtenay had no idea of the limitations which bound the Directors when he was negotiating with them. Therefore justice will best be done between Mr. Courtenay and the Association if the Court directs the Receiver to report more fully on all the work done and the charges already made. This will mean clear accounts of all transactions. With that data before the Court an endeavour may be made to fix fair commercial rates of remuneration for the non-professional work done by Mr. Courtenay. It will also be possible to check the financial position between him and the Association.

16. The Court orders Mr. Courtenay to prepare Bills of Costs for all professional work done and to submit them for taxation within two months of the date of this judgment and forward the taxed bills to the Receiver at the earliest possible date after taxation so that his account may be settled.

17. I think it well to emphasise the fact that these transactions have passed out of the hands of all parties and that no settlement of the affairs of the Morter Estate by agreement between parties will be accepted by the Court. That the Court must take this position is obvious, having regard to the conduct of the Executors and the very controversial nature of the status of any person being able to bind the Association. Questions may arise as to what will constitute proper charges for the voluminous correspondence passing between Mr. Courtenay and the Association since he first carried out duties for that body. His visit to New York provides another example of fees alleged to have been agreed upon by the Directors. I need not say that time limitations under the law governing solicitors re-opening "lump sum" agreements does not arise here; the Court holds that no binding agreements have been made between these parties. Further, the entries of payments in respect of such items appearing in the meagre accounts produced by Mr. Courtenay do not even constitute evidence of payments of such amounts. For the information of the Receiver I consider it necessary to set the position of Mr. Courtenay and the Association in respect of the properties of this estate, which should have been sold many years ago. Mr. Courtenay's position as Solicitor and Attorney to the Association must not be confused with that of the Executors and especially Mr. Balderamos. The restrictions which bind the latter in regard to professional services rendered do not so bind Mr. Courtenay. In this

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matter the same issue may arise as to "lump sum" professional fees which purport to have been agreed upon by Mr. Courtenay and either Mr. Bein at the Director's meeting, or by correspondence signed by alleged officials of the Association. There is very recent law on that subject, but it is unnecessary to cite those cases. Without giving a decision on any actual case which may arise at taxation, the Court is of opinion that it is extremely doubtful whether any person with power to bind the Association has agreed on any lump sum costs with Mr. Courtenay. This lack of power to bind the Association exists in spite of there being both oral and documentary evidence which purports to show that such agreements were made in connection with items in accounts to Mr. Courtenay's credit, for professional services rendered by that gentleman. The Court has already set out its reasons for forming this last mentioned opinion, in respect of non-professional work done. I have ordered taxation of bills of costs for all professional work done for the Association, and therefore will not comment on any issue that may arise on that aspect at this stage.

18. I am of opinion that the entries in the accounts produced by Mr. Courtenay showing him as credited in respect of certain Bills of Costs, the amounts of which it is alleged have been agreed upon by the Directors do not constitute "settled accounts." Further no injustice is disclosed as likely to arise for anyone concerned if these Bills are taxed. (*In re Webb, Lambert* vs. *Still*, L.R., Chan. Div. 1894. (1), p. 73; *In re Clough and Another—West King and Adams ex parte.* L.R., Q.B. Div., 1892. (2); *Van Loon. In re Chatterton ex parte* L.R., K.B. Div., 1907. (2), p. 23).

19. As I have said, non-professional work should be paid at normal commercial rates. Unlike the Executors Mr. Courtenay has no duty to perform this work at a statutory rate, nor upon terms subject to statutory restrictions. The distinction must be drawn in dealing with the question of remuneration for services rendered by Mr. Courtenay to the Association between non-contentious business performed by Mr. Courtenay as a solicitor (a useful definition of which term appears in Corderey's Law Relating to Solicitors. (2nd. Ed.) p. 270) and other work which he has performed, but which could have been done by any person, other than one holding a solicitor's licence to practise in this Colony.

20. (1) It is alleged in the affidavits filed by Mr. Courtenay on the 27th June, 1939, that the Association, in 1938, by resolution appointed him Attorney in this Colony to recover from the Executors the interests of the Association in the Morter Estate. By virtue of that power Mr. Courtenay commenced the action No. 11—1939 in this Court. On the 14th September, 1939, this Court ordered—amongst other things—that an account of the dealings of the Executors in connection with the Morter Estate should be taken, and the legacies and annuities paid. Further, it was ordered that the real and personal estate and effects of the testator in the hands of the Executors should be handed over to the Association by not later than the 25th September, 1939. This Order, very obviously, was an attempt to put an end to the most reprehensible delays for which the Executors were solely responsible at that time. The Court ordered that the Association should enter into a bond to carry out any instructions of the Will as to debts etc. which remained unfulfilled. (See Record Book 34,

p. 330). Speaking generally, the Association was placed in the shoes of the Executors. There is no question that the Association has failed in its trust. As a result of that last mentioned Order—

(2) By an Indenture dated the 30th September, 1939, made between the Executors and the Association, certain scheduled properties in this Colony were conveyed to the latter body. (Record Book, No. 34, pp. 326–330.) By an Indenture dated the 3rd November, 1939, made between the Association and Mr. Courtenay, as their trustee, the Belize property and two Banks on the Belize River were conveyed to Mr. Courtenay to sell and convert into cash. (See Record Book, No. 34, p. 365.) It should be noted that the last four properties mentioned in the schedule to the conveyance of the 30th September, 1939—which have been described as plantations—were not included in the conveyance to Mr. Courtenay.

(3) Also seven properties in Belize were excepted from the original conveyance, but included in a separate conveyance to Mr. Courtenay dated the 16th November, 1939. (Record Book 34, p. 378.) Mr. Francis executed this deed at His Majesty's Consulate in New York City and has, in sworn evidence before me, said that he did so without the knowledge of the Directors. He said that the Secretary of the Association—Miss Lulu Johnson—reminded him of this some months later, but nothing was done. If his evidence is accepted, then the attestation clause, in which it is alleged that the seal of the Association was affixed in accordance with a resolution of the Company is inaccurate and the execution of Mr. Francis without effect, whatever his powers may be, the deed must record the truth of the position of the parties purporting to execute it. This deed raises two aspects of the position of the Association. Firstly, Mr. Francis has shown by his evidence that he cannot be accepted as worthy of the trust with which any official of a Public Company should be guided in actions on behalf of the Company which he represents, in the opinion of the Court. Secondly, a mere resolution of the Board of Directors—even had it been passed by them lawfully—is insufficient to bind the Association, unless in addition it has the confirmation of the Potentate, or other confirming authority under the Book of Laws of the Association. Should compliance with these provisions have been achieved, they should be set out in correct detail in any document which purports to have been executed by the Association as such.

(4) By a Power of Attorney dated the 22nd November, 1939 (Record Book 34, p. 380), the Association appointed Mr. Courtenay its Attorney, with the usual wide powers to act on their behalf. This document contained no reference to his remuneration. Paragraph 5 gave Mr. Courtenay unrestricted power to sell real property of the Association. I am of opinion that there was no real necessity for these properties to be reconveyed to Mr. Courtenay. The several properties previously conveyed to the Association were sub-divided in the reconveyance, which may provide some grounds for the action of the Association. On that possibility the Court will allow the usual scale fees to be charged.

(5) This Order does not include the properties which were conveyed and subsequently reconveyed. I will deal with those later.

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(6) By a deed poll dated the 24th June, 1941, this last-mentioned Power of Attorney was revoked and Mr. Francis was appointed Attorney for the Association in his stead. (Deeds Book 34, pp. 798–800.)

(7) I do not propose to deal with, nor comment upon, the many conflicting issues between Mr. Courtenay, Mr. Francis and the Association which are set out by both Mr. Courtenay—in his affidavit filed in Action 7, 1942, and the various documents attached thereto—nor those contained in the affidavit of Mr. Francis in his reply dated the 18th January, 1943, nor those facts alleged in the voluminous correspondence and other exhibits filed in that action, quite apart from the questions of status with which I have dealt. The lamentable state of affairs disclosed clearly indicate that no binding agreement has existed between the parties on the issues before me and the most serious doubt must be said to arise as to the validity and binding effect of any document produced before me in this matter.

21. Messrs. M. Bein and A. Taussig are involved in many of these matters and they thought fit to address the Court by personal letters direct. I directed that they should be informed that they must comply with the Rules of Court in any application they might wish to make; they were furnished with a list of names of local solicitors.

22. If there was never any agreement between the parties having power to execute agreements, the Court need not waste time in examining, investigating and commenting upon the mass of controversial facts set out in the documents produced. I have read them all at their face value. My primary duty is to see that the terms of the Testator's Will are carried into effect. I must see that his debts and accounts due in respect of services rendered to the estate are paid at reasonable rates. To achieve this purpose it will be necessary for the Receiver to collect considerable data and report on it to the Court. I will now deal with such other information that I know that I want at this stage.

23. (1) The first item raised in issue by the Receiver here is the salaries of the three clerks—successively—paid for work for the estate after Mr. Courtenay took over its management. This is a difficult problem and the Court directs the Receiver to file a special report showing more fully what the true position is in this matter. I leave the question as to whether his report shall be supported by affidavits to his discretion. I reserve my decision until I have that report before me.

(2) To provide some guidance to the Receiver in the preparation of this report I will record the following comment. I have not allowed the Executors to charge their statutory commission on the rents Mr. Trejo collected and upon which he was paid his commission of 10 per cent. Rents the Executors themselves collected they were allowed their 5 per cent., as on other moneys coming into their hands, but not the rent collectors' 10 per cent. in addition. I felt that the Executors should not be paid twice for services rendered by other persons paid therefor from Estate funds, but final decision has been reserved on that, pending the Receiver's special report. The same system might be adopted about rents collected after Mr. Courtenay took office as attorney. Obviously if these rents were collected by Mr. Courtenay himself he is only entitled to

his 5 per cent. on such collections. Equally obviously, if the staff he paid from estate funds collected these rents—as part of their employment, for which they were adequately paid—he is not entitled to 5 per cent. on the sums they collected. The Receiver should ascertain from the tenants who did collect the rents. Again, if it is proved that some other person was employed to collect these rents on a commission basis, paid from estate funds, several questions will arise. Firstly, was such an employment justified, having regard to the paid staff available? If so, was the rate a fair commercial rate for that service? In any case if the rents were collected by the staff, or a paid rent collector, then the 5 per cent. commission would not be due to Mr. Courtenay.

(3) With reference to the conversion of the assets, different aspects arise in respect of the several classes. The conflict, if any, is that of whether professional fees or commercial fees are payable.

(4) Where Mr. Courtenay is entitled for professional fees for selling property, this is professional work and he is not entitled to 5 per cent. commission on any money which may come into his hands as a result of that transaction. He is working as a solicitor and should be paid as such. The remuneration should be higher. If Mr. Courtenay was acting for both parties, and the purchaser paid the professional charges in respect of a transaction—this is a matter of agreement in the bargain; in the absence of such agreement I have known custom to be different in different places, then Mr. Courtenay will be entitled to charge his professional fees for safeguarding his clients' interests, at the usual scale rates.

(5) I rule that Mr. Courtenay should receive his professional fees in connection with the Morter House and adjoining land transaction with Mr. Taussig, as I have formed the opinion that he was acting in good faith. That ruling refers to the conveyance and reconveyance. He will not receive the 5 per cent. commission on this item. Miscellaneous items of income received by Mr. Courtenay such as sale of produce, scrap metals, etc., etc.—which amount to little, but often involve work out of all proportion to the receipts, would be entitled to the commission basis.

24. (1) As to what should be paid to Mr. Courtenay in respect of his services in overlooking the plantation properties. The charge of $1600.00 is exhorbitant. It is difficult to arrive at an equitable charge. He received commission on the produce, and should have charged his out-of-pocket expenses in visiting the property from time to time. I am of opinion that $250.00 per annum would be a just charge and allow $500.00 for this item.

(2) I direct the Receiver to investigate and provide a special report on the item of $4500.00 shown in the accounts as due to Messrs. Douglas Grant & Dold of London. This item was an agreed settlement of certain costs involved in one of the appeals to the Privy Council. As a result of complaint made to the Court some time ago by this firm, Mr. Courtenay was given a fixed period to settle the account, before the Court took action in respect of the complaint. It appears that he settled the account, as he reported, but gave the Association the benefit of the variation of the currency since the agreement was made. The accounts show this payment to have been made on the basis of $4.03 U.S.A. currency to the English

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pound sterling. The agreement was for $4500.00, apparently, and that sum should have been paid. The Receiver will rectify this deplorably improper transaction, as a debt payable by the Association from the funds of the estate, thereby reducing the ultimate balance payable from the estate to the Association.

25. I require a special report from the Receiver as to whether the wages paid to the clerks, paid by the Association, were entered in the appropriate Income Tax Returns of the Association. If they were not, the matter should be fully adjusted.

26. The Receiver will investigate and file a Special Report on the sale of the 24 Royal Canadian Bank Shares which were sold, according to the accounts, to Mrs. Courtenay, the wife of Mr. Courtenay the Attorney of the Association for $3000.00. In that report the Receiver will cover the following items :—

(A) The date upon which the sale of these 24 shares took place, and the date upon which they were transferred to Mrs. Courtenay.

(B) The production of Bank Evidence, in some form, showing the date upon which the physical transfer of the consideration money between the purchaser and Mr. Courtenay or the Association Bank Account took place. There should be Bank evidence of this transaction, apart from that shown in the Association Accounts produced by Mr. Courtenay.

(C) An account showing the commissions paid to Mr. Courtenay and the Executors in respect of the capital transfer and the income which apparently reached the Executors over a period, and was transferred to Mr. Courtenay, who presumably paid it to the owner of the shares, Mrs. Courtenay. It seems that both Mr. Courtenay and the Executors were drawing commission on the receipt of this income from these shares, after the alleged sale took place. Possibly the failure of the Executors to pay taxes on this estate in the Dominion of Canada may have interfered with the transfer of the shares, but in that case, obviously no transfer of the cash would take place and the income would accrue to the estate.

(D) The Receiver will obtain a certificate from the Royal Bank of Canada, and file it, showing the market price of these shares on the date they were transferred to Mrs. Courtenay, or a subsequent purchaser, or both, if two transfers were made of these shares.

27. The Court directs the Receiver to file a Special Report on similar lines in respect of the sale of the Pan American Insurance Shares.

28. Turning now to the directions necessary in carrying out the instructions of the testator which still remain to be done. I propose to sit fortnightly, or more often when necessary, to deal with the several reports I have ordered to be filed, and such other matters as may arise, in the disposal of the real and personal estate remaining unconverted, and in settling the outstanding accounts. In addition to the matters brought forward for my decision, I request that the Receiver, at each such hearing,

shall report progress on all outstanding matters. I will fix a day to-day for the first of these hearings—after hearing Counsel and the Receiver on the subject of minimum prices for private sales and the maximum periods during which negotiations may be carried on to arrange for such sales. The Receiver will also prepare for that hearing a draft advertisement for publication in the local press, in which the full list of all the properties of the estate available for sale will be included.

29. The Receiver will consider and report for my consideration with the assistance of Counsel as to whether it would be expedient to serve legal notice on all tenants of the estate, if more than one month's notice is necessary to terminate their tenancies. Where such extended tenancies are terminated, they might be renewed on a monthly basis. This course of action should increase the monthly value of such properties as early possession could be offered. I direct that all sales must be for cash. Offering to sell with consideration to be partly paid in cash and the balance on mortgage held by the estate, obviously will delay the winding up of this estate, which is so deplorably overdue already.

30. The Receiver will bring the valuation of all properties—including the reversion of lands etc. held for life by Emma Arthurs—up to date as expeditiously as possible, and submit them to the Court at the next hearing after each item becomes available.

The Court will hear any submissions made by interested parties and then will decide the minimum prices to be fixed on each property or group of properties and the best method of disposing of it at the earliest possible date.

Notice calling in any outstanding mortgages must be given forthwith.

31. All solicitors will prepare their bills of costs for services rendered to the estate prior to the 30th June, 1944, and submit them for taxation before a date I will fix to-day, after I have heard Counsel as to their convenience in that matter. This order does not refer to special matters arising as bills of costs with which I have dealt earlier in this decision. The Receiver will pay, or credit, as the case may require, these accounts at the expiration of any period, after the date of the Taxing Master's Certificate, during which an appeal against the said taxation may be lodged.

32. The Registrar and Receiver must retain custody of all books, accounts, correspondence and other exhibits and not allow such articles to leave their custody without an order of the Court pending the completion of the Morter estate.

C. G. LANGLEY,
C.J.

Balderamos :

Asks that period for filing this Bill of Costs may be extended from 15th October until 31st October, 1944.

Application granted.
Friday, 20th October first meeting.
9.30 a.m.

C. G. LANGLEY,
C.J.

In the Supreme Court of British Honduras.

No. 38.

PETITION FOR LEAVE TO APPEAL to His Majesty in Council by Universal Negro Improvement Assn. Inc. by its Attorney L. A. Francis, dated 7th October 1944.

No. 38. Petition for Leave to Appeal to His Majesty in Council by Universal Negro Improvement Association Inc., by its Attorney L. A. Francis, 7th October 1944.

By Order dated the 15th day of October, 1942.

To His Honour CARLETON GEORGE LANGLEY, K.C., Chief Justice of British Honduras.

THE HUMBLE PETITION of UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INC., one of the above-named Defendants, by Lionel Athanase Francis its attorney under seal

SHEWETH that

1. On the 18th day of September 1944 Judgment was given in this Court in the above action against your Petitioner the above-named Universal Negro Improvement Association Inc. whereby certain real and personal estate that had been of the above-named Isaiah Emmanuel Morter and which by the Will of the said Isaiah Emmanuel Morter are the property of your Petitioner was ordered to be sold and otherwise dealt with.

2. Your Petitioner is desirous of appealing to His Majesty in Council in England against so much of the said judgment as decides that—

(1) The real and personal estate that was of Isaiah Emmanuel Morter deceased *of* any part thereof shall be sold and converted into money.

(2) The Receiver shall deal any further with the said real and personal estate.

(3) Your Petitioner is prepared to enter into good and sufficient security to the satisfaction of this Court as required by Section 7 of Chapter 155 of the Consolidated Laws, 1924.

(4) The matter in dispute in the intended appeal is of an amount exceeding $1500.00 in value. The intended appeal from the said judgment involves directly or indirectly claims or questions to or respecting property or civil rights of a value exceeding $1500.00.

YOUR Petitioner therefore humbly prays that leave may be granted to it to appeal to His Majesty in Council from the said Judgment upon its executing or finding security in such manner and in such sum as Your Honour shall direct.

AND your Petitioner as in duty bound will ever pray, etc., etc., etc.

Dated at Belize this 7th day of October, 1944.

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC. by its attorney (under Powers of Attorney, under its Seal dated respectively November 22, 1939 and June 24, 1941),

(Sgd.) LIONEL A. FRANCIS.

It is intended to serve this Petition on

1. The Plaintiff, Ernest Johnston Hofius, Esquire.
2. The Receiver, John Claude Thomson, Esquire.
3. The following Defendants—
   Arthur Balderamos, Esquire, Executor.
   Hubert Hill Cain, Esquire, Executor.
   Woldrich Harrison Courtenay, Esquire, Trustee and Attorney.

No. 39.

In the Supreme Court of British Honduras.

AFFIDAVIT of L. A. Francis in support of Petition, dated 7th October 1944.

No. 39. Affidavit of L. A. Francis in support of Petition, 7th October 1944.

By Order dated the 15th day of December 1942.

I, LIONEL ATHANASE FRANCIS of 11 Pickstock Street in Belize in the Belize District of this Colony, the representative in British Honduras of Universal Negro Improvement Association Inc. and by calling a business manager, make oath and say as follows :—

1. I am the attorney in this Colony of Universal Negro Improvement Association Inc. under a power of attorney dated the 24th day of June 1941 executed under the seal of Universal Negro Improvement Association Inc. and one of November 22, 1939.

2. The statements in the annexed Petition signed by me on behalf of Universal Negro Improvement Association Inc. and filed herein this day are true.

Sworn at Belize aforesaid this 7th day of October 1944 } (Sgd.) LIONEL A. FRANCIS.

Before me,

(Sgd.) A. O. LONGSWORTH,
Registrar General.

This affidavit is filed by the Universal Negro Improvement Association, Inc.

No. 40.

No. 40. Notice of Hearing of Petition, 7th October 1944.

NOTICE OF HEARING OF PETITION, dated 7th October 1944.

By Order dated the 15th day of December, 1942.

Pursuant to Section 5 of Chapter 155 of the Consolidated Laws of British Honduras 1924 NOTICE IS HEREBY GIVEN that the above-named Defendant Universal Negro Improvement Association, Inc., has lodged an application by way of Petition to the Supreme Court of British Honduras dated October 7, 1944 for leave to appeal against so much of the judgment in this action delivered by the said Court on the 18th day of September 1944 as decides that :

1. The real and personal estate that were of Isaiah Emmanuel Morter, deceased, or any part thereof shall be sold and converted into money.

2. The Receiver shall deal any further with the said real and personal estate.

In the Supreme Court of British Honduras.

No. 40. Notice of Hearing of Petition, 7th October 1944, *continued.*

And that the said Petition will be heard on the 17th day of October 1944 at the Supreme Court in Belize at 10 o'clock in the forenoon or so soon thereafter as conveniently may be.

Dated the 7th day of October 1944.

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION, INC.
by its attorney (under Powers of Attorney, under its Seal dated respectively November 22, 1939 and June 24, 1941).

(Sgd.) LIONEL A. FRANCIS.

To The above-named Plaintiff, Ernest Johnston Hofius, and his Solicitors, Messieurs Dragten, Woods & Co.

To The Receiver John Claude Thomson, Esquire, and his Solicitors Messieurs Dragten, Woods & Co.

To The above-named Defendant, Arthur Balderamos and Hubert Hill Cain, Executors.

To The above-named Defendant, Woldrich Harrison Courtenay, Trustee and Attorney.

No. 41. Petition for Leave to Appeal to His Majesty in Council by A. Balderamos and H. H. Cain, 7th October 1944.

No. 41.

PETITION FOR LEAVE TO APPEAL to His Majesty in Council by A. Balderamos and H. H. Cain, dated 7th October 1944.

By Order dated the 15th day of December, 1942.

To His Honour The Honourable CARLETON GEORGE LANGLEY, K.C. Chief Justice of British Honduras.

THE HUMBLE PETITION of ARTHUR BALDERAMOS and HUBERT HILL CAIN of Belize Executors of the said Estate—

SHEWETH—

1. On the 18th day of September 1944 Judgment was given by this Court in Chambers in this matter whereby the Chief Justice (*inter alia*) disallowed certain pecuniary claims and decided certain other matters against the said Executors of the said Estate.

2. Your Petitioners are desirous of lodging an Appeal to His Majesty in Council against so much of the said Judgment of the Chief Justice as is designated in the Notice for leave to Appeal of the date hereof.

3. Your Petitioners are prepared to enter into good and sufficient security to the satisfaction of this Court as required by Section 7 of Chapter 155 of the Consolidated Laws 1924.

4. The matter in dispute in the intended Appeal so far as it relates to property is of an amount exceeding $1,500.00 in value. The intended

Appeal from the said Judgment involves directly or indirectly claims or questions to or respecting property or civil rights of a value exceeding $1,500.00.

YOUR Petitioners therefore humbly pray that leave may be granted to them to Appeal to His Majesty in Council from so much of the said Judgment as aforesaid upon their executing or finding security in such manner and in such sum as Your Honour shall direct.

And Your Petitioners as in duty bound will ever pray etc., etc., etc.

Dated at Belize this 7th day of October 1944.

(Sgd.) ARTHUR BALDERAMOS.
,, HUBERT H. CAIN.

No. 41. Petition for Leave to Appeal to His Majesty in Council by A. Balderamos and H. H. Cain, 7th October 1944, *continued.*

It is intended to serve this Petition on the following persons viz. :— Ernest Johnston Hofius the above-named Plaintiff and Messrs. Dragten Woods & Co. his Solicitors, John Claude Thomson Receiver and Messrs. Dragten Woods & Co. Solicitors for the Receiver, Lionel Francis Attorney for The Universal Negro Improvement Association Inc. and Woldrich Harrison Courtenay Attorney & Trustee of The Universal Negro Improvement Association Inc.

No. 42.

AFFIDAVIT of A. Balderamos and H. H. Cain in support of Petition, dated 7th October 1944.

No. 42. Affidavit of A. Balderamos and H. H. Cain in support of Petition, 7th October 1944.

By Order dated the 15th day of December 1942.

WE ARTHUR BALDERAMOS of Belize Solicitor and HUBERT HILL CAIN of Belize Newspaper Proprietor the above-named Defendants make oath and say as follows :—

1. We are the Executors of the Estate of Isaiah Emmanuel Morter deceased.

2. The Statements in the annexed Petition filed herein this day are true.

Sworn by the said Arthur Balderamos and Hubert Hill Cain at Belize this 7th day of October 1944 Before me,

(Sdg.) ARTHUR BALDERAMOS.
,, HUBERT H. CAIN.

(Sgd.) A. O. LONGSWORTH,
Registrar General.

This Affidavit is filed by Frederick Phillips of Regent Street West, Belize, Solicitor for the Executors of the said estate.

In the Supreme Court of British Honduras.

No. 43. Notice of Hearing of Petition, 7th October 1944.

No. 43.

NOTICE OF HEARING OF PETITION, dated 7th October 1944.

By Order dated the 15th day of December 1942.

Pursuant to Section 5 of Chapter 155 of the Consolidated Laws of British Honduras 1924, NOTICE IS HEREBY GIVEN that the above-named Arthur Balderamos and Hubert Hill Cain Executors of the Estate of Isaiah Emmanuel Morter deceased have lodged an application by way of Petition for leave to appeal against so much of the Judgment of the said Court delivered herein on the 18th day of September 1944 as decided against the Appellants :—

1. To disallow their claim for executors' commission at 5 per centum on the gross value of the Estate of $150,003.01.

2. To disallow the amount of $3,680.00 for accounting expenses.

3. To disallow their claim for further accounting expenses of $40.00 and $360.00.

4. That the Appellants are jointly and severally responsible for any loss in connection with the amount owing by Hubert Hill Cain one of the Appellants to the estate for rent.

5. That the Appellants were dishonest in their dealings with the estate.

6. That the Appellants have dealt dishonestly with the Assets of the estate.

7. That the Appellants through the said Arthur Balderamos did not use an honest discretion in employing Percy Trejo.

8. That the Appellants inserted a false item (No. 57) for $360.00 in the said 16th Estate account and swore to same on 25th November 1942.

9. That the Appellants filed and supported by affidavit an Account which to their certain knowledge was false and fraudulent.

10. That the Appellants claim to commission in the said sum of $7,500.15 was made to cover a deficiency in cash and that the said sum of $7,500.15 had been used by them and should have been available assets in their hands and was in fact not so available.

And that the said Petition will be heard by His Honour the Chief Justice in Chambers on the 17th day of October 1944 at 10 o'clock in the forenoon or so soon thereafter as conveniently may be.

Dated this 7th day of October 1944.

(Sgd.) FREDERICK PHILLIPS,
Solicitor for Arthur Balderamos and Hubert Hill Cain
Executors of the said estate.

To Ernest Johnston Hofius the above-named Plaintiff and Messrs. Dragten, Woods & Co., his Solicitors.

To John Claude Thomson Receiver and Messrs. Dragten, Woods & Co., Solicitors for the Receiver.

To Lionel Francis Attorney for the Universal Negro Improvement Association Inc. and

To Woldrich Harrison Courtenay Attorney and Trustee of The Universal Negro Improvement Association Inc.

No. 44.

JUDGE'S NOTES OF PROCEEDINGS, dated 17th October 1944.

In the Supreme Court of British Honduras.

No. 44. Judge's Notes of Proceedings, 17th October 1944.

17th October 1944.

In the matter of the estate of Emmanuel Morter

Ernest J. Hofius - - - - - - - - Pltff.

and

Balderamos and others - - - - - - - Defts.

Receiver

Dragten

Francis

Cain

Hassock Courtenay

Balderamos

Courtenay

Phillips

Phillips :

Petition of Messrs. Balderamos & Cain taken as read.

Entitled as of right

Ex commission

Allow commission 360
40

Other questions findings of fact.

Phillips :

Suggests $1500 cases for Exors.

Having regard to the costs previously involved and the very heavy record which has to be prepared the Court fixes the maximum of $2500.

One month with liberty to apply.

Should special circumstances arise causing difficulty in obtaining the necessary security.

Mr. Phillips says that the Court has no right to make a conditional period.

Mr. Phillips leaves the Court.

Mr. Lionel Athanase Francis appears in person.

I base my authority on the power dated 24th June, 1941, given as a result of the resolution of the Board of Directors.

Arnold H. Maloney is the Potentate and under Article X Sect. would sign as Chairman of the Board of Directors.

In the Supreme Court of British Honduras.

No. 44. Judge's Notes of Proceedings, 17th October 1944, *continued.*

The Association does not desire to sell more property than is necessary to meet the liabilities of the Morter Estate. This was decided by the Ex. Co. late in 1937, and conforming with that resolution petition was made to Mr. Justice Agar to vest all the properties in the name of the Assn. I am informed that such was done.

There is a local organization here whose interests must be preserved. That preservation would be by operating the residuary estate locally.

In 1937 late the Ex. Co. felt that the value of the residuary estate was considerably less to what it was in 1924, 25, 26.

The Assn. desired to retain the Hotel, Morter House and the North Front St. ppty. Plantation ppties. not to be sold. There are some small ppties. on Wilson St. Another Craig St. Another Victoria St. 10

The reason why the Assn. does not want these ppties. to be sold is because they would be sacrificed.

Apply to Petition as of right, under subsection 2 Chap. 155, the ppties. in question being of $1500. value and upwards.

Mr. Francis submits that all the Assn. ppty. is in hands of the Court and the Assn. should not be called upon to give security.

Dragten :

Sell so much as would be sufficient to cover pay the debts. 20

Mr. Francis :

By that $2500 to be paid, in accordance with the decision of His Majesty's Privy Council or not, as the case may be, by the Receiver from the residuary sum which may become due to the U.N.I.A.

Time does not arise in this case.

Hassock :

Petition on behalf Mr. Courtenay.

$1100 on the Plantation fees.

Other miscellaneous sums which may arise in claims fees by B/C and commercial rates instead of those which were agreed by the parties. 30

$2500.

One month with liberty to apply, as in the case of Mr. Balderamos.

No. 45.

In the Supreme Court of British Honduras.

No. 15. Order Granting Conditional Leave to Appeal to H.M. in Council to Executors, 17th October 1944.

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL to His Majesty in Council to Executors, dated 17th October 1944.

IN THE SUPREME COURT OF BRITISH HONDURAS A.D. 1942.

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

Suit No. 7/1942.

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of the Estate of ISAIAH EMMANUEL MORTER deceased) - - - Defendants

by original action

and

Defendants added by Order dated 16th October 1942

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY and LIONEL FRANCIS as Attorneys of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY as Trustee of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

Dated the 17th day of October 1944.

Before His Honour the Honourable CARLETON GEORGE LANGLEY, K.C., Chief Justice—In Chambers.

ORDER.

UPON READING the Notice herein (under Section 5 of Chapter 155 of the Consolidated Laws 1924) and the Petition for leave to appeal both dated the 7th day of October 1944, and the Affidavit of Arthur Balderamos and Hubert Hill Cain sworn herein on the 7th day of October 1944 and UPON HEARING Mr. Phillips of Counsel for the above-named Defendants Arthur Balderamos and Hubert Hill Cain the Executors of the said estate and Mr. Dragten of Counsel for the above-named Plaintiff and for John Claude Thomson the Receiver herein and Mr. Hassock for W. H. Courtenay and Mr. L. Francis IT IS ORDERED :—

1. That leave to appeal to His Majesty in Council from so much of the Judgment given by this Honourable Court in Chambers, on the 18th day of September 1944 in this matter as is designated in the said Notice for leave to appeal herein be granted to the above-named Defendants Arthur Balderamos and Hubert Hill Cain the Executors of the said estate Upon the condition that the Appellants, the said Arthur Balderamos and Hubert Hill Cain within the period of one month from the 17th day of October 1944, enter into good and sufficient security to

In the Supreme Court of British Honduras.

No. 45. Order Granting Conditional Leave to Appeal to H.M. in Council to Executors, 17th October 1944, *continued.*

the satisfaction of this Court in the sum of Two thousand five hundred dollars for the due prosecution of the appeal and the payment of all such costs as may become payable in this matter in the event of the said Executors not obtaining an Order granting final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the said Executors to pay the costs of the appeal in this matter.

2. And that the costs of this Application be costs in the cause.

Dated the 21st day of December 1944.

By Order.

(Sgd.) A. O. LONGSWORTH,
Registrar General.

No. 46.

ORDER GRANTING LEAVE TO APPEAL to His Majesty in Council to L. A. Francis, the Attorney and Representative of the Universal Negro Improvement Association Inc., dated 17th October 1944.

No. 46. Order Granting Leave to Appeal to H.M. in Council to L. A. Francis, the Attorney and Representative of the Universal Negro Improvement Association Inc., 17th October 1944.

IN THE SUPREME COURT OF BRITISH HONDURAS A.D. 1942.

IN THE MATTER of the estate of ISAIAH EMMANUEL MORTER late of Belize, Planter, Deceased.

Suit No. 7/1942.

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of the Estate of ISAIAH EMMANUEL MORTER) - - - - - Defendants

By original action

and

Defendants added by Order dated 16th October 1942

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY and LIONEL FRANCIS as Attorneys of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY as Trustee of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

Dated the 17th day of October, 1944.

ORDER

Before His Honour the Honourable CARLETON GEORGE LANGLEY, K.C., Chief Justice—In Chambers.

UPON READING the Notice herein (under Section 5 of Chapter 155 of the Consolidated Laws, 1924) and the Petition for leave to appeal, both dated the 7th day of October, 1944, and the affidavit of Lionel Athanase Francis sworn herein on the 7th day of October 1944, and upon hearing the said Lionel Athanase Francis the attorney and representative of the

Defendant above-mentioned Universal Negro Improvement Association Inc. and Mr. Dragten of Counsel for the above-named Plaintiff and for the Receiver, John Claude Thomson, respectively and Mr. Hassock of Counsel for the defendant Woldrich Harrison Courtenay

In the Supreme Court of British Honduras.

IT IS ORDERED—

No. 46. Order Granting Leave to Appeal to H.M. in Council to L. A. Francis, the Attorney and Representative of the Universal Negro Improvement Association Inc., 17th October 1944, *continued.*

1. That leave to appeal to His Majesty in Council, without providing security for costs under Section 7 of Chapter 155 of The Consolidated Laws, 1924, from so much of the judgment given by this Honourable Court in Chambers on the 18th day of September, 1944, in this matter, as is designated in the said Notice for leave to appeal herein, be granted to the said Defendant, Universal Negro Improvement Association Inc.

2. That the costs of this application be costs in the cause.

Dated this 2nd day of January 1945.

A. O. LONGSWORTH,
Registrar-General.

No. 47.

SUMMONS taken out by Executors, dated 16th November 1944.

No. 47. Summons taken out by Executors, 16th November 1944.

BRITISH HONDURAS 1942.

IN THE SUPREME COURT OF BRITISH HONDURAS A.D. 1942.

IN THE MATTER of the Estate of ISAIAH EMMANUEL MORTER late of Belize, Planter, deceased.

Suit No. 7/1942.

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of the Estate of ISAIAH EMMANUEL MORTER deceased) - - - Defendants

By original action

AND

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of the Estate of ISAIAH EMMANUEL MORTER deceased) and UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY and LIONEL FRANCIS as Attorneys of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY as Trustee of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC. - - - Defendants.

By Order dated the 15th day of December 1942.

TAKE NOTICE that you are hereby summoned to appear before the Court in Chambers on Tuesday the 28th day of November 1944 at 10 o'clock in

In the Supreme Court of British Honduras.

No. 47. Summons taken out by Executors, 16th November 1944, *continued.*

the forenoon or so soon thereafter as Counsel can be heard to show cause why :—

1. Final leave to appeal to His Majesty in Council from so much of the Judgment of this Honourable Court, in Chambers, of the 18th day of September 1944 in this matter whereby the Chief Justice (inter alia) disallowed certain pecuniary claims and decided certain other matters against the said Executors of the said Estate as designated in the Notice for leave to appeal herein of the 7th day of October 1944, should not be granted to the above-named Arthur Balderamos and Hubert Hill Cain Executors of the said Estate. 10

2. The time for preparing the Record should not be fixed at three months.

3. The costs of this application should not be costs in the cause.

Dated the 16th day of November 1944.

By Order.

(Sgd.) A. O. LONGSWORTH,
Registrar-General.

To Ernest Johnston Hofius the above-named Plaintiff and Messrs. Dragten Woods & Co., his Solicitors.

To John Claude Thomson, Receiver and Messrs. Dragten Woods & Co., 20 Solicitors for the Receiver.

To Lionel Francis, Attorney for the Universal Negro Improvement Association Inc., and

To Woldrich Harrison Courtenay, Attorney and Trustee of the Universal Negro Improvement Association Inc.

This Summons was taken out by Frederick Phillips of Regent Street West, Belize, Solicitor for the Executors of the said estate.

No. 48.

AFFIDAVIT in support of Summons, dated 16th November 1944.

In the Supreme Court of British Honduras.

No. 48. Affidavit in support of Summons, 16th November 1944.

BRITISH HONDURAS 1942.

IN THE SUPREME COURT OF BRITISH HONDURAS A.D. 1942.

IN THE MATTER of the Estate of ISAIAH EMMANUEL MORTER late of Belize, Planter, deceased.

Suit No. 7/1942.

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of the Estate of ISAIAH EMMANUEL MORTER deceased) - - - Defendants

By original action

AND

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of the Estate of ISAIAH EMMANUEL MORTER deceased)

and

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY and LIONEL FRANCIS as Attorneys of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY as Trustee of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC. - - - Defendants.

By Order dated the 15th day of December 1942.

I, FREDERICK PHILLIPS of Regent Street West, Belize, Solicitor for ARTHUR BALDERAMOS and HUBERT HILL CAIN the executors of the said estate make oath and say as follows :—

1. On the 17th day of October 1944 leave to appeal to His Majesty in Council from so much of the Judgment given by this Honourable Court in Chambers, on the 18th day of September 1944 in this matter as is designated in the Notice for leave to appeal herein was granted to the above-named Arthur Balderamos and Hubert Hill Cain executors of the

In the Supreme Court of British Honduras.

No. 48. Affidavit in support of Summons, 16th November 1944, *continued.*

said estate upon the condition that the appellants, the said Arthur Balderamos and Hubert Hill Cain within the period of one month from the 17th day of October 1944, the date of the hearing of the application for leave to appeal, enter into good and sufficient security to the satisfaction of the Court in the sum of two thousand five hundred dollars for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondents in the event of the said appellants not obtaining an order granting final leave to appeal or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the said appellants to pay the respondents' costs of the appeal.

2. I have been informed by the said Arthur Balderamos and verily believe that the above-named Arthur Balderamos and Hubert Hill Cain, executors of the said estate, have executed a bond for the said amount with surety approved by this Honourable Court and that such bond has been filed in the General Registry, Belize.

Sworn at Belize this 16th day of November 1944 } (Sgd.) FREDERICK PHILLIPS.

Before me,

(Sgd.) A. O. LONGSWORTH,
Registrar General.

This affidavit is filed by Frederick Phillips of Regent Street West, Belize, Solicitor for the said executors.

No. 49. Judge's Notes, 28th November 1944.

No. 49.

JUDGE'S NOTES, dated 28th November 1944.

10 a.m.
7/1942
11/1939
Mr. Thomson
Mr. Dragten, K.C.
Phillips
Balderamos
Cain
Courtenay

Phillips :

Application final leave to appeal on behalf of Balderamos and Cain as Executors of the Estate of Morter, decd.

Final leave granted.

Record in three months. Record printed in England.

Costs in cause.

Mr. Dragten :

Says that " informally " he states that Mr. Francis has asked him to apply for the period of his filing the appeal be three months.

Having regard to Mr. Francis's past record before the Court the Court is not prepared to grant such an informal application.

C. G. LANGLEY.

No. 50.

ORDER GRANTING FINAL LEAVE TO APPEAL to His Majesty in Council to the Executors, dated 28th November 1944.

In the Supreme Court of British Honduras.

No. 50. Order Granting Final Leave to Appeal to H.M. in Council to Executors, 28th November 1944.

IN THE SUPREME COURT OF BRITISH HONDURAS A.D. 1942.

IN THE MATTER of the Estate of ISAIAH EMMANUEL MORTER late of Belize, Planter, deceased.

Suit No. 7/1942.

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors of the Estate of ISAIAH EMMANUEL MORTER deceased) - - - Defendants

By original action

AND

Defendants added by Order dated 16th October, 1942

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY and LIONEL FRANCIS as attorneys of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY as Trustee of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

Dated the 28th day of November 1944.

Before His Honour the Honourable CARLETON GEORGE LANGLEY, K.C. Chief Justice—In Chambers.

ORDER.

UPON READING the Summons herein dated the 16th day of November 1944 and the Affidavit of Frederick Phillips sworn herein on the 16th day of November 1944 and UPON HEARING Mr. Phillips of Counsel for the above-named Defendants Arthur Balderamos and Hubert Hill Cain the Executors of the said estate and Mr. Dragten of Counsel for the above-named Plaintiff and for John Claude Thomson the Receiver herein IT IS ORDERED :—

1. That the above-named Defendants Arthur Balderamos and Hubert Hill Cain the Executors of the said estate have final leave to appeal

In the Supreme Court of British Honduras.

No. 50. Order Granting Final Leave to Appeal to H. M. in Council to Executors, 28th November 1944, *continued.*

to His Majesty in Council from so much of the Judgment given by this Honourable Court in Chambers, on the 18th day of September 1944 in this matter as is designated in the Notice for leave to appeal herein.

2. That the record be prepared within three months from the date of this Order and that it be printed in England.

3. And that the costs of this application be costs in the cause.

Dated the 21st day of December 1944.

By Order,

(Sgd.) A. O. LONGSWORTH,
Registrar General.

No. 51.

SUMMONS taken out by L. A. Francis, dated 7th March 1945.

No. 51. Summons taken out by L. A. Francis, 7th March, 1945.

IN THE SUPREME COURT OF BRITISH HONDURAS, A.D. 1942.

IN THE MATTER of the ESTATE of ISAIAH EMMANUEL MORTER late of Belize, Planter, Deceased.

Suit No. 7/1942.

Between ERNEST JOHNSTON HOFIUS - - - Plaintiff

and

ARTHUR BALDERAMOS and HUBERT HILL CAIN (Executors ot the Estate of ISAIAH EMMANUEL MORTER) - - - - - - Defendants

By original action

and

Defendants added by Order dated 16th October 1942

UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY and LIONEL FRANCIS as Attorneys of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

and

WOLDRICH HARRISON COURTENAY as Trustees of the said UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION INC.

By Order dated the 15th day of December 1942.

TAKE NOTICE that you are hereby summoned to appear before the Court in Chambers on Tuesday the 13th day of March 1945 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard to show cause why Pursuant to the Notice of Appeal herein dated the 7th day of October 1944 by the Defendant the said Universal Negro Improvement Association Inc.—

1. Final leave to appeal to His Majesty in Council from so much of the Judgment of this Honourable Court of the 18th day of September 1944 in this matter as decided that

1. The real and personal estate that were of Isaiah Emmanuel Morter deceased or any part thereof shall be sold and converted into money,

2. The Receiver shall deal any further with the said real and personal estate,

In the Supreme Court of British Honduras.

No. 51. Summons taken out by L. A. Francis, 7th March 1945, *continued.*

should not be granted to the said Defendant Universal Negro Improvement Association Inc. without providing security for costs under Section 7 of Chapter 155 of the Consolidated Laws 1924.

2. The time for preparing the Record should not be fixed at three months.

3. The costs of this application should not be costs in the cause.

Dated the 7th day of March 1945.

By Order.

A. O. LONGSWORTH,
Registrar General.

To Ernest Johnston Hofius the above-named Plaintiff and Messrs. Dragten Woods & Co., his Solicitors

To John Claude Thomson, Receiver and Messrs. Dragten Woods & Co., Solicitors for the Receiver

To Woldrich Harrison Courtenay, Attorney and Trustee of the Universal Negro Improvement Association Inc. and

To Frederick Phillips, Solicitor for Arthur Balderamos and Hubert Hill Cain, Executors of the Estate of Isaiah Emmanuel Morter deceased.

This Summons was taken out by Lionel Francis of North Front Street, Belize, Attorney for the Universal Negro Improvement Association, Inc.

No. 52.

JUDGE'S NOTES, dated 13th March 1945.

No. 52. Judge's Notes, 13th March 1945.

13th March 1945.

Dragten
Thomson Receiver
Francis
Courtenay
Hassock

Mr. Balderamos, Mr. Phillips & Mr. Cain were notified but have not appeared.

Final leave to appeal.

Three months to prepare the Record.

Costs of Courtenay waived.

Adjourned until 10 a.m. to-morrow Wednesday morning on account of the absence of Messrs. Balderamos & Phillips.

C. G. LANGLEY,
C.J.

In the Supreme Court of British Honduras.

No. 53.
Judge's Notes, 14th March 1945.

No. 53.

JUDGE'S NOTES, dated 14th March 1945.

14th March 1945.

Mr. Dragten
Francis—App.
Phillips—Balderamos & Cain
Balderamos
Cain
Thomson

Phillips

Appears under protest.

The process not a procedure of the Court.

I did receive the summons from Mr. Francis but did not consider it necessary to attend.

Period fixed in accordance with subsection 7 (*b*) Chap. 155 extended from 28th Feb. 1945 to 30th June 1945 in the case of appeal by Mr. Balderamos & Cain for the despatch of the record to England.

The same extension of Mr. Francis appeal to 30th June 1945.

C. G. LANGLEY,
C.J.

No. 54.
Reasons for Judgment, 22nd March 1945.

No. 54.

REASONS FOR JUDGMENT, dated 22nd March 1945.

(The printing of this document is objected to by the Executors.)

Appeal to His Majesty's Privy Council by Arthur Balderamos and Hubert Cain.

To :
The Registrar General,
Supreme Court,
Belize.

Sir,

In accordance with the provisions of section 17 of Chapter 155 of the Consolidated Laws, 1924, the following reasons for the interim judgment given by me on the 18th September, 1944 in the consolidated suit Ernest Johnstone Hofius and Arthur Balderamos and Hubert Hill Cain (Executors of the estate of Isaiah Morter, deceased) and the Administration action (11/1939 and 7/1942) Universal Negro Improvement Association Inc. *vs.* Executors of the said estate, are communicated to you.

2. Before this appeal can be considered, it is necessary that all the above litigation should be viewed in its proper perspective and I therefore outline the salient points of its history which extends to a period of over twenty years.

The testator died on the 7th April 1924, having executed a Will dated the 15th February 1924. This document was prepared by Arthur Balderamos (Barrister-at-law of England), Solicitor in this Colony. Arthur Balderamos and Hugh Cain were appointed executors.

The Executors filed their petition for probate in this Court on the 28th April 1924 and Probate was granted to them on the 8th September 1924.

Copy of the Will is filed in these papers. The testator left the bulk of his money away from his family and many caveats were entered. Two appeals reached the Registrar of His Majesty's Privy Council, culminating in final judgment delivered on the 15th August 1935.

The Executors did not file this judgment in this Court until four years later on the 20th June 1939, but continued to administer the estate and draw their fees for doing so. Mr. Cain, for no good reason connected with the estate, and in spite of receiving fees as executor during that period, lived rent free in a house leased for his sole convenience.

The principal issue at the final appeal to the Privy Council was which of several bodies incorporated in the United States of America under the same style was the true beneficiary under the terms of this Will. That was settled in 1935.

Being dissatisfied because the Executors were holding up the final settlement of this estate, the U.N.I.A. Inc. commenced an action by way of Originating Summons on the 21st June 1939.

On the 14th September 1939, the late Sir Arthur Agar, Chief Justice, ordered the Executors to file an account of their dealings and hand over the residue of the real and personal estate to the U.N.I.A. Inc. or their representative on or before the 29th September 1939, on condition that the U.N.I.A. Inc. should execute a bond to secure the repayment of whatever sums which might become payable in respect of the estate debts, which the U.N.I.A. Inc. had undertaken to pay from the monies handed over to them by the Executors. This bond was filed.

Pausing here, it should be noted that the handing over of the real property was contrary to the terms of the Will, which ordered the sale of it and the payment of the moneys realised to the U.N.I.A. Inc. for the African Redempton Fund.

This latter fund was intended to raise armies etc. to conquer the continent of Africa and form it into a nationalistic Negro State.

I assumed office as Chief Justice of this Colony on the 7th December 1940 and this litigation was first brought before me on 7th March 1941, on an appeal from the Taxing Master on a Bill of Costs filed by Mr. Balderamos. My judgment in that matter is embodied in my present judgment, because it is necessary to show how these Executors were dealing with the estate.

I did not feel justified in interfering with the order made by my predecessor at that time, although I was of opinion that it was contrary

In the Supreme Court of British Honduras.

No. 54. Reasons for Judgment, 22nd March 1945, *continued.*

to the terms of the Will. An opinion with which Mr. Phillips concurs as his submission is that where a will directs that real property shall be realised, it must be treated as so converted.

On the 2nd October 1942, Mr. E. J. Hofius filed an originating summons as an interested person (creditor of the estate) for payment of an account originally $941.79, against which the Executors had paid some $325 between the 4th November 1939 and 6th December 1941. The accuracy of this claim had never been questioned. There were always ample assets of the estate from which either the Executors or the U.N.I.A. Inc. —after they received some of the estate assets—could have settled this claim.

As both the Executors and the U.N.I.A. Inc. had failed to carry out their duties and obligations and duties under the Will and the Order of the Court respectively, on the 17th October 1942 the Court assumed the administration of this estate by appointing a Receiver, and at the application of the Executors joined the U.N.I.A. Inc. Messrs. W. H. Courtenay and L. Francis, who appeared to be their attorneys, and the former their Trustee.

The final order was made on this on the 21st December 1942.

The affidavits—and documents annexed—of Mr. Courtenay dated the 18th December 1942 and Mr. Francis dated the 18th January 1943 show clearly how unfit those persons were to clear up the outstanding matters of this estate.

I order them to form part of the Record.

On the 29th September 1943, the Receiver submitted his report on the estate accounts and asked for directions for the payment of certain debts of the estate. The Court gave verbal directions to make the more urgent payments—which should have been paid years before and about which there was no question—and reserved judgment on the many difficult problems which arose on the accounts as a result of the maladministration disclosed by the Receiver, and also the statutes governing them.

Owing to the necessity of sending to England for several authorities which had to be studied and the very heavy research necessary for me to assimilate the great bulk of documents and accounts involved in these several actions, the interim judgment from which this appeal is now lodged could not be delivered until the 18th September 1944.

I had some hesitation in granting leave to appeal from an interim judgment as obviously it would seem ineffectual to incur the expense involved in such an appeal on a matter which has not been fully dealt with by the Court. The investigation of the accounts has not been completed. (See J, para. 6 (A).)

Subsection 2 (*a*) of the Privy Council Appeals Ordinance, Chapter 155, Consolidated Laws, 1924, provides an appeal as of right from final judgments in the first five lines, but the remainder, which is additional, seems to give that right also where the appeal involves directly or indirectly, property of $1,500 and upwards. I felt the matter was taken out of my discretionary powers. I should certainly not have granted leave to appeal at this stage had I not formed that opinion.

3. Turning now to Mr. Phillips' submissions on behalf of the Executors :—

(1) Firstly, he submitted that it was within the discretion of the Court to grant a commission of 5 per cent. on the whole value of the estate, whether realised, or not. As there is no statutory authority for this commission, which has grown up into a practice of the Court, I agreed with this submission of the Court's discretion. At one time, this Colony was closely connected with Jamaica, and possibly the practice originated in that way. Executors receive 5 per cent. for moneys actually coming into their hands. This practice has been established for over 100 years. These Executors paid themselves at this rate for nearly 20 years.

I dealt with this matter in my judgment, paras. 5 (A)–6 (1) (F).

In my opinion the Court has a discretion controlling these payments to Executors, but is not entitled to vary the long established practice without good and sufficient reasons.

This submission was not made until the Executors were ordered to hand over the assets of the estate. The Bank Pass Books produced disclosed that there were not sufficient funds in the Estate Bank Account to pay the very large item of $7,500.15, which the Executors have sworn they paid to themselves on the 16th October 1942.

In my opinion Mr. Phillips has raised his client's submission through a perverted sense of loyalty to Mr. Balderamos, with whom he has been working in these Courts for over thirty years; the object of this appeal being to put off the day when the Court will be in a position to hand over the case to the Crown for the purposes of a criminal investigation.

(2) *Accounting Expenses.* (Judgment para. 7.)

At the end of sub-para. 7 (5), I said that I should record no decision on this item until the full facts of the matter were available, therefore to say that I disallowed it is inaccurate.

(3) *Disallowance of* $40 *and* $360 *alleged payments to Mr. Trejo.* (Judgment para. 8.)

These items are shown in the Estate account filed by the Executors in the Probate Court as payments to Mr. Trejo on the 16th October 1942. In my opinion they were not paid to Mr. Trejo and were entered for the sole purpose of reducing the deficiency of cash which should have been in the hands of the Executors and available for them to hand over with the other estate assets in 1939.

Mr. Trejo was not explicit on the $40 item, but denied on oath having received the $360, which the Executors, also on oath, had said they had paid to him. I accepted the evidence of Mr. Trejo.

Mr. Trejo had been paid his salary annually by cheque for many years. No cheque or receipt was produced for these items and there was no evidence of a cash transaction.

In my opinion it is an affront to the Court for the Executors to appeal against this disallowance.

(4) *Arrears of rent due from Mr. Cain.*

The executors were parties to the continued renting of a leased property in which Mr. Cain lived. There was no question of his residence there being

In the Supreme Court of British Honduras.

No. 54. Reasons for Judgment, 22nd March 1945, *continued.*

necessary for his work as Executor. The rent paid by the Executors and other outgoings constituted a loss to the estate even when Mr. Cain paid the inadequate rent they fixed as due from him. He paid for many years and then fell into arrear.

Mr. Balderamos was in charge of the cash of the estate, and, well knowing that Mr. Cain was heavily in arrear with his rent due to the estate, regularly made substantial payments of his 5 per cent. commission, without any attempt at making a set off.

In my opinion these circumstances showed *prima facie* evidence of a conspiracy to defraud the estate, as Mr. Cain is not in a financial position to meet this debt. Even if that was not proved, obviously, they were jointly and severally responsible financially to the estate for this fraudulent arrangement.

This happened several years before any attempt was made to credit themselves with the commission on the whole estate property.

(5) *My statement that these Executors were dishonest, and were dishonest in their dealings with the assets of the estate.*

The circumstances set out in my judgment provided ample justification for my statement that I should hand over the papers and accounts to the Crown Law Officers for criminal investigation. I did not take that step at the time I delivered my interim judgment because the civil investigation of the Executors' accounts by the Receiver was not completed to my satisfaction.

In my opinion, it is dishonest for Executors fraudulently to file a false affidavit in the Probate Registry.

Only a jury can find them guilty of that, but on such substantial documentary evidence, I felt, and still feel, that I was justified in describing them and these transactions as dishonest, and because of that, saying I should hand the matter to the Crown Law Officer to deal with.

(6) *That Mr. Balderamos did not use an honest discretion in employing Mr. Trejo.*

Mr. Balderamos was accountant in a solicitor's office for many years before becoming a Barrister-at-law. Mr. Trejo was his head clerk, but was paid a nominal salary as such. Any clerk could have kept the accounts, and as I said, in asking the Receiver to investigate the matter further, the real question of how much should be charged for clerical duties depended on the bulk of the transactions, many of which were trivial.

I am of opinion, that the evidence indicated that Mr. Balderamos was charging this estate with an undue proportion of the salary of his head clerk, in order to avoid paying him a proper salary for the services he rendered him in his practice.

(7) I need not comment here on the last three grounds of appeal raised by Mr. Phillips as they have been dealt with already.

(Sgd.) C. E. LANGLEY,
Chief Justice.

23rd March, 1945.

No. 55.

ORDER extending time for compiling and despatching Record to England, dated 11th September 1945.

In the Supreme Court of British Honduras.

No. 55. Order extending time for compiling and despatching Record to England, 11th September 1945.

Before His Honour HAROLD JOHN HUGHES, Acting Chief Justice In Chambers.

ORDER.

UPON HEARING Mr. Phillips of Counsel for the above-named Defendants Arthur Balderamos and Hubert Hill Cain and Mr. Dragten of Counsel for the above-named plaintiff

IT IS BY CONSENT ORDERED

That the time for compiling and despatching the record to England be extended from the time fixed by the Order dated the 28th day of November 1944 to the 15th day of September 1945.

Dated the 11th day of September 1945.

A. O. LONGSWORTH,
Registrar-General.

No. 56.

LETTER, Registrar of Privy Council to Registrar of Supreme Court, dated 3rd April 1946.

No. 56. Letter Registrar of Privy Council to Registrar of Supreme Court, 3rd April 1946.

Privy Council Office,
Downing Street,
London, S.W.1.
3rd April, 1946.

Sir,

Balderamos and others v. *Thomson.*

Privy Council Appeal No. 82 of 1945.

I have to refer to your letters of the 12th September, 1945 and the 3rd January, 1946 in the above matter.

From the Orders granting leave to appeal to the Privy Council, there appear to be two appeals here, one arising from Action No. 11 of 1939 and the other from Action No. 7 of 1942. Both actions were apparently decided by one judgment of the Supreme Court, but I cannot find any Order consolidating the actions or the two appeals here. I shall be glad to know whether any such Consolidation Order has in fact been made.

It is desirable that all evidence referred to by the Chief Justice should be before their Lordships' Board on the hearing of the appeals and I should therefore be glad if you would send me the petitions for leave to appeal with the grounds of appeal and all evidence, oral or documentary, to which the Chief Justice refers either in his judgment delivered on the

No. 56. Letter Registrar of Privy Council to Registrar of Supreme Court, 3rd April 1946, *continued*.

18th September, 1944, or in his "Reasons for Judgment" dated the 23rd March, 1945, which is not contained in the transcript which you have already sent.

At present we can only infer who are the parties to the appeals from the Orders granting leave to appeal, and it will accordingly be helpful if you would furnish a statement of parties to the two appeals before the Board.

May I also remind you that I have not yet received the certificate required by Rule 11 of the Judicial Committee Rules, 1925.

I am, Sir,

Your obedient Servant,

(Sgd.) J. D. WATERS,
Registrar of the Privy Council.

The Registrar-General,
General Registry,
Belize, British Honduras.

No. 57. Letter Registrar of Supreme Court to Registrar of Privy Council, 12th October 1946.

No. 57.

LETTER, Registrar of Supreme Court to Registrar of Privy Council, dated 12th October 1946.

BRITISH HONDURAS.

GENERAL REGISTRY,
BELIZE.

No.

12th October, 1946.

Sir,

Balderamos and others vs. *Thomson*

Privy Council Appeal No. 82/1945.

I have the honour to acknowledge your letter dated the 3rd April 1946. I regret that it has not been answered before. Your letter was long delayed in transit here, and shortage of staff has caused further delay in preparing the records you have asked for in that letter.

2. The Order of the Court adding U.N.I.A. Inc. Francis and Courtenay parties in action No. 11–1939 to those of action No. 7–1942 was made by the Court on the 16th October 1942. (See para. 3 in No. 10 p. 20 of the Record) by consent.

From that date onwards the two actions were consolidated, and, in effect the Court resumed administration of the Morter Estate. Mr. Thomson was appointed Receiver on the 15th December 1942. (See Order in No. 13. p. 48.) and now is the sole respondent in this appeal.

3. The defendants Balderamos and Cain, and later Francis—as Attorney for the U.N.I.A. Inc.—petitioned, as of right, for leave to appeal and their appeals, although separately filed, constitute a combined appeal against the same judgment.

No. 57. Letter Registrar of Supreme Court to Registrar of Privy Council, 12th October 1946, *continued.*

4. With reference to para. 3 of your letter, I am forwarding herewith the following documents—

(1) *Petition for leave to appeal*—

		Page
(A)	No. 33. Judgment on appeal from taxation of Bill of Costs	143
(B)	No. 34. Petition by U.N.I.A. Inc. by its Attorney L. A. Francis	159
(C)	No. 35. Affidavit of Francis in support	161
(D)	No. 36. Notice of Hearing	162
(E)	No. 37. Petition of Balderamos and Cain	164
(F)	No. 38. Their Affidavit in support	166
(G)	No. 39. Notice of Hearing	167
(H)	No. 40. Judges' Notes dealing with these appeals	..169–71
(I)	No. 41. Certificate asked for in letter.	
(J)	No. 42. Certificate of these proceedings.	

(2) *Judgment 18th September* 1944. (See No. 18 pp. 67–90.)

(A) Two previous appeals to Privy Council No. 26 of 1927.
No. 33 of 1932.

Final Judgment of Privy Council dated 18th August 1935.

The above form part of the Privy Council Records.

(B)	para. 5 (2) (A) p. 67	Testator's Will.	No. 23 p. 95.
(C)	6 (1) (A) p. 69	16th Annual Account	24 p. 96.
(D)	8 (1) (B) p. 75	Trejo items 56 and 57.	24 p. 101.
(E)	p. 76	Evidence of Balderamos 11th October 1943 under examination of Mr. Phillips under heading "Book-keeper and General Clerk."	11 p. 26.
		Evidence of Percy Trejo 13th October 1943 and further evidence Balderamos	p. 27.

(3) *Reasons for Judgment.* (See No. 25 pp. 104–107.)

(A)	Para. 2 p. 104.	Testator's Will. See 4 (2) (B) above for reference.
(B)		Two appeals. See 4 (2) (A) above for reference.
(C)	106.	Action No. 7–1939.
(D)	105.	Reference to African Redemption Fund and Universal African Legions in Appeal No. 26. 1927 Ex. No. 24. pages 28 & 49. See Sir H. K. M. Sisnett's judgment pp. 85–88.
(E)	105.	Appeal on Bill of Costs. See 4 (1) (A) above for reference.
(F)		Hofius No. 11—1942.
(G)		Order 16th October 1942. See para. 2 above for reference.

No. 57. Letter Registrar of Supreme Court to Registrar of Privy Council, 12th October 1946, *continued.*

(H) Para. 2. p. 105. Final Order 15th Dec. 1942. No. 13 p. 48.
(I) Affidavits of Courtenay & Francis. See Nos. 26–92 pp. 106–131.
(J) Queries of Receiver 29th Sept. 1943. No. 15 p. 52.
(K) 106. Item $7,500.15. Executors. No. 24 p. 102.
(L) Item $40. and $360. Trejo. No. 24 p. 101.

(B) & (D) above form part of Privy Council Records—Appeal No. 26 of 1927.

5. With reference to para. 3 of your letter.

In amplification of the history of this litigation set out in Sir Carleton Langley's "Reasons for Judgment" (See No. 25 p. 104) the present position is that the two actions (i.e. Nos. 11/1939 and 7/1942) were combined.

Mr. Hofius, the plaintiff in the latter action was a judgment creditor of the Morter Estate who has now been paid in full, and that action is in effect terminated as far as he is concerned. Mr. Thomson as Receiver of the Morter Estate is sole respondent.

Before Mr. Hofius could be paid it was necessary to consolidate the two proceedings and to reassume administration of the Morter Estate. A Receiver was appointed to be vested with the real estate involved, in order to carry out the provisions of the Will. The Executor and the Company had failed to do this. The validity of the claim made by Mr. Hofius for goods supplied to the estate was not questioned by anybody.

Finally after the interim judgment of the 18th September 1943 was delivered Mr. Courtenay did not pursue his appeal. Mr. Hofius and Mr. Courtenay therefore, in any event, would not appear to be involved in any question of costs.

Therefore there remained two groups of the defendants—with separate grounds of appeal—firstly, the Executors Balderamos and Cain, and secondly, the principal beneficiary, the U.N.I.A. Inc., by L. A. Francis, who is alleged to be the Attorney of that Company.

With reference to paragraph 4 of your letter, I regret that I omitted to enclose the certificate required by Rule 11. I now enclose it. (No.–p. 172.)

7. I hope this letter will make the position clear. Should any other matter arise please let me know and I will do my best to deal with it.

8. This letter and its enclosures has been shown to the parties.

I have the honour to be,
Your obedient servant,
(Sgd.) ————————
Registrar, Supreme Court, British Honduras.

EXHIBITS.

Exhibits.

No. 1.

Exhibit 1. Will of Isaiah Emmanuel Morter, 15th February 1924.

Will of Isaiah Emmanuel Morter, dated 15th February 1924.

BRITISH HONDURAS.

THIS IS THE LAST WILL AND TESTAMENT of me ISAIAH EMMANUEL MORTER of Belize Planter. I hereby revoke all other Wills and testamentary dispositions heretofore made by me and I appoint Arthur Balderamos of Belize Barrister-at-Law and Hubert Hill Cain of Belize Newspaper Proprietor Executors and Trustees of this my Will. After payment of all my just debts funeral and testamentary expenses I devise my two lots of land in Frederick's Alley and my banks on the left hand ascending the Belize River to Emma Arthurs for the term of her natural life and after her death I direct my said Executors and Trustees to sell the same and pay the net proceeds over to the Parent Body of the Universal Negro Improvement Association for the African Redemption Fund. I direct my said Executors and Trustees as soon as possible after my death to call in all monies outstanding under Mortgages or otherwise and also to sell and convert into money all my real and personal estate wheresoever and whatsoever which are not specifically devised or bequeathed for the purpose of paying out the same as hereinafter directed :—

(1) For payment of all my just debts funeral and testamentary expenses and to expend such sum of money for the erection of a Tombstone as my executors shall deem fit.

(2) I bequeath to Maria Estrada the wife of Solomon Estrada the sum of five hundred dollars.

(3) I bequeath to Mary Ann Ciego the sum of Five hundred dollars.

(4) I bequeath to Isabella Lawrence Spinster a trained Nurse lately of New York but at present in Belize the sum of Six thousand dollars, and her passage to New York or Trinidad to be paid by my said Executors and she be allowed to remain in my dwelling house in Barrack Road for a reasonable time after my death.

(5) I bequeath to my Executors and Trustees the sum of Three thousand dollars to be deposited by them at a Bank in Belize for the benefit of my Sister Susan Perry and the amount to be paid out to her by monthly instalments of sixteen dollars on the written order of my said Executors and Trustees. If she should die before the Three thousand dollars is exhausted then the balance left over must be paid to the Parent Body of the Universal Negro Improvement Association for the African Redemption Fund.

(6) I bequeath to Emma Arthurs the sum of One thousand five hundred dollars and twelve head of cattle.

(7) I bequeath to my wife Ann Rebecca Morter the sum of Twenty five dollars. After all my directions are carried out I give devise and bequeath the residue of my real and personal estate wheresoever and whatsoever to the Parent Body of the Universal Negro Improvement

Exhibits.

Exhibit 1. Will of Isaiah Emmanuel Morter, 15th February 1924, *continued.*

Association for the African Redemption Fund. But should the residue exceed the amount of Fifty thousand dollars net then I direct my Executors and Trustees to pay a further sum of Two thousand dollars or as near thereto as possible out of the said residue to the said Isabella Lawrence. I declare that the said Arthur Balderamos shall be entitled to receive all the usual professional charges and emoluments notwithstanding his acting as one of my Executors and Trustees.

IN WITNESS whereof I have set my hand to this My Last Will this fifteenth day of February one thousand nine hundred and twenty-four.

I. E. MORTER.

SIGNED by the within-named Testator and acknowledged by him to be his last Will and Testament in the presence of us, present at the same time, who at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

PERCY TREJO,
Belize Planter.

E. A. BURGESS,
Belize Clerk.

Exhibit 2. Judgment on Appeal from Taxation of Costs, 14th July 1941.

No. 2.

Judgment on Appeal from Taxation of Costs, dated 14th July 1941.

BRITISH HONDURAS 1924.

IN THE SUPREME COURT.

Probate Side.

IN THE GOODS of ISAIAH EMMANUEL MORTER, Deceased, of Barrack Road, Belize, Planter.

BILL OF COSTS

payable by Arthur Balderamos and Hubert Hill Cain, Executors of the Estate of Isaiah Emmanuel Morter, deceased, to Arthur Balderamos, Solicitor to the Executors of the said Estate, and the Universal Negro Improvement Association, Incorporated, Interveners.

Before dealing with the issues arising on this summons it is necessary to ascertain the precise position of the parties involved and their respective relationships with each other.

This is an appeal from the decisions of the Taxing Master in connection with a Bill of Costs—hereinafter called the " Bill," of Mr. Balderamos—hereinafter called the " solicitor "—for services rendered by him as solicitor to the estate of the late Isaiah Emmanuel Morter (hereinafter called " the said estate " and the " testator " respectively). The testator died on the 7th April 1924.

Exhibits.

Exhibit 2. Judgment on Appeal from Taxation of Costs, 14th July 1941, *continued.*

By his Will, dated the 15th February 1924—hereinafter called the said Will—the testator appointed the solicitor and Mr. Hubert Hill Cain—hereinafter called jointly the "executors"—to be his executors. Probate of the said Will was granted on the 8th September 1924.

The Universal Negro Improvement Association Incorporated—hereinafter called the "appellants"—a foreign corporation, intervenes in this matter as an interested party whose residuary interests in the estate give them a right to do so, under the provisions of Section 39 Solicitors Act 1843 (6-7 Vic. c. 73).

The position of the parties is now clear.

Mr. Courtenay on behalf of the appellants submitted that this summons was rightly addressed to the solicitor personally, and that the difference in heading of the said Bill was irrelevant to this summons.

The solicitor submitted that as this summons constitutes an appeal from the decision of the Taxing Master on matters contained in the Bill, the executors should have been substituted for his personal description in the heading of the summons.

As I understand submissions of Counsel, the solicitor, of his own volition, applied for taxation of the bill. There was no suggestion that his co-executor raised that issue. He gave notice of the taxation also, to the appellants and provided them with a copy of his bill. He need not have taken this action but, in the circumstances, probably it was prompted by an intelligent anticipation of an application from them directly to the Court. His action had the virtue of reducing the costs of a separate application from the appellants to be paid from the estate funds and therefore was in favour of the estate.

The fact that the appellants were introduced into this matter before the Court, by the solicitor, does not alter the fact that originally they were outside the position of the solicitor submitting his account for personal services to the executors of the said estate.

The Court is of opinion that each of the parties should be included in the heading of the summons in the several capacities described above and orders accordingly.

Mr. Courtenay objected to the presence of Mr. Cain at the hearing of this summons. Having regard to the fact that Mr. Cain is one of the executors of the said estate, and, especially to the fact that he alone has no conflicting interests in the issues under consideration, the Court was of opinion, that he had every right, both legal and equitable to be present at the determination of the issues arising on expenditure payable from the estate funds for the administration of which he is personally responsible. The Court overruled that objection and Mr. Cain attended all hearings.

It is necessary to examine very closely the terms of appointment of the solicitor, because where a solicitor is appointed as executor he is not allowed to take profit costs from the estate of which he is in charge, unless special authority to do so is contained in the testamentary document creating his appointment (*Lincoln* vs. *Windsor* (1851) 9 Hare 158). This restriction is one aspect of the imperative principle enforced by the Courts that no

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Exhibit 2. Judgment on Appeal from Taxation of Costs, 14th July 1941, *continued.*

trustee, without the very clearest authority to do so, shall derive any pecuniary benefit from his office, and, that he must account in the Trust Funds for all profit derived therefrom if he has not that authority. How strict this supervision of the Court is in this matter is shown by the case—and the cases cited therein—*In re Fish Bennett* vs. *Bennett* (1893) L.J. (N.S.) 62 Chan. Div. p. 977).

The terms of appointment used in the said Will are—

> " I declare that the said Arthur Balderamos shall be entitled to receive all the usual professional charges and emoluments notwithstanding his acting as one of my executors and trustees."

As I understood him, Mr. Balderamos submitted that the Court should interpret the inclusion of the word " emoluments " to mean that—in addition to the payment of his professional fees—he should be paid as a solicitor, for all business transacted by him in connection with the estate of whatever kind. That is business which might have been performed, or would necessarily have been performed, in person by an executor not being a solicitor.

It would require, in my opinion, very much clearer words than those in the above *clause* to create such a profitable situation for the solicitor. (*Chalinder and Herington* (1907) 1 Chan. p. 58.)

The Court holds that, under the terms of the Will, the solicitor is entitled to fees in respect of services performed by him in which he gave more than an unqualified executor could have given.

Before proceeding further there are two aspects with which I wish to deal.

Firstly, during the administration of this estate several suits and actions have been conducted in connection therewith by the solicitor, who knew of, and acted upon, the well-established practice that a solicitor should submit his account at the termination of such suits or actions. That shows that the solicitor was discriminating between such business and miscellaneous business.

Secondly, it is the duty of a solicitor to deliver a cash account of his receipts and payments for and on behalf of his clients to the Taxing Master at the time any taxation takes place. (See Bannher and Porter, 1921 Ed., pp. 945–7 and the many cases cited therein.)

That cash account must be rendered because it is essential that the Taxing Master should have all material information before him during the taxation.

In this case, it appears from the 15th Annual Statutory Account that all disbursements made in respect of the miscellaneous business shown in the bill, during the relevant period (with two small exceptions to be mentioned later), were paid from moneys in the hands of the executors, as such.

That cash account for the period 1st January 1929 to 21st October 1940 should show cash transactions in respect of moneys of the said estate received and disbursed by the solicitor in his capacity as such. That is

such moneys of the said estate as have passed through his hands as solicitor, separating them from moneys which may have passed through his hands, jointly or severally, as executor of the said estate.

If moneys which should have been passed through the estate accounts, in fact passed through his hands as solicitor, they should be shown clearly in the cash account, and he is responsible for them to the estate, in his capacity as a solicitor.

The principle governing these transactions is that each transaction has its separate identity and must be accounted for precisely in relation to the ownership of the accounts to which it may belong.

The Taxing Master should have had before him this precise data upon which he would have been in a position to base his review of the fees and disbursements charged in the bill under taxation.

Although this cash account was not before the Taxing Master at the time of taxation it is desirable that the Court record should be completed to date and the Court will order that it be filed.

It is of importance that the exact amount of the estate funds in the hands of the solicitor as such should be ascertained, because such monies may be subject to his general lien. Such a lien, however, would attach only to monies, or other assets, of the estate lawfully in his personal custody as solicitor, and not to such assets in the estate accounts, or which should have been therein, over which he may have sole or joint control as an executor of the said estate.

Passing now to the employment given to the solicitor and his remuneration, as such, for services rendered, apart from actions.

The solicitor submitted his first Bill of Costs for services rendered to the said estate during the period 7th April to 31st December 1928. It should be noted, in passing, that at the time this Bill was taxed and paid from the funds of the said estate, the distribution of the estate was still in issue. That state of affairs did not prevent that settlement, then, and need not have interfered with the settlement of accounts had they been submitted more regularly. The solicitor lodged the Bill, now in issue, for taxation of the 19th August 1940. This Bill covers the period from 1st January 1929 to 21st October 1939. Taxation commenced on the 23rd August 1940 and continued intermittently until the 8th January 1941. The Taxing Master eventually signed his certificate on the 28th February 1941.

It may be of use to note that this Court ordered the executors to hand over the residuary estate to the Appellants on the 14th September 1939, in compliance with a decision of His Majesty's Privy Council, dated the 13th August 1935, which was not filed in this Court until the 28th June 1939.

Mr. Courtenay has contended that some 450 odd items on the Bill are statute barred by the provisions of section 32 Limitations of Actions Ordinance, Chapter 188 Consolidated Laws 1924 hereinafter called " Chapter 188." This legislation compares with the English Act 21 Jas. 1, Chap. 16, p. 3.

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Exhibit 2. Judgment on Appeal from Taxation of Costs, 14th July 1941, *continued.*

The first aspect of that submission was that the Taxing Master should have dealt with this issue at taxation.

A Taxing Master in this Colony is not vested with the same powers at a taxation as a similar official in England would be.

In every case in England, taxation is by order of a Court. That order constitutes directions in the matter for the Taxing Master. In addition, there are Masters' Rules, intended to create uniformity of practice, but which have no binding effect on the Taxing Master's discretion : and also the guidance and control of the Common Order.

In British Honduras taxation is controlled by Order 61 Supreme Court Rules 1926. Rule 17 of that order provides that Bills may be taxed without any special order of the Court.

Before this Bill could be brought before an English Taxing Master the question as to some of the claims being statute barred would have been raised before, settled and included by the Court in its order for taxation.

It is therefore necessary for this Court to decide how far the jurisdiction of the Taxing Master in this Colony extends in dealing with points of law arising at a taxation.

The English Taxing Masters, in addition to the wide experience they gain from the bulk of the work brought before them, which in itself is highly specialized, all hold legal qualifications. Therefore the English cases, dealing with the decisions and appeals therefrom, of Taxing Masters in that country provide little guide, and must be very carefully examined before any principle is taken from them to govern matters arising in this Colony.

The Court is of opinion that, in the circumstances of this Colony, the Taxing Master was correct when he decided to tax these alleged statute barred items. He decided whether they were due, and rightly left the issue as to whether they were payable to be decided by the Court. He might have referred the matter for this Court's decision but, I think, having regard to the fact that an account being statute barred does not prevent settlement of so much as is due by the debtor, made it desirable that he should leave the initiative in the hands of the debtor.

Mr. Balderamos has raised a point of procedure in this matter by submitting that Mr. Courtenay should have appealed on this point of law under the provisions of Order 55 Rule 16 and that as he did not do so within the time allowed by the rule, he is out of time in this application. Rule 16 provides that an appeal may be made to the Chief Justice " without a fresh summons." That wording implies an existing summons before the Registrar. Taxation arises on a " Notice " so that the rule would not appear to apply to taxation cases.

The rule is not very clearly expressed and it is difficult to give an exhaustive list of matters to which it would apply. Matters of settlement may arise, which the Court may refer to the Registrar for investigation, or report. Again a summons may be brought before the Registrar, as such, under the provisions of section 47 Supreme Court Ordinance

Chapter 153 Consolidated Laws 1924, hereinafter called "Chapter 153," by which the Registrar is empowered to act in the absence of the Chief Justice. There may be other cases.

The most cogent reason against this submission is that at a taxation the Registrar is acting in the statutory capacity of Taxing Master (section 12 Chapter 153) and that all matters affecting taxation are governed by the provision of Order 61 of the Supreme Court Rules 1926.

An appeal procedure is provided therein by the provisions of Rule 34. It is complete and in no way limits the reasons for dissatisfaction of the party appealing against the allowance or disallowance of an item to issues of fact, or of law.

The Court therefore overrules this submission and holds that the correct procedure of appeal from any decision of a Taxing Master—other than a summary application for review under the provisions of Section 12 Chapter 153—is that created by Order 61 Rule 34.

The Court is of opinion that it would be unwise to restrict the discretion of the Taxing Master as to what points of law he may consider to be within his discretion to decide and leaves him an unfettered discretion in the matter.

My researches have brought to light no exact precedent for guidance as to when the limitation commences to run in cases where miscellaneous business in connection with the winding up of an estate is in issue. The decision in *Beck* vs. *Pearce* (1889) 23 Q.B.D. 316, 328, C.A., and *Phillips* vs. *Broadley* (1846) 9 Q.B. p. 744, are cited in Halsbury's Laws of England Vol. 19 p. 48 para. 73 as authority for the statement that in the case of miscellaneous work the statute commences to run upon the completion of each piece of work. Those cases are not precisely in point, but, appear to establish the principle. It is also established that the statute does not run from the date of delivery of a solicitor's bill. (*Coburn* vs. *Colledge* (1897) 1 Q.B. 702, C.A.)

Mr. Balderamos has submitted that this bill is in respect of miscellaneous business which is continuous employment. He submitted that it will only be terminated when the final account is filed by the Executors: when the estate is wound up and closed: when a release is given to the executors by the appellants. Mr. Balderamos made reference to several actions which arose in connection with the estate, but as they were separate matters which have been terminated, they have little bearing on the issues before the Court, apart from being a cause, and excuse, for some of the deplorable delay which has arisen in the distribution of this estate.

That submission would carry more weight if some substantial reason had been offered taking the charges out of their obvious category of miscellaneous business. Moreover, the fact that this business for one period of five years was paid for, would appear to indicate that no reason existed—as I have said already—why periodical accounts should not have been rendered more regularly.

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Exhibit 2. Judgment on Appeal from Taxation of Costs, 14th July 1941, *continued.*

In the case of litigation and quasi-litigation the principle that accounts may be rendered when suitable breaks in the employment occur, is well established law.

Therefore for all solicitor's work provision is made for accounts to be rendered within periods which give the debtor a reasonable opportunity of review while the matters, on which they arise, are still fresh in the memories of witnesses and documents are not submerged in the litter of the lumber rooms of their custodians.

Those circumstances provide a negative answer to the submission of Mr. Balderamos that the statute does not commence to run until the estate is finally closed. To allow an account for miscellaneous business to run for such a long period is most undesirable because it cannot be expected that small details which support miscellaneous business can be properly reviewed after an interval of over twelve years.

No substantial reason has been offered why such a course should be adopted. This delay has rendered the Executors' statutory accounts filed of little use. There is no reason, or practice, known to the Court which would prevent a solicitor from submitting his account annually in respect of miscellaneous business. It would be unreasonable to render a bill for every trivial complete transaction; some reasonable period of accounting is indicated for this class of business.

Mr. Courtenay fixed the 21st January 1935 (item 454) as the last of the statute barred items. Items 450–454 were disallowed by the Taxing Master so that Mr. Courtenay is in error. The last item allowed by the Taxing Master before that is No. 449 in respect of work done on the 15th November 1934, and the Court fixes that item as the last. Consequentially all items allowed by the Taxing Master up to and including item 449 are disallowed by the Court. That involves a nett disallowance of $\$980.69\frac{1}{4}$.

For the future guidance of practitioners the Court points out that in this estate the statutory annual accounts filed were rendered for periods ending on the 31st August in each year. The Court is of opinion that a solicitor should submit his account for miscellaneous services rendered at least once in each year—preferably before the end of the statutory accounting period of each particular estate, so as to show the full law costs in the period of the annual account. The account can then be paid before the end of the accounting period and give a more accurate state of account.

The failure to account punctually in this case affords a striking example of how misleading these accounts can be, if substantial debts are not mentioned.

The fifteenth Annual Account shows a credit balance of $1,075.22. There is a footnote saying "There were a few amounts to be collected and a few bills and bill of costs to be paid which will be included in the Final Account in winding up the estate." Yet when the executors lodged their affidavit as to the accuracy of these accounts it was, or should have been within their knowledge that the Bill of Costs, to which such vague reference was made, amounted to over $2,200. That sum, if payable,

would convert the balance in hand to a deficit of great amount—having regard to the size of the estate. That deficit constituted a very considerable proportion of the whole annual income of the said estate.

I am not suggesting that the affidavit of the executors was inaccurate, but, there can be no question that those accounts filed by them were misleading.

It is with very great regret that the Court has to arrive at this finding; involving as it does so serious a loss in fees to a member of the legal profession.

Where such unprecedented and unreasonable delay occurs in rendering accounts for services of this nature, the principles which were created by Chapter 188 must be enforced by the Court. The Court has no discretion in this matter, and were that otherwise, the circumstances of this case weigh unmistakably against the solicitor.

Before finishing with this issue I shall deal with another aspect.

The Appellants, as interested parties, are entitled to invoke the jurisdiction of the Court. They are interested in the property out of which the Bill has to be paid.

Executors have the right to pay a statute barred debt—*Stahlschmidt* vs. *Lett* (1853) 1 Sm. & G. 415—until it has been declared to be barred by a Court of competent jurisdiction. The Court will not set up the statute, where none of the parties are desirous of doing so, in favour of absent beneficiaries. But where a beneficiary pleads the statute against the Will of the executors, the Court accept that plea as being most for the benefit of the estate—*Midgeley* vs. *Midgeley* (1893) 3 Chan. 282, 297, C.A.

Some of these items which are statute barred are wholly or in part due to the solicitor and this fact must be within the knowledge of Mr. Courtenay's clients. They may feel that Mr. Cain—for he has no conflicting interests, may well have thought—to use the words of Vice-Chancellor Sir John Stuart in *Stahlschmidt* v. *Lett*—"that he would be doing an unrighteous and improper thing to deprive the solicitor of any fees which were properly due to him, because he failed to render his account earlier."

I should agree with that attitude of mind and would ask Mr. Courtenay to convey that expression of opinion to his clients.

I will now deal with the question as to the extent the Court should interfere with decisions based on the wide discretion of the Taxing Master. A very great deal is left to the wisdom, experience and knowledge of the Taxing Master in the exercise of what is practically an unfettered discretion in matters of taxation of costs. The cases all show that the Courts are loth to interfere with his discretion, unless of opinion that he has been misled into giving decisions based on wrong principles, or considerations—*Hill and Peel* (1870) L.R. 5 C.P. 172; *Denaby Main and etc.* vs. *Yorkshire Miners*, 23 Times Reports 635.

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Exhibit 2. Judgment on Appeal from Taxation of Costs. 14th July 1941, *continued.*

Obviously the Taxing Master's first duty was to decide in his own mind where the line should be drawn in this case between the professional duties of the solicitor, as such, and his duties as executor of the estate.

The solicitor assumed a professional and a lay capacity in the matter, but he can only assume one standard of mental capacity, therefore in carrying out his duties he must do so to the best of his ability as a lay executor for which he received payment by commission. Before he can earn any professional fee it must be payment for professional service beyond that full capacity as lay executor. Were this not the standard to be set, then the solicitor would be receiving two payments for the same service.

The Courts have established very clear principles governing cases where a solicitor acts in this dual capacity. They restrict the professional remuneration of the solicitor precisely to what may strictly be described as professional business. That is the kind of work which a solicitor would in the ordinary course of business be necessarily employed by a client to do for him—*Chappel Newton and Chappel* (1884) 27 Chan. p. 584, *Chanlender & Herrington.*

The first of these cases includes a decision on the words " and emoluments " upon which the solicitor laid some stress.

It is desirable that no confusion of thought should arise as to the precise issue now before this Court. The Courts do not encourage legal practitioners to act in this dual capacity of legal adviser and executor of estates, for the simple and obvious reason that when so acting, of necessity they must be subject to conflicting interests. The sole issue here is the distinction between professional and non-professional business vested by this dual capacity.

Many of the items which are herein disallowed by this Court might well be made charges payable by executors for legal assistance called in by them. Therefore these disallowances must not be regarded as precedents, in the future, to cover the very different circumstances where personal representatives have employed independent legal practitioners to do similar legal business.

The Court is of the opinion that some of the items allowed in the Bill show on the record that the Taxing Master has failed in principle by taking too liberal a view of what may rightly be described as services rendered where more was given than an unqualified executor could give. Where that is apparent, either positively or negatively, this Court will deal with these matters to which objection was raised by Mr. Courtenay.

In my judgment of the 18th April 1941, in this matter, the question of whether the Appellants were limited to appealing only in respect of those items to which objection was taken at taxation was dealt with by me. Perhaps, as my judgment was later cited to the contrary, it would be well for me to repeat that Appellants are not limited to those objections they raised at the taxation.

Cross reference is made to the documents attached to this Summons dated 11th March 1941.

Bracket (a).

Items Nos. 1–449 inclusive have been declared statute barred.

Bracket (b).

Items 702/5, 707/10 and unnumbered taxing fees are forfeited under provisions of Order 61 Rule 33.

Mr. Courtenay raised objection to these items on their merits and as the matter was fully argued before the Court it will be dealt with in that aspect—despite the forfeiture—for future guidance of practitioners.

In normal cases a solicitor submitting his bill of costs for settlement by his client is not entitled to include any charge for the preparation of his bill: excepting for business done in litigation or quasi-litigation. The later being such business as an application for payment out of a fund, or to determine the construction of a will. (*re National Bank of Wales*, 1902, 2 Chan. 412.)

In every case where a Bill of Costs is taxed the solicitor must file a copy of the bill in the Registry to complete the records of the Court. It is desirable that records of "private taxations"—if such a description may be permitted—should be available and provide material for the Government Auditors to check Court fees levied thereon, which otherwise would escape control.

From Order 61 Rule 17 an inference to the contrary might be presumed. To cure that doubt the Court now orders otherwise and steps will be taken at an early date to clarify the rule.

Whilst on the subject of bills of costs I have noticed that fractions of cents arise as a result of some scale charges. In future practitioners, when making out their bills may delete these fractions of cents in every case by increasing the item to the next full cent., and the Court hereby provides authority for the Taxing Master to allow such increments to the scale rate. The confusion in the typed columns caused by these trivial amounts is not warranted, neither is the strain they entail on the eyesight of all who have the misfortune to try and disentangle them.

Under the provisions of Order 61, Rule 33, items 702, Draw Bill of Costs, $51.50, 703 Copying $103.00 (of which $25.75 has been disallowed by the Taxing Master) making a disallowance by the Court $77.25, and Item 708, $1.00 are forfeit. That is a total of $129.75 forfeited.

Under the provisions of an Order of the Supreme Court, dated the 25th May, 1927, forming part of B (1) Appendix M, Supreme Court Rules, 1926, where forfeiture occurs the party whose bill has been so reduced has to pay all costs of taxation. Accordingly items 704, 707, 710 at 50 cents each are forfeit, although Mr. Courtenay did not appeal against the allowance of those items at the present hearing. This brings the total amount forfeited under Rules of Court to $131.25.

The effect of these two Rules of Court is to delete all the items, except disbursements, as charges against the said estate. They also make the solicitor liable for the disbursements which he has paid—Items 705 and 709—which amount to $1.55, personally. The Court directs that these sums shall not be recovered from the funds of the said estate.

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Exhibit 2. Judgment on Appeal from Taxation of Costs, 14th July 1941, *continued.*

The Court directs the solicitor to pay the Taxing fee of $25.

The Court realizes fully that this is an extremely heavy burden to fall on the solicitor, but, has he not himself alone to blame for this? The Court Records in the Probate matter of the estate of the late Sarah Keefe Usher—to which references were made by the parties as providing precedents for certain items—indicate that Mr. Balderamos found himself in almost precisely the same position in 1935 as he is in to-day.

Mr. Balderamos drew the Will in that instance and used precisely the same wording for his appointment as executor and solicitor to that estate.

The words "professional charges and emoluments" were fully discussed and the learned Taxing Master dealing with that case cited many of the same authorities as to their limitations to professional business as were cited before me on this occasion. His decision I have now confirmed by the present judgment.

In that case the learned Taxing Master prepared a case for review by the Chief Justice, including full arguments on both sides, citing these cases, and recommended that Mr. Balderamos should not forfeit these taxation fees under the Rules of Court.

The Honourable C. W. W. Greenidge, Chief Justice, after reviewing this stated case saw no reason for remitting the forfeiture.

With all respect to his decision I doubt if he had authority to do so. In any case his decision provides confirmation of the learned Taxing Master's opinion and gave it the authority of a decision of the Court.

An officer of the Court is not entitled to suppress adverse authorities, within his personal knowledge, when submitting his case to the Court. He may leave such authorities to be raised by his opponent. That is the usual course to be adopted. But if his opponent does not raise a decision bearing directly on the matter before the Court, Counsel should not leave the Court in ignorance of the relevant previous judicial authority in the matter.

In that instance the Bill of Costs was reduced more drastically than any case within my knowledge. That is from $712.10 3/4 to $224.83: or approximately by 66 per cent.

When it is remembered that the Courts have regarded a reduction of 16 per cent. as so serious a reflection on the solicitor submitting it, as to warrant this heavy forfeiture by Rule of Court, the above case would appear to have justified the severest censure.

With such drastic punishment received within a comparatively short period of the submission of the present bill, the Court is of opinion that the solicitor was greatly daring to put precisely the same arguments already decided. It is conduct that the Court strongly deprecates. It is to be hoped that it will never be repeated by any practitioner in the future.

Bracket (c).

Items 499, $1.25, 583 $1.25, 665 $2.50, 667 .50 cents, 670 .50 cents (Statute barred items omitted) are for miscellaneous business over which the Court is satisfied that the Taxing Master has a full discretion. He may allow such amount as he thinks fit in respect of all conferences not coming strictly within the scope of the scale charges contained in the Supreme Court Rules for the business therein specified.

It has been ruled in England that the Taxing Master in his discretion may give fees at a higher rate than those allowed by scale, should he consider the circumstances of any particular case before him would warrant that action but may not allow less than the scale charge (*Price* vs. *Clinton* (1906) 2 Ch. 487).

The Court sees no grounds for interfering with his decisions on these items and is not moved by the arguments affecting matters covered by his discretion. The total of $6.00 is allowed.

Bracket (d).

Omitting statute barred items.

The Court sees no grounds justifying interference with the discretion exercised by the Taxing Master in the items 474 .25 cents, 475 $1.25, 476 $1, 477 .50 cents, 491 12½ cents, 492 $1.25, 653 $1.50, 654 $1.50, 655 $1.25, 685 $1.50, 686 $1.50, 687 $1.25, 691 12½ cents, 692 $1.25, 693 $1.00, 694 .50 cents. These items make a total of $15.75 allowed.

In the case of items 568 .50 cents, 628 $1.50, 629 $1.50, 630 $1.25, 646 $1.75, 647 $1.75, 648 $1.25, 661 $1.75, 662 $1.75, 663 $1.25, 664 $1.25, 666 $1.25, 668 $1.00, 669 .50 cents special circumstances arise.

Amongst other activities, the testator carried on business in cutting mahogany growing on certain lands he owned.

It appears that the executors continued this business of cutting mahogany by sub contract. They allege that the trees were ripe for cutting and would have deteriorated had they not been cut. In the opinion of the Court it is more likely that their activities were actuated by the material benefit they would derive by way of commission on the receipts for the timber sold than the state of the timber.

In the absence of lawful and expressed direction from the testator, or the Court, the executors had no authority to carry on this mahogany business, or any other business of the estate except such as may of necessity arise in winding up the estate (*Collenson & Lester* (1885), 20 Beaver, p. 356).

In this instance there was no such authority given to the executors, nor was there any necessity to carry on this business for the purpose of winding up the estate.

The question as to whether any trees were ripe for cutting is irrelevant. The only question is were they in such a condition that they would deteriorate if not cut. Had that been the case the authority of the Court should have been sought with expert opinion to support the application.

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Exhibit 2. Judgment on Appeal from Taxation of Costs, 14th July 1941, *continued.*

The sum of $18.25 is involved and there being nothing tangible upon which the Court could decide, this amount will be allowed. To call evidence in the matter, or to return that issue to the Taxing Master for further review would involve greater expenditure. The Taxing Master was satisfied that the work had been done.

The Court stresses the fact, for future guidance, that because the estate assets could not be distributed until the appellants were finally identified by the Courts as the parties to whom the residuary estate belonged, the executors should not have departed from the principle which should have governed their actions in winding up the estate. The executors failed to keep in view their primary duty of winding up the estate assets with all reasonable diligence and dispatch. Its distribution should await the result of the Court's decision after every possible step to settle the affairs and deal with assets had been complete, leaving only the last steps to be taken in compliance with the Court's final order.

Bracket (e)

A curious position has arisen in connection with items 494 $73.12½, 553 $71.25, 613 $68.62½, 650 $60.75, 699 $59.62½.

Mr. Courtenay specifically omitted to appeal in respect of the fees claimed for preparing the Annual Accounts, confining his objections to fees claimed for copies of these documents. The appellants having considered the matter since the taxation, when objection was taken to the fees for preparing these accounts, have decided not to appeal now. The Court will, therefore, assume that these items are allowed by consent and the Court will not interfere with a matter which is within the discretion of the appellants.

To arrive at a decision on the items charged for copies the Court must consider the status of the original document. There is no evidence on the record that any point of law arose in connection with the Annual Accounts, and, in the absence of such issues arising, the solicitor was giving no more, in their preparation, than an unqualified executor might have given. The bulk of the work connected with a big estate does not create the necessity for the use of professional skill. If this work necessitated complicated accounting, requiring professional skill, it may have necessitated the employment of an accountant, but not a solicitor.

The Court is of opinion that the Taxing Master failed to grasp this principle and sustains Mr. Courtenay's objection because, if the original accounts were not allowable, then copies of them cannot be allowed. This disallowance totals $333.37½.

Items 561 $1.25, 596 $1, 597 .50 cents, 598 .50 cents, 605 .12½ cents, 638 $1.25.

Bracket (f).

Items 457 $1.25, 468 .50 cents, 469 $1.25, 472 $1.25, 547 $2.50, 639 $1.25.

These items are concerned with miscellaneous business which the Taxing Master has considered. The Court has heard Mr. Courtenay's arguments in respect of these items, but sees in them no grounds for interfering with the Taxing Master's decisions.

These two groups amounting to $1.62½ and $8.00 respectively are allowed.

Bracket (g).

Items 506, 507, 508, 509, 514, 515, 606, 607 at .75 cents each and items 671 and 672 at $1.50 each are fees in respect of income tax returns. The Court is of opinion that the Taxing Master erred in allowing these items. There was no evidence that the solicitor gave more than the great majority of the taxpayers who prepare their own returns have to give in performing this statutory duty.

Unquestionably many and difficult points requiring legal advice may arise on this work, but there is no evidence that they did so. The total of $9. is disallowed.

Items 496, 555, 615, 652 and 701 at .50 cents each are fees for attending at the Registry to file the annual accounts of the said estate and providing the supporting affidavit. No professional skill was exercised by the solicitor in attending and providing these affidavits. He swore to a joint affidavit, in each case, with his co-executor Mr. Cain and gave no more than that gentleman gave.

The Taxing Master appears not to have realized that the solicitor attended at the Registry for this purpose as a lay executor and not as a legal practitioner attending to a matter requiring his special legal skill. These items totalling $2.50 are disallowed.

Items 458, 459, 519, 521, 551, 608, 636, 682, and 684 at $7. each, are lump sums claimed to cover professional fees and disbursements incurred by the solicitor in attending at parts of the said estate, away from Belize for sundry reasons. They contravene the provisions of Order 61 Rule 24 which calls for a clear distinction between disbursements and professional fees.

On the facts recorded in the Bill, and such explanations as were offered to the Court by the solicitor, no single case appears where the solicitor gave more than a lay executor could have given.

Possibly the solicitor may recover from the estate funds such disbursements incurred by him while carrying on these inspections as he can support by the production of proper vouchers.

The fact that the solicitor was a solicitor and did visit these several places to deal with matters governed by labour and other legislation in force in the Colony did not, of necessity, mean that he was exercising the professional skill of a solicitor. There is insufficient evidence to prove that any legal difficulty arose which could not have been dealt with by a lay executor. The exercise of tact in dealing with labour need not necessarily be confined to legal practitioners.

Exhibits.

Exhibit 2. Judgment on Appeal from Taxation of Costs, 14th July 1941, *continued.*

The Court feels that the Taxing Master was swayed by wrongful considerations by assuming that the attendance of a legally qualified executor in itself justified his presence in a professional capacity. The Court disallows these items amounting to $63.

The two trivial items 510 18¾ cents and 511 $1.25 arose in respect of the receipt of a formal notice by the executors from the Surveyor General of British Honduras notifying them that a trigonometrical survey would be taking place in a district which included lands of the said estate.

Obviously, points of considerable intricacy in law upon which legal advice would have to be obtained might well arise in consequence of such a survey and the entry on the estate of the Surveyor General's Staff for the purpose of carrying it out.

The solicitor, however, informed the Court that no such point did in fact arise; nor was there any reason to believe that it would do so. The Court is of opinion that the Taxing Master had no proper material before him to justify the items being charges against the said estate. The Court disallows $1.43¾.

Items 500 .50 cents, 501 .12½ cents, 571 .50 cents, 656 .50 cents, 673 .50 cents, 683 .50 cents, 455 .25 cents, 456 $1.25, 478 .31¼, 479 $1.25, 622 $1.25 are all items for which, after having given consideration to all Mr. Courtenay's submissions in respect of them, the Court sees no grounds for interfering with the Taxing Master's decisions. Accordingly $2.62½ and $4.31¼ are allowed.

Summarizing the financial and other implications of this judgment the Court orders that—

1. The heading of this summons shall be amended to coincide with that of the Bill of Costs, with the addition of the names of the Appellants, described as " Interveners."

2.

(A) *Bracket (a).*		
Items Nos. 1–449 inclusive		$980.69¼
(B) *Bracket (b)*		
Forfeited fees		129.75
,, disbursements		1.55
(C) *Bracket (e)*		
Items 494, 553, 613, 650, 699		333.37½
(D) *Bracket (g)*		
Items 506/9, 514/15, 606/7, 671/2, ..		9.00
458/9, 519, 521, 551, 608, 636, 682, 684		63.00
496, 555, 615, 652, 701		2.50
510, 511		1.43¾
		$1520.30½

The sum of $1520.30½ shall be disallowed.

3. (A) *Bracket (c).*

Items 499, 583, 665, 667, 670	6.00
(B) *Bracket (d).*	
Items 474/7, 494/2, 653/5, 685/7, 691/4	15.75
568, 628/30, 646/8, 661/4, 666, 668/9 ..	18.25
(C) *Bracket (e).*	
561, 596/8, 605, 638	4.62½
(D) *Bracket (f).*	
457, 468/9, 472, 547, 639	8.00
(E) *Bracket (g).*	
500/1, 571, 656, 673, 683	2.62½
455/6, 478/9, 622	4.31¼
	$59.56¼

shall be allowed. The Taxing Master is hereby directed to endorse a certificate on the Bill giving effect to this judgment.

4. Taxing fee to be paid by Mr. Balderamos personally within 7 days from this date $25.00

5. That the solicitor shall file in the Registry a Cash Account for the 1st January 1929 to the 30th September 1939 showing all transactions of moneys received and paid by him in respect of the said estate—together with his affidavit authenticating the accuracy of this account, within twenty-eight days from the date of this judgment at his own expense and without any charge to the said estate.

Further, with reference to costs the Court orders that—

1. All costs arising on the preliminary objections raised on this summons by Mr. Balderamos, as they arose partly over the irregularity of service and partly on the correct form of procedure in appeal in which each party won one issue, shall be paid by their respective clients. That is Mr. Courtenay will charge the appellants and Mr. Balderamos will charge the estate, both on a solicitor and client basis.

2. The Court certifies this matter as fit for two counsel on each side.

3. All costs of Mr. Balderamos involved by the amendment of the heading to this summons to be charged to the said estate on solicitor and client basis.

Mr. Courtenay—after consulting his client Dr. Francis—informed the Court that his clients were prepared by consent, to agree that each party pay their own costs of this summons apart from those dealt with in the judgment by the Court and the Court orders accordingly.

(Sgd.) C. G. LANGLEY,
Chief Justice.

14th July, 1941.

Exhibits.

Exhibit 3. Sixteenth Statement of Account of Executors showing cash balance in hand, 25th November 1942.

No. 3.

Sixteenth Statement of Account of Executors showing cash balance in hand, dated 25th November 1942.

BRITISH HONDURAS 1924.

IN THE SUPREME COURT.

Probate Side.

IN THE GOODS of ISAIAH EMMANUEL MORTER Deceased of Belize Planter.

SIXTEENTH STATEMENT OF ACCOUNT.

	1939.		RECEIPTS			
1.	Sept.	1.	By Balance brought down in favour of the estate as at 31st August 1939 as per fifteenth statement of Account		$1075.22	
2.		13.	,, Royal Bank of Canada being quarterly dividend No. 208 on 24 shares to *1st September 1939* .. .. $45.60 Less Discount 9% .. $4.10 Stamp Duty .. .03 4.13	$41.47		
3.	Nov.	30.	,, Interest received in Savings Account from the Royal Bank of Canada, Belize to 30th November 1939 (Account No. M327) ..	.77		
4.	Dec.	7.	,, Royal Bank of Canada being quarterly dividend No. 209 on 24 shares to 1st December 1939 .. .. $45.60 Less Discount 12% .. $5.47 Stamp Duty .03 5.50	40.10		
	1940					
5.	March	19.	,, Royal Bank of Canada being quarterly dividend No. 210 on 24 shares to 1st March 1940 .. .. $45.60 Less Discount 11% .. $5.02 Stamp Duty .03 5.05	40.55		
6.	May	31.	,, Interest received in Savings Account from the Royal Bank of Canada, Belize to 31st May 1940 (Account M327)	.97		
7.	June	20.	,, Royal Bank of Canada, being quarterly dividend No. 211 on 24 shares to 1st June 1940 .. .. .. $45.60 Less 11% discount .. $5.01 Stamp Duty .03 5.04	40.56		
8.	Sept.	28.	,, Royal Bank of Canada being quarterly dividend No. 212 on 24 shares dated 3rd September 1940 to 1st September 1940	45.60		
9.	Dec.	31.	,, Royal Bank of Canada being quarterly dividend No. 213 on 24 shares dated 2nd November 1940 to 1st December 1940	45.60		
			Carried forward	$255.62	$1,075.22	

Exhibits.

Exhibit 3. Sixteenth Statement of Account of Executors showing cash balance in hand, 25th November 1942, *continued.*

	1941		Brought forward	$255.62	$1,075.22	
10.	Feb.	19.	By Interest received in Savings Account from the Royal Bank of Canada Belize to 30th November 1940 (Account No. M243) (1½ years)	.26		
11.	May	31.	„ Interest received in Savings Account from the Royal Bank of Canada Belize to 31st May 1941 (Account No. M243) ..	.07		
12.	June	23.	„ Royal Bank of Canada being quarterly dividend No. 214 on 24 shares dated 1st March 1941 to 1st March 1941	45.60		
13.		23.	„ Royal Bank of Canada being quarterly dividend No. 215 on 24 shares dated 2nd June 1941 to 1st June 1941	40.80		
14.	Nov.	30.	„ Interest received in Savings Account from the Royal Bank of Canada Belize to 30th November 1941 (Account No. M243) ..	.07		
	1942					
15.	April	29.	„ Royal Bank of Canada being quarterly dividend No. 216 on 24 shares dated 2nd September 1941 to 1st September 1941 .. .. $40.80 Less 10% $4.08, Stamp Duty .03 4.11	36.69		
16.		29.	„ Interest received in Savings Account from the Royal Bank of Canada Belize to 30th November 1941 (Account No. M327) (1½ years)	2.37		
17.	May	31.	„ Interest received in Savings Account from the Royal Bank of Canada Belize to 31st May 1942 (Account No. M327) ..	.65		
18.		31.	„ Interest received in Savings Account from the Royal Bank of Canada Belize to 31st May 1942 (Account No. M243) ..	.07		
					382.20	
	1939		CAYE CHAPEL			
19.	Sept.	12.	By Amount from Franklin Baker Co. for 4125 coconuts at $6.00 per thousand .. .. $24.75 662 rejected coconuts at $4.00 per thousand .. .. .. 2.64 221 culls at $2.00 per thousand .44	$27.83		
20.	Oct.	3.	„ Amount from Franklin Baker Co. for 4171 coconuts at $9.00 per thousand .. .. $37.53 925 rejected coconuts at $5.00 per thousand .. .. .. 4.62 200 culls at $3.00 per thousand .60	42.75		
21.		14.	„ Amount from Franklin Baker Co. for 4515 coconuts at $10.00 per thousand .. .. $45.15 743 rejected coconuts at $6.00 per thousand .. .. 4.45 150 culls at $3.00 per thousand .45	50.05		
			Carried forward	$120.63	$1,457.42	

Exhibits.

Exhibit 3. Sixteenth Statement of Account of Executors showing cash balance in hand, 25th November 1942, *continued.*

	1939		Brought forward ..	$120.63	$1,457.42	
22.	Oct. 27.	By Amount from Franklin Baker Co. for 4489 coconuts at $10.00 per thousand	$44.89			
		1025 rejected coconuts at $6.00 per thousand	6.15			
				51.04		
					171.67	
		NEW WINDSOR BANK				
	1939					10
23.	Sept. 30.	By Amount of produce sold at the market 100 green corn for		.40		
24.	Oct. 4.	„ Amount from Franklin Baker Co. 107 coconuts at $9.00 per thousand	.96			
		37 rejected coconuts at $5.00 per thousand	.18			
				1.14		
25.	Oct. 4.	By amount of produce sold at the Market 150 Grapefruits at 40 cts. per hundred ..		.60		20
26.	23.	„ amount of produce sold at the Market one cargo corn equal 60 quarts for		1.40		
					3.54	
		RENTS OF PROPERTIES IN BELIZE.				
27.	Sept. 30.	By amount of house rents collected from 13th to 30th September 1939 as per rent book ..			342.90	
		LIFE INSURANCE.				
	1940.					
28.	Jany. 10.	By Pan American Life Insurance Co. being dividend No. 48 on 40 shares Pan American Life Insurance Co. dated 2nd January 1940 ..			14.40	30
		PAYMENTS.				
		CAYE CHAPEL.				
	1939.					
29.	Oct. 3 to Jany. 12 1940	To amount paid labourers' wages at Caye Chapel from 3rd October 1939 to 12th January 1940 as per labourers' account book		$68.60		
	1939					
30.	Sept. 12.	„ amount paid George Blease being freight on 4,125 cocoanuts at $1.50 per thousand	$6.18			40
		freight on 863 rejected cocoanuts at 75 cts. per thousand	.66			
				6.84		
31.	Sept. 18.	To amount paid La Espanola for one bag flour for ration labourers Caye Chapel		2.30		
32.	Oct. 3.	„ amount paid George Blease being freight on 4,171 cocoanuts at $1.50 per thousand	$6.25			50
		freight on 1,125 rejected cocoanuts at 75 cts. per thousand	.84			
		and freight on half bag flour to Caye Chapel	.12			
				7.21		
		Carried forward ..		$84.95	$1,989.93	

	1939.		Brought Forward ..		$84.95	$1,989.93	*Exhibits.*
33.	Oct.	3.	To amount paid John Harley & Co. for 48 lbs. salt beef for ration labourers Caye Chapel ..		6.72		Exhibit 3. Sixteenth Statement of Account of Executors showing cash balance in hand, 25th November 1942, *continued.*
34.		14.	„ amount paid George Blease being freight on 4,515 cocoanuts at $1.50 per thousand	$6.77			
			freight on 893 rejected cocoanuts at 75 cts. per thousand	.66			
					7.43		
35.		14.	„ amount paid Guerra's Grocery for 32 lbs. flour and 16 lbs. beef for ration labourers Caye Chapel		3.20		
36.		17.	„ amount paid C. Melhado & Sons for half bag flour for ration labourers Caye Chapel (obtained 30th September 1939)		2.30		
37.		21.	„ amount paid La Espanola for 16 lbs. salt beef and 32 lbs. flour for ration labourers Caye Chapel		3.20		
38.		27.	„ amount paid George Blease being freight on 4,489 cocoanuts at $1.50 per thousand	$6.73			
			freight on 1,025 rejected cocoanuts at 75 cts. per thousand	.76			
					7.49		
39.		27.	„ amount paid La Espanola for 16 lbs. salt beef and 32 lbs. flour for ration labourers Caye Chapel		3.20		
40.		31.	„ amount paid George Blease for passage of Cipriano Martinez from Caye Chapel (agreement completed)		.25		
					$118.74		
			NEW WINDSOR BANK.				
	1939						
41.	Sept. to Oct.	29. 5.	To amount paid labourers' wages New Windsor Bank, Belize River from 29th September to 5th October 1939 as per labourers' account book	$19.86			
42.	Oct.	6.	„ amount paid Kattan Commercial Co. for 16 lbs. salt beef and 32 lbs. flour for ration labourers New Windsor Bank, Belize River ..	3.20			
					23.06		
			PROPERTIES IN BELIZE.				
	1939.						
43.	Sept.	30.	To amount paid Percy Trejo being 10% commission on $342.90 house rents collected from 13th to 30th September 1939	$34.28			
44.		30.	„ amount paid stamp duty on receipt for house rents	.15			
45.		30.	„ amount paid C. R. W. Usher one month's rent of lot in Queen Street where the Trumpet Press is to 30th September 1939 ..	25.00			
46.	Oct.	27.	„ amount paid Angelus Press for one rent receipt book	.12			
					59.55		
			Carried Forward ..		$201.35	$1,989.93	

Exhibits.

Exhibit 3. Sixteenth Statement of Account of Executors showing cash balance in hand, 25th November 1942, *continued.*

			Brought forward ..	$201.35	$1,989.93	
			SUPREME COURT.			
	1939.					
47.	Sept. 12.	To	amount paid Registrar-General fee for filing fifteenth annual account in the estate I. E. Morter deceased	1.25		
			LIFE INSURANCE.			
	1940.					
48.	Jany. 10.	To	W. H. Courtenay on behalf of the Universal Negro Improvement Association Inc. of 120 West 135th Street, New York, draft of the Pan American Life Insurance Co., New Orleans, La. dated 2nd January 1940 No. 1501 on the Whitney Central National Bank, New Orleans, La. U.S.A. for $14.40 in settlement of dividend No. 48 on 40 shares of the Capital Stock in the Pan American Life Insurance Co.	14.40		10
			PERSONAL ESTATE.			
	1940.					20
49.	Sept. 17.	To	W. H. Courtenay on behalf of the Universal Negro Improvement Association of 120 West 135 Street New York for two Bank Dividends Nos. 210 & 211 on 24 shares Royal Bank of Canada to 1st March 1940 and 1st June 1940	$81.11		
50.	28.	„	W. H. Courtenay on behalf of the Universal Negro Improvement Association Inc. of 120 West 135 Street New York Cheque for $45.60 of the Royal Bank of Canada dated 3rd September 1940 being dividend No. 212 on 24 shares in the Royal Bank of Canada ..	45.60		30
51.	Dec. 31.	„	W. H. Courtenay on behalf of the Universal Negro Improvement Association Inc. of 120 West 135 Street New York Cheque for $45.60 of the Royal Bank of Canada dated 2nd November 1940 being dividend No. 213 on 24 shares in the Royal Bank of Canada ..	45.60		40
	1941.	„				
52.	June 25.		W. H. Courtenay on behalf of the Universal Negro Improvement Association Inc. of 120 West 135 Street New York Cheque for $45.60 of the Royal Bank of Canada dated 1st March 1941 being dividend No. 214 on 24 shares in the Royal Bank of Canada ..	45.60		50
			Carried forward ..	$217.91	$217.00	$1,989.93

	1941.		Brought forward ..	$217.91	$217.00	$1,989.93	
	53.	June 25.	To W. H. Courtenay on behalf of the Universal Negro Improvement Association Inc. of 120 West 135 Street New York Cheque for $10.80 of the Royal Bank of Canada dated 2nd June 1941 being dividend No. 215 on 24 shares in the Royal Bank of Canada ..	10.80			
	1942.						
	54.	Oct. 16.	„ Arthur Balderamos Solicitor in full of taxed Bill of Costs dated 12th March 1940 in Originating Summons	138.80			
	55.	16.	„ Arthur Balderamos, Solicitor in full of taxed Bill of Costs dated 19th August 1940 for professional services rendered ..	343.87½			
	56.		„ Percy Trejo for keeping books, making out labourers' accounts and General Clerk from 17th August 1939 to 16th October 1939 2 months at $20.00 per month	40.00			
	57.		„ Percy Trejo for keeping books and General Clerk from 17th October 1939 to 16th October 1942—36 months at $10.00 per month	360.00			
	58.	Oct. 16.	To amount of Executors' commission 5% on $914.71 ..	45.73			
	59.		„ Executors' Commission of 5% on $150,003.01 being the gross value of the estate ..	7,500.15			
					8,687.26½		
					$8,904.26½		
			By Balance			6,914.33½	
					$8,904.26½	$8,904.26½	
			To Balance in favour of the Executors Brought down		$6,914.33½		

Exhibits.

Exhibit 3. Sixteenth Statement of Account of Executors showing cash balance in hand, 25th November 1942, *continued.*

N.B.—There are Bills of Costs to be taxed as ordered by the Court which will be done and charged in the final Account in winding up the Estate.

We Arthur Balderamos and Hubert Hill Cain both of Belize the Executors of the within-named Estate make oath and say that the foregoing seven Pages contain a true account of all our dealings with the said estate from 1st September 1939 to 16th October 1942 as ordered by the Court.

Sworn at Belize this 25th day of November 1942 } (Sgd.) ARTHUR BALDERAMOS.
} (Sgd.) HUBERT H. CAIN.

Before me,
(Sgd.) A. O. LONGSWORTH,
Registrar-General.

Exhibits.

Exhibit 4. Valuation of Estate submitted in evidence on 11th October 1943 by Executors.

No. 4.

Valuation of Estate submitted in evidence on 11th October 1943 by Executors.

Inventory and Valuation of the Real Estate in Belize, the property of the late Isaiah E. Morter deceased.

Description of Property.	*Situation.*	*Intrinsic Value.*	*Market Value.*
1 Lot, 2—1 St. Houses (1 New)	Wilson Street	1,800.00	1,500.00
1 *Lot divided into* 2 *lots*			
(1) 1—2 St. house (Geo. Grant) (Jos. Burrows)	Barrack Road	5,000.00	3,500.00
(2) 1 Large 1 st. House (I.E.M.) ..	Barrack Road	10,000.00	6,000.00
1 Lot, 2 St. House (Eagan) ..	Barrack Road	—	2,000.00
1 Lot, 4—1 St. Houses (1 New) ..	Barrack Road	2,800.00	2,000.00
1 Lot, 1 Storey House (Jno. E. Clare)	Cor. Barrack & Freetown Rds. Lot 1258 ..	1,000.00	900.00
1 *Lot divided into* 2 *Lots*			
(1) 1 Storey House (B. Oliva) ..	Barrack Road # 899 ..	1,700.00	1,400.00
(2) 1 St. House with portion underneath enclosed (Mrs. L. Braddick)	Barrack Rd. # 899 ..	2,000.00	1,800.00
1 Lot with 5—1 St. Houses ..	Victoria St. lot 1213 ..	2,700.00	2,300.00
1 Lot with a 2—St. House (Justiano Marin)	Barrack Rd. Lot 1141 ..	1,800.00	1,400.00
1 *Lot divided into* 2 *lots*			
(1) 2 Storey House (J. Escalante) ..	Cor. Barrack Rd. & Hydes Lane	6,000.00	3,000.00
(2) 2 Storey House (Mrs. Burrows) ..	Hydes Lane	1,500.00	1,200.00
1 Lot, 2 Storey House (V. Oglayneta)	Barrack Road by the Canal	3,000.00	2,000.00
1 Lot, 2 Storey House (Chas. Bradley)	Daly Street adj. Lot 1060	1,800.00	1,500.00
1 Lot, 2 Storey House (A. Christie)	Craig Street Lot 920 ..	2,900.00	2,000.00
1 Lot, with 2—2 St. Houses (Forte & Kirkwood)	Craig Street Lot No. 868	4,000.00	3,000.00
1 *Lot divided into* 3 *Lots*			
(1) 1 Storey House with portion underneath enclosed (Vernon)	Craig Street	1,400.00	1,000.00
(2) 1 Storey House (L. Reyes) ..	Cor. Craig & Eve Streets 867	2,500.00	2,000.00
(3) 1 Storey House with portion underneath enclosed (Mrs. Edith Baber)	Eve Street	2,000.00	1,800.00
1 Lot with 1 Storey House, portion underneath enclosed	Eve Street No. 863 ..	1,800.00	1,500.00
1 Lot with 2 St. House (M. S. Metzgen)	Eve St. No. 848 ..	4,000.00	3,200.00
1 Lot with 1 Storey House portion underneath enclosed (Palmer)	Eve St. No. 849 ..	1,800.00	1,000.00
1 Lot, Hotel & 2 St. House (Amada Escalante)	Queen Street	18,000.00	10,000.00
1 Storey House (Trumpet P.) ..	Queen Street	1,100.00	800.00
1 Lot with 2 St. House & outhouses (1 outhouse propty. V. L. Bryant)	North Front St. ..	5,700.00	5,000.00
1 Lot, 1 St. House (Hinds) ..	East Canal St. 207 ..	900.00	800.00
1 Lot, 1 St. House (Holmes) ..	West Street	1,100.00	900.00
1 Lot, 2 St. House (Myvett) ..	West Street No. 643 ..	2,000.00	1,500.00
1 Lot, 2 St. House (E. Arthurs) ..	Frederick's Alley ..	2,000.00	1,800.00
		$92,300.00	$66,800.00

We hereby certify that the above is a true valuation of the Real Estate in Belize, the property of the said Isaiah Emmanuel Morter deceased according to the best of our knowledge, information and belief.

W. PILGRIM.
WM. A. CAMPBELL.