

Arthur Balderamos and another - - - - - *Appellants*

v.

John Claude Thomson and others - - - - - *Respondents*

Universal Negro Improvement Association, Inc. - - - - - *Appellant*

v.

John Claude Thomson and others - - - - - *Respondents*

FROM

THE SUPREME COURT OF BRITISH HONDURAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 22ND MAY, 1951

Present at the Hearing:

LORD PORTER

LORD MORTON OF HENRYTON

LORD REID

[*Delivered by* LORD MORTON OF HENRYTON]

These are two appeals from a Judgment of the learned Chief Justice of British Honduras. The matters with which the appeals are concerned arose in the administration of the estate of one Isaiah Emmanuel Morter, deceased (hereafter called "the Testator") and the only parties appearing before the Board are:—

(1) Arthur Balderamos and Hubert Hill Cain, the executors and trustees of the Testator's will (hereafter called "the Executors").

(2) John Claude Thomson (hereafter called "the Receiver") who was appointed to be Receiver of the Testator's estate in December, 1942.

(3) Universal Negro Improvement Association Inc. (hereafter called "the Association"), the residuary legatee and devisee under the Testator's will.

The Judgment under appeal was delivered on the 18th September, 1944, in two actions against the Executors, commenced respectively by the Association on the 21st June, 1939 (Action No. 11 of 1939), and by the Respondent Hofius on the 2nd October, 1942 (Action No. 7 of 1942). No formal order for consolidation of these actions ever appears to have been made, but from the time that the second of the two actions was commenced the two appear to have been heard together and to have been treated as though they had formally been consolidated.

The Executors' appeal relates to four matters referred to the Court by the Receiver. In dealing with these matters the Chief Justice severely criticised the conduct of the Executors and there can be no doubt that the present appeal by the Executors is inspired, to a considerable extent, by their desire to clear their characters. The criticisms of the Chief

Justice will be discussed later, but it should be said at once that neither the Receiver nor the Association attempted to support these criticisms before the Board.

The appeal of the Association is concerned only with certain directions given to the Receiver by the Chief Justice, and their Lordships were informed, at an early stage of the hearing, that the Receiver and the Association had arrived at a settlement of the matters in dispute, subject to the approval of the Board.

The events leading up to the judgment of 18th September, 1944, must now be stated.

The Testator made his will on 15th February, 1924. The material portions of it are as follows:—

"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."

Under heads (2) to (7) the Testator gave a number of legacies, and continued:—

"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 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."

The Testator died on the 7th April, 1924, and probate of his will was granted to the Executors on the 8th September, 1924. A great deal of litigation followed, mainly concerned with two questions (a) whether the residuary gift was valid and (b) if so, what body was entitled to the residuary estate. In 1927 the Board answered the former question in the affirmative and on 30th July, 1935, the Board held that the Association was the body entitled. The Executors were not parties to the appeal in which the latter judgment was given.

Meanwhile the Executors continued to administer the Testator's estate, and filed yearly "statements of account" in the General Registry, Belize. The first fifteen of such statements, carrying the accounts down to the 31st August, 1939, were not included in the Record, but their Lordships felt able to dispense with their production, as the only item appearing in these accounts which was queried by any party to these appeals is a charge for payments made to a Mr. Trejo by way of salary, amounting in all to \$3,680 over a period of 15 years. These payments will be referred to hereafter.

The absence of these fifteen accounts makes it impossible for their Lordships to ascertain with accuracy what items made up the Testator's estate at his death and which of these items were sold in order to pay debts and legacies, but it is common ground between the parties that the Testator had a number of houses of substantial value, some farm land, and some personal estate, and that the Executors retained unsold the whole or the greater part of the houses and land.

It would appear that for some time after the decision of the Board on 30th July, 1935, there were disputes between Mr. W. H. Courtenay (named as a respondent to the present two appeals) and certain other parties as to who was entitled to represent the Association, and the Order in Council was not filed in British Honduras until 1939.

On the 21st June, 1939, the Association commenced action No. 11 of 1939 asking for an order for:—

- (1) Administration of the real and personal estate of the Testator.
- (2) Conveyance to the Plaintiff of the residuary real and personal property of his estate.

This action came before Sir Arthur Agar, the then Chief Justice, and at the hearing an undertaking was given on behalf of the Association 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 the 14th September, 1939, the Chief Justice directed certain accounts and enquiries and 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."

In the course of his judgment the Chief Justice observed "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 Chief Justice gave the Executors, as well as the Association, their costs, as between solicitor and client, out of the estate of the Testator.

On the 30th September, 1939, the Executors conveyed to the Association all the real estate of the Testator then vested in them, and handed over the major part of the personal estate to Mr. Courtenay as Solicitor and Attorney of the Association, on the footing that the balance of the personal estate would be accounted for in the Executors' final account.

On the 2nd October, 1942, the Respondent Hofius, a creditor of the estate, commenced the action No. 7 of 1942, asking for an order for the administration of the said estate. This action came before His Honour The Honourable Carleton George Langley, then Chief Justice, on the 16th October, 1942, when he made an order in the terms asked by the Summons and also ordered that the Executors should "file their final account to the date of this order." He also directed that his Order should be served on the Association and on the Respondent Courtenay as Attorney and Trustee of the Association and on one Dr. Lionel Francis, also as Attorney of the Association, and that all these parties should be added as Defendants in the action. On the 25th November, 1942, the Executors filed their sixteenth account, covering the period from 30th September, 1939, to 16th October, 1942, as ordered.

On the 15th December, 1942, the Chief Justice made an order appointing the Receiver to be Receiver of the estate and directed him to take and make, *inter alia*, the following accounts and inquiries:—

(1) An account of what was due and owing to the Plaintiff and all other the creditors of the Testator.

(2) An Account of the personal estate of the Testator 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.

(3) An inquiry what parts (if any) of the deceased's personal estate were outstanding or undisposed of.

He further ordered:—

(a) That the deceased's personal estate be applied in payment of his debts and funeral and testamentary expenses and any other necessary expenses in due course of administration.

(b) In case the deceased's personal estate should be insufficient for the payments referred to in (a) an inquiry what real estate the deceased was seized of or entitled to at the time of his death and that the deceased's real estate or a sufficient part thereof to make good the deficiency of his personal estate should be sold with the approbation of the Chief Justice and the money arising from the sale of the deceaseds' real and personal estate applied by the Receiver in payment of all debts.

He adjourned the further consideration of the action with liberty to all parties to restore the same to the Chief Justice for further hearing and consideration.

On the 21st September 1943, the Receiver submitted a report to the Supreme Court setting out the position of the estate and the claims that he had received and asked for the Court's direction as to a number of items. He also asked for permission to sell the properties comprising the real estate to meet outstanding debts. Among the claims for which he specifically asked for the Court's direction were those forming the subject matter of the present appeal by the Executors. They are four in number:—

(1) A charge by the Executors for commission at the rate of 5 per cent. on the gross value of the estate, namely \$150,003.01	\$7,500.15
(2) A charge by the Executors for a book-keeper and general clerk from the 17th April, 1924, to the 16th August, 1939; at \$240 per annum	\$3,680.00
(3) A similar charge for a book-keeper and general clerk from the 17th August, 1939, to the 16th October, 1939—2 months at \$20.00 per month	\$ 40.00
and from October 17, 1939, to October 17th, 1942—36 months at \$10.00	\$ 360.00
(4) Arrears of rent from the Executor Cain amounting to	\$1,382.75

The first and third of these items appeared in the Executors' sixteenth account. The second item is made up of a number of annual payments made to a Mr. Trejo over a period of some 15 years, all of which (it is agreed) appeared in the first fifteen accounts. The fourth item is described in the Receiver's report as follows:—

"(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
	<hr/>
	\$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."

In regard to the second item, it should be stated at once that the Executors received a commission of 5 per cent. on all income collected by them from 1924 onwards. It is not altogether clear whether they also received a commission of 5 per cent. on the proceeds of sale of any capital assets which may have been sold by them between 1924 and 1939. Their Lordships will return to this point later. The Executors paid a commission of 10 per cent. on the amount of rents collected to Mr. Trejo, who acted as rent collector. No objection has been raised in these appeals to the receipt by the Executors of the 5 per cent. commission on income collected, or to the payment by them of the 10 per cent. commission to Mr. Trejo; but it was contended before the Chief Justice and before the Board that the Executors were not entitled, in these circumstances, to pay Mr. Trejo a further \$20.00 per month out of the estate, for acting as "book-keeper and general clerk" to the estate.

The consideration of Items 1 to 4 above referred to took place on the 11th, 13th and 29th October, 1942, when evidence was led and arguments heard. The hearing of other points raised by the Receiver took place also on the 29th October, 1942, and on the 4th and 10th November, 1942. Judgment on all points was reserved and was delivered nearly two years later, on the 18th September, 1944.

In dealing with the first item in dispute the learned Chief Justice said, *inter alia* :—

"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 \$150,003.01. . . . Had the Executors obeyed the express 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 sale of such properties, when it reached their hands. . . . 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.

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 mis-handled 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.

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."

The comments made by the learned Chief Justice in these passages deserve, and will receive, consideration, but their Lordships will first state that they agree with the Chief Justice in thinking that this claim of the Executors cannot be accepted. It is put forward in the sixteenth account as "Executors' Commission of 5 per cent. on \$150,003.01 being the gross value of the estate". Counsel for the Executors was unable to explain how this "gross value" was made up, or at what date the estate was alleged to have this gross value, but their Lordships think further inquiry on this point is unnecessary. The claim as put forward must be rejected on short and simple grounds. No such claim would be allowed under English law. It is for the Executors to show that, under the law of British Honduras, executors are entitled to a commission on the gross value of the whole of the Testator's estate, realised or unrealised, but Mr. Quass on their behalf was unable to produce any statute or decided case which supports that view. Accordingly their Lordships see no reason to differ from the view of the Chief Justice that this claim "has no precedent or authority to support it" and must be rejected. Mr. Quass suggested that there might have been realisations of capital between 7th April, 1924, and 31st August, 1939, on which the Executors had received no commission and he further suggested that when the Chief Justice said that the Executors "credited themselves with 5 per cent. commission . . . on cash of the estate received by them" he may have been referring only to income receipts. If these suggestions are correct, there may be some commission due to the Executors on capital realisations, and their Lordships are willing, at Counsel's request, to direct an inquiry as to whether there were any such realisations. The precise terms of this inquiry will be stated later.

Turning now to the adverse comments of the Chief Justice, already quoted, upon the conduct of the Executors, their Lordships feel bound to say that they can find no justification for any of these comments. There is nothing in the Record to indicate that the Executors "mishandled this estate" for over 15 years. No such allegation was made at the hearing on behalf of the Association, whose solicitor had had access to all the filed accounts. If this comment is based merely on the fact that the Executors retained real estate unsold, it must be pointed out that the sole residuary devisee, the Association, was extremely well satisfied to receive this real estate, makes no complaint of its retention and, indeed, brings the second of the two appeals now before the Board with the object of preventing any sales of real estate by the Receiver. In these circumstances it seems unnecessary for their Lordships to consider, at any length, the reasons which may have prompted the Executors to retain the real estate unsold, but they note that it is by no means clear that the Testator intended an immediate sale of the whole of his realty. The direction for sale in the will is "for the purpose of paying out the same as hereinafter directed". Then follow directions for payment of debts and legacies and the ultimate gift "after all my directions are carried out" is not a gift of the residue of the proceeds of sale but of "the residue of my real and personal estate". The Executors may well have thought that it was desirable to ascertain the wishes of the residuary devisee before selling the residuary realty. The residuary devisee was not ascertained until 1935 and, when ascertained, was far from showing any desire for a sale.

As to the other comments of the Chief Justice, it is not unnatural that this claim by the Executors to commission was not voiced until after they had been ordered to hand over the estate. At any time before that date they might have sold the realty and obtained 5 per cent. commission on the proceeds of sale, as the Chief Justice himself points out; but when the order was made, this was no longer a possibility. It is not altogether surprising if the Executors then thought, "We could have got a commission on selling; is it not fair and logical that we should have a commission on conveying to the residuary devisee". Their Lordships have already held that the Executors have failed to prove that the law entitled them to have this commission but it is a misdescription, with a sinister sound, to call their claim "wholly fictitious".

Finally, their Lordships desire to say that there appears to be no justification at all for the Chief Justice's suggestion that this claim "was made in the sixteenth Estate Account solely to cover a deficiency of cash which should have been in the hands of the Executors". This suggestion would appear to be based on a misunderstanding of the meaning of the account in question.

Item 2 relates to a claim for money paid by the Executors to Mr. Trejo for certain services over a series of years, and can be dealt with briefly. The learned Chief Justice neither allowed nor disallowed this item, but directed the Receiver to investigate the whole matter and gave certain other directions which seem to their Lordships quite unnecessary. It was conceded by all parties to the Executors' appeal that there is no law in British Honduras which either expressly allows or expressly forbids the employment by executors of a "book-keeper and general clerk" in addition to a rent collector, at the expense of the estate. The Chief Justice thought that the Court had a discretion to allow or disallow payments made for this purpose and the contrary was not argued before the Board. The question in each case is whether the employment of such an assistant, and the amount paid for his services, can be regarded as reasonable in the circumstances of the particular case. Their Lordships think that, in place of the directions given by the Chief Justice, there should be an order for an inquiry under this head, the precise terms whereof will be stated later.

Their Lordships now come to Item 3. This is the smallest item from a monetary point of view but it is of extreme importance to the Executors, because of the comments made by the Chief Justice on their conduct. The sum of \$40.00 which forms part of Item 3 was disallowed by the Chief Justice "as an unnecessary payment for services which could and should have been performed by the Executors". Mr. Quass does not accept this description, but he did not think it right to trouble the Board with argument as to this trifling amount, and therefore did not contest its disallowance.

Turning to the sum of \$360.00 the Chief Justice observed that this item "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."

Their Lordships will not travel through the "detail" given in this regrettable portion of the judgment. It is clear that the Chief Justice wholly misunderstood the nature of the item in the sixteenth account "Percy Trejo for keeping books and General Clerk from 17th October, 1939, to 16th October, 1942—36 months at \$10.00 per month". The Executors were complying with the Chief Justice's order of 16th October, 1942, already quoted. They first set out in the account a number of payments, the last of which was on 25th June, 1941. Each payment is either described as "amount paid" or the method of payment is stated. Then the account ends with six items, all dated 16th October, 1942, which are clearly not sums already paid but sums which the Executors are claiming against the estate as at the date of the order. They include this item of \$360.00 and also the Executors' claim for \$7,500.15 commission which has already been discussed.

The Executors' affidavit verifying the sixteenth account is in the following terms:—

"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."

Unfortunately the Chief Justice construed this statement, coupled with the item of \$360.00 in the account, as being a statement on oath that Mr. Trejo had been paid \$360.00 on 16th October, 1942. It was

nothing of the kind and their Lordships feel that this unfortunate misunderstanding may have had a powerful effect upon the Chief Justice's general view of the Executors. The Chief Justice then went on to say that on 11th October, 1943, Mr. Balderamos gave evidence that the \$360.00 was paid to Mr. Trejo, but the Chief Justice's notes of the evidence contain no such statement by Mr. Balderamos. Moreover, Mr. Balderamos swore an affidavit on 12th October, 1943, dealing with the employment of Mr. Trejo and does not say that the latter was paid this sum. It is, indeed, difficult to see any reason why Mr. Balderamos should make such a statement, having regard to the manner in which this sum is set out in the sixteenth account. Mr. Trejo had not been paid this sum, and the account does not suggest that he had been paid. The Chief Justice concludes this part of his judgment by saying, "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."

Their Lordships are unable to find any foundation for this remark, and Counsel for all parties felt unable to offer any reasonable explanation of it. If the disputed items of \$7,500.00, \$40.00 and \$360.00 were omitted from the sixteenth account, a sum of only \$986.00 would be shown as owing to the estate; and there is no evidence indicating that the Executors, one of whom was a practising solicitor, would have any difficulty in paying this amount.

This item of \$360.00 can appropriately be included in the inquiry as to the \$3,680.00 which is Item 2.

As to Item 4, it is a fact, as Mr. Quass admitted in opening the appeal, that at the date of the Receiver's report Mr. Cain owed the estate \$1,382.75, being arrears of rent of a property occupied by him. *Prima facie*, that is a liability of Mr. Cain which he has never disputed, but the Chief Justice held that "both Executors are jointly and severally responsible for any loss the estate has sustained in this matter" and continued "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."

Mr. Quass contended that, whether or not Mr. Balderamos could have been made liable for this sum in suitable proceedings, this issue did not arise in the proceedings before the Chief Justice. The Receiver's report contained no suggestion that Mr. Balderamos was liable for this sum of \$1,382.75, and the account ordered in December, 1942, was an account of the Testator's personal estate "come to the hands of" the Executors and was not an account on the footing of wilful default. Their Lordships accept this contention and accordingly they refrain from any comment upon the Chief Justice's reasons for finding Mr. Balderamos liable. This part of the judgment cannot stand, and the special report ordered by the Judge becomes unnecessary. Mr. Cain's personal liability to the estate for any rent due from him is not disputed.

Before turning to the second appeal, wherein the Association is the appellants, their Lordships think it right to make the following observations.

If the Executors persist in the inquiry as to commission already mentioned, and if the Association persists in the inquiry as to the \$3,680.00 and \$360.00 already mentioned, they will do so at their own risk as to costs, which will be in the discretion of the Judge or official conducting the inquiry. They should carefully consider whether it would not be to their mutual benefit to agree figures and dispense with these inquiries.

Their Lordships were informed at an early stage that the second appeal, wherein the Association is the appellants, had been compromised.

subject to the approval of the Board. The terms of compromise, which were signed by Counsel for the Association and the Receiver respectively, are as follows:

COMPROMISE

entered into between Universal Negro Improvement Association, Inc. and John Claude Thomson, the Receiver abovenamed.

The Appeal of Universal Negro Improvement Association Inc. (hereinafter called U.N.I.A.) shall be allowed as between the U.N.I.A. and the Receiver on the following terms:—

1. That the Receiver's past acts in paying creditors of the deceased or of the Executors of the deceased in that capacity and in making other payments (if any) authorized by the Supreme Court of British Honduras shall be confirmed subject to his accounting to the Supreme Court of British Honduras in respect thereof.

2. That all past and existing directions given by the said Supreme Court to the Receiver be carried out, except that the Receiver shall not sell any further properties of the Estate of the late Isaiah Emmanuel Morter or of U.N.I.A., save only as directed by the said Supreme Court for the purpose of making such payments, if any, as may by the said Court be found to be payable as the result of the carrying out of any directions as aforesaid and as the result of the carrying out of any directions, if any, given by this Board and save only that should the Privy Council make an Order that the costs of the Receiver and of any of the other parties to the appeal of Balderamos & Cain and to that of U.N.I.A. should be paid out of the properties of U.N.I.A. or out of the Estate of Isaiah Emmanuel Morter, the Receiver shall have authority to realise such properties or Estate in the order directed by the lawfully appointed attorney of U.N.I.A. in British Honduras and then only to the extent that the personal property of U.N.I.A. or of the Estate of Isaiah Emmanuel Morter deceased is or may be deficient for these purposes. The Receiver shall in any case not sell the safe belonging to the Estate of the late Isaiah Emmanuel Morter deceased without the consent of the lawfully appointed attorney of U.N.I.A. in British Honduras.

3. U.N.I.A. and the Receiver shall have their solicitor and client taxed costs (including the costs of the present appeal) out of the properties of U.N.I.A. or of the Estate of Isaiah Emmanuel Morter deceased.

4. Either party shall have leave to apply to the Supreme Court in British Honduras on notice for directions as to the sale (if any) of the properties belonging to U.N.I.A. or to the Estate of Isaiah Emmanuel Morter in accordance with this compromise.

5. This Compromise (which shall be embodied in the Order in Council disposing of the appeals of Balderamos & Cain and of U.N.I.A.) shall be subject to the approval of the Privy Council.

London, this Fifth day of April, 1951.

(Sgd.) GILBERT DOLD, for U.N.I.A.

F. WISHART, for Respondent Receiver.

Their Lordships see no objection to these terms, subject to two matters (a) It must be clearly understood that the "past and existing directions" which are to be carried out under Clause 2 of the terms, do not include the directions to the Receiver which have been criticised above: (b) The Executors are respondents to the Association's appeal and the Association must pay their costs of that appeal.

One other matter should be mentioned. On the 22nd March, 1945, the Chief Justice addressed to the Registrar General of the Supreme Court, Belize, a document headed "Reasons for Judgment", in purported compliance with Section 17 of Chapter 155 of the Consolidated Laws, 1924, of British Honduras. Section 17 reads as follows:—

"Section 17.—The reasons of the Court, or in cases coming under the Land Transfer Registration Ordinance of the Chief Justice, for or against any Judgment pronounced in the course of proceedings out of which the appeal arises shall by the Court or the Chief Justice (as the case may be) be communicated in writing to the Registrar General within two weeks after final leave to appeal shall have been given, or so soon thereafter as practicable, and shall by him be filed in the General Registry and form part of the Record."

The Executors objected to the inclusion of this document in the Record and submitted that Section 17 of Chapter 155 of the Consolidated Laws has no application where the Court has already given a reasoned Judgment.

Their Lordships allowed this document to be read *de bene esse* but they are of opinion that the Executors' objection and submission were well founded. It is perhaps unfortunate that Section 17 does not contain an express exception directed to cases in which the Court has already given a reasoned judgment, but in their Lordships' view such an exception must be implied.

As to the Executors' appeal, their Lordships will humbly advise His Majesty that this appeal should be allowed and that the order appealed from (which is to be found only in the written judgment of the Chief Justice) should be varied in the following respects:—

A. *As to the Executors' claim for commission amounting to \$7,500.15.*

By ordering an inquiry whether the Executors have received any sums of cash, representing capital of the Testator's estate, in respect of which they have received no commission.

B. *As to the items of \$3,680.00 and \$360.00.*

By ordering, in lieu of the directions given by the Chief Justice, an inquiry whether it was reasonable for the Executors to employ Mr. Trejo as book-keeper and general clerk to the Testator's estate (a) During the period from 17th April, 1924, to 16th August, 1939; (b) During the period from 17th October, 1939 to 17th October, 1942, or any part of such periods respectively and if so, what was a reasonable salary to be paid to Mr. Trejo for these services.

The respective claims of the parties will be dealt with in the administration of the Testator's estate, in accordance with the results of these inquiries and with the views already expressed by their Lordships, but it will be open to any party to rely upon any Statute of Limitations which may be applicable.

As to the item of \$1,382.75.

By discharging the portion of the Chief Justice's order which deals with this sum.

The Receiver's costs of this appeal, as between solicitor and client, must be paid out of the Testator's estate. There will be no order as to the costs of the other parties to this appeal.

Their Lordships will humbly advise His Majesty that the appeal of the Association should be allowed upon the terms of the Compromise set out above. The Association must pay the Executors' costs of this appeal.



In the Privy Council

ARTHUR BALDERAMOS AND ANOTHER

v.

JOHN CLAUDE THOMSON AND OTHERS

UNIVERSAL NEGRO IMPROVEMENT
ASSOCIATION, INC.

v.

JOHN CLAUDE THOMSON AND OTHERS

DELIVERED BY LORD MORTON OF
HENRYTON