# CONSTRUCTIVE TRUSTS AND AGENCY

G. W. KEETON

THE extent to which agents, acting on behalf of trustees, may incur personal responsibility as constructive trustees and so become accountable to the beneficiaries, has produced an extensive case law and some interesting distinctions, often turning upon the facts of the individual case, and the nature and extent of the agent's participation in the acts which are impeached. In the leading case of *Barnes* v. *Addy*,[1] decided a century ago, a sole trustee had been appointed against the advice of a solicitor and the sole trustee misapplied the funds. Two solicitors who had prepared the deeds in the transaction in which the funds had been misapplied and who had received their costs were joined as defendants in a suit by two beneficiaries, along with the sole trustee. The Vice-Chancellor dismissed the bill against the two solicitors, and his decree was affirmed on appeal. In the course of his judgment on the appeal, Lord Selborne L.C. said:[2]

> 'Now in this case we have to deal with certain persons who are trustees, and with certain other persons who are not trustees. That is a distinction to be borne in mind throughout the case. Those who create a trust clothe the trustee with a legal power and control over the trust property, imposing on him a corresponding responsibility. That responsibility may no doubt be extended in equity to others who are not properly trustees, if they are found either making themselves trustees *de son tort*, or actually participating in any fraudulent conduct of the trustee to the injury of the *cestui que trust*. But, on the other hand, strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions, perhaps of which a Court of Equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist

[1] (1874) 9 Ch. App. 244.
[2] at pp. 251-253.

with knowledge in a dishonest and fraudulent design on the part of the trustees. Those are the principles, as it seems to me, which we must bear in mind in dealing with the facts of this case. If those principles were disregarded, I know not how anyone could, in transactions admitting of doubt as to the view which a Court of Equity might take of them, safely discharge the office of solicitor, of banker, or of agent of any sort to trustees. But, on the other hand, if persons dealing honestly as agents are at liberty to rely on the legal power of the trustees, and are not to have the character of trustees constructively imposed upon them, then the transactions of mankind can safely be carried through; and I apprehend those who create trusts do expressly intend, in the absence of fraud and dishonesty, to exonerate such agents of all classes from the responsibilities which are expressly incumbent, by reason of the fiduciary relation, upon the trustees.'

These observations are the foundation of two paragraphs in *Halsbury's Laws of England*,[3] which have been frequently cited in cases involving the position of agents as constructive trustees. Two cases decided in 1968 illustrate the circumstances in which constructive trusteeship may be attributed to an agent. The first considered transactions in which the agents were bankers, the second considered transactions involving the solicitors of a foundation.

The first case, *Selangor United Rubber Estates Ltd.* v. *Cradock (No. 3)*[4] is notable for the full consideration by Ungoed-Thomas J. of the position of bankers who act on behalf of trustees or other fiduciaries. It was established in *Foley* v. *Hill*[5] and reaffirmed by Lord Hatherley L.C. in *Burdick* v. *Garrick*[6] that a banker is not a trustee for a customer of the amount standing to his credit in his bank account, and this has been continuously acted upon subsequently. The relationship between banker and customer, as Ungoed-Thomas J. pointed out in the instant case, is contractual, and it is founded on one contract, which normally includes the relationship of creditor and debtor with regard to the balance in the customer's bank account and the relationship of principal and agent in respect of the payment of the customer's cheques drawn on the customer's bank account. It was more extensively discussed

[3] Vol. 38, paras. 1449-1450, pp. 860-861.
[4] [1968] 1 W.L.R. 1555.
[5] (1848) 2 H.L. Cas. 28.
[6] (1870) 5 Ch. App. 233.

by Atkin L.J. in his well-known judgment in *Joachimson* v. *Swiss Bank Corporation.*[7] The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate a forgery. In addition, as both Atkins L.J. and Bankes L.J. pointed out in *Hilton* v. *Westminster Bank Ltd*,[8] it is the duty of the bank to exercise reasonable care and skill in dealing with the customer's business.

It is evident from this that there is no place for the inclusion of a constructive trust in the *ordinary* relations of banker and customer. For this to exist, there must be some additional factor, of the kind discussed by Lord Selborne in *Barnes* v. *Addy*.[9] In the *Selangor Estates Case*, Ungoed-Thomas J. pointed out that there were two very different kinds of constructive trustees, and he lucidly explained the difference between them:

> '(1) Those who, though not appointed trustees, take upon themselves to act as such and to possess and administer trust property for the beneficiaries, such as trustees de son tort. Distinguishing features for present purposes are (a) they do not claim to act in their own right but for the beneficiaries, and (b) their assumption to act is not of itself a ground of liability (save in the sense of course of liability to account and for any failure in the duty so assumed), and so their status as trustees precedes the occurrence which may be the subject of claim against them. (2) Those whom a court of equity will treat as trustees by reason of their action, of which complaint is made. Distinguishing features are (a) that such trustees claim to act in their own right and not for beneficiaries, and (b) no trusteeship arises before, but only by reason of, the action complained of.
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> Until the limitation provisions of the Trustee Act, 1925,[10] the first category of constructive trustees could not rely, in defence of claims against them, on statutory limitation or the analogous rules enforced by courts of equity. This was because they acted as trustees for others, and therefore held in right of those others and therefore time was held not to run in their favour against those others. But as the second category of trus-

[7] [1921] 3 K.B. 110, 126-7.
[8] (1926) 135 L.T. 358, 362. Reversed in the House of Lords, but not on this point 43 T.L.R. 124.
[9] *supra.*
[10] It would seem that Ungoed-Thomas J. is referring to the provisions of the Limitation Act, 1939, not to the Trustee Act, 1925.

tees claimed in their own right, time ran in their favour from their obtaining possession. It is largely by reason of this distinction that the first category of constructive trustee is sometimes referred to or included in the authorities under the term "express trustee" ...'

The second part of these observations is founded upon the opinions of the Privy Council, as expressed in the Canadian case of *Taylor* v. *Davies*,[11] when it was stated:

'The possession of an express trustee was treated by the Courts as the possession of his cestuis que trustent, and accordingly time did not run in his favour against them. This disability applied, not only to a trustee named as such in the instrument of trust, but to a person who, though not so named, had assumed the position of a trustee for others or had taken possession or control of property on their behalf ... These persons, though not originally trustees, had taken upon themselves the custody and administration of property on behalf of others; and though sometimes referred to as constructive trustees, they were, in fact, actual trustees, though not so named. It followed that their possession also was treated as the possession of the persons for whom they acted, and they, like express trustees, were disabled from taking advantage of the time bar.'

The Privy Council went on to point out that the position of these trustees was quite different from that of constructive trustees in the narrower sense. These were the constructive trusts discussed by Lord Esher M.R. and Bowen L.J. in *Soar* v. *Ashwell*.[12] In the course of his judgment in this case Lord Esher says:

'If the breach of the legal relation relied on, whether such breach be by way of tort or contract, makes, in the view of a Court of Equity, the defendant a trustee for the plaintiff, the Court of Equity treats the defendant as a trustee become so by construction, and the trust is called a constructive trust; and against the breach which by construction creates the trust the Court of Equity allows Statutes of Limitation to be vouched.'

In the *Selangor Case* the claim by a liquidator of the company against the banks could only be made in respect of the second class of constructive trusts. The case against the two banks, the

[11] [1920] A.C. 636, 650-651.
[12] [1893] 2 Q.B. 390.

District Bank and the Bank of Nova Scotia, rested upon the extent of their participation in the operations of the directors of the Selangor company, in respect of which the directors were held accountable, as being in breach of trust. So far as the District Bank was concerned, Cradock, who bought a controlling interest in the company, had a small account at its branch in Oxford Street, and he told the manager and deputy manager of the branch that he could influence the transfer of the Selangor account to the branch, in view of his interest in the company. It was this circumstance which induced the manager, McMinn, and assistant manager, Reynolds, to arrange a Banker's draft for £195,322.5s.2d. to Contanglo which conducted banking business for Cradock, in exchange for a banker's draft from the Bank of Nova Scotia for £233,000, drawn on Selangor's account at that bank.

At a meeting on April 25 1958, Cradock explained to Reynolds that the Selangor account would be transferred to the District Bank and that Selangor would draw a cheque on District for £232,500 in favour of the Woodstock Trust (also controlled by Cradock) as a loan. This cheque would be endorsed by Woodstock as a loan by the Woodstock Trust in favour of Cradock, also as a loan. This cheque was then paid into Cradock's account at the District Bank, and Reynolds parted with the cheque for £195,000 in favour of Contanglo. By this means the Selangor account was stripped of its assets, an operation which had been facilitated by the failure of the manager and assistant manager of the District Bank to make any inquiries, either at the time when the funds were transferred, or later when 79 per cent of the Selangor stock was registered in one of the District Bank's nominee companies as nominee for Cradock.

The liquidator's claim against the District Bank was therefore that it should, as a constructive trustee, replace the £232,500 of the plaintiff's money with interest at five per cent, which had been paid in furtherance of an arrangement which gave financial assistance to Cradock for the purchase of the Selangor stock, and which was therefore not used for the purposes of the company. There was a further claim against the Bank for damages for negligence in the performance of the duty which they owed to Selangor as their customer, in honouring a cheque for £232,500 drawn on Selangor, and debiting it to the Selangor account, without making any inquiry of Cradock and his associates of the purpose for which the £232,500 was being paid to Cradock, by a cheque in favour of the Woodstock Trust, which that trust in turn endorsed to Cradock.

To decide whether this claim was entitled to succeed involved a detailed examination of the extent of the participation of the manager and assistant manager of the District Bank in the wrongful activities of Cradock and his associates, and of their knowledge and understanding of them. It will be seen that their conduct required to be measured by the standards of normal banking practice in relation to the accounts of customers, and Ungoed-Thomas J. made a full examination of the decisions on this point, and he observed:[13]

> 'The standard of that reasonable care and skill[14] is an objective standard applicable to bankers. Whether or not it has been attained in any particular case has to be decided in the light of all the relevant facts, which can vary almost infinitely. The relevant considerations include the prima facie assumption that men are honest, the practice of bankers, the very limited time in which banks have to decide what course to take with regard to a cheque presented for payment without risking liability for delay, and the extent to which an operation is unusual or out of the ordinary course of business. An operation which is reasonably consonant with the normal conduct of business (such as payment by a stockbroker into his account of proceeds of sale of his client's shares) of necessity does not suggest that it is out of the ordinary course of business. If "reasonable care and skill" is brought to the consideration of such an operation, it clearly does not call for any intervention by the bank. What intervention is appropriate in that exercise of reasonable care and skill again depends on circumstances. Where it is to inquire, then failure to make inquiry is not excused by the conviction that the inquiry would be futile, or that the answer would be false.'

Judged by these standards the bank was held to be liable because it paid the Woodstock cheque out of the Selangor account in circumstances known to the bank before payment and in which a reasonable banker would have concluded that the payment was to finance the purchase by Cradock of the Selangor stock – although neither McMinn nor Reynolds realised that the payment was being used for this purpose. In the judge's view the bank had failed to exercise reasonable care in what was plainly an exceptional and

[13] at p. 1608.

[14] i.e. as defined by Atkin L.J. and Bankes L.J. in *Hilton* v. *Westminster Bank Ltd. supra.*

very substantial transaction. 'For my part,' he added,[15] 'I can see no substantial difficulty in banks providing against such exceptional transactions, involving substantial amounts, as in this case, being carried through by officials completely inexperienced in such transactions and unqualified to deal with them. If a bank allows such officials to conduct such business it is asking for the kind of trouble which it has got in this case.'

The claim against the Bank of Nova Scotia arose from a distinct, but connected transaction. It was a claim against them as constructive trustees to replace £249,500 with interest at five per cent, and for damages for negligence in the performance of their duty as the bankers of Selangor United Rubber Estates Ltd. So far as the constructive trust was concerned, the claim was based, not on actual knowledge, but on knowledge which the bank would have had if it had made the inquiries which it was its duty to make. In equity, it was argued, the bank was liable to the same extent as it would have been if it had made proper inquiries and had obtained honest answers. In each case, the standard of care was that of a reasonable banker.

In this case, the claim against the Nova Scotia Bank failed as it was able to show that it had exercised such a degree of care. The Selangor Company had an account at the defendant bank, and the company's secretary and chairman, Burden and Sinclair, had a mandate to issue cheques on it, following resolutions of the company's board of directors. Very shortly after the mandate had been given, a cheque for £207,500 was drawn on the company's account, and was paid into Burden's account, and Burden drew a cheque for the same amount from his account in favour of Cradock. At an interview with an official of the bank, it was explained that the cheques were being exchanged for 'internal accounting reasons', or 'internal book-keeping reasons'. A second cheque for £42,000, also on the company's account and also in favour of Burden, was drawn shortly afterwards. Ungoed-Thomas J. held that in the light of all the circumstances, there was nothing which put the bank upon a further inquiry, and therefore the bank was not liable, either in negligence or as a constructive trustee. The difference in the position of the two banks therefore turns upon the degree of caution with which they approached these unusual transactions.

Another case in 1968, *Quistclose Investments Ltd.* v. *Rolls Razor Ltd.*,[16] illustrates a further aspect of the relationship of

[15] at p. 1634.
[16] [1968] Ch. 540; [1970] A.C. 567 (H.L.).

banker and customer from the standpoint of the law of trusts. At a time when Rolls Razor Ltd. was in serious difficulties, and had a large overdraft with Barclays Bank Ltd., the company obtained a loan of £209,719.8s.6d from Quistclose Investments on the agreed condition that it was used only for the purpose of paying a dividend which had been declared shortly before. A cheque for the amount was received and was paid into a special No. 4 account at the bank, and a letter from the company to the bank stated that it would only be used for the purpose of paying the dividend. Before the dividend was paid, the company went into liquidation so that no dividend could be paid. Quistclose therefore brought an action, claiming that Rolls Razor Ltd. held the money on trust to pay the dividend, and that, as that trust had failed, the company held this sum on a resulting trust for Quistclose, and further that as the bank had notice of the purpose for which the money had been advanced the bank held it as a constructive trustee for Quistclose, and therefore could not use it as a set-off against the firm's overdraft. Both the Court of Appeal and the House of Lords accepted the claim of Quistclose Ltd., and held that the bank, who had received the money with knowledge of the trust, must account for it to Quistclose Ltd.

The basis of the decision in the Quistclose case was that the money had been paid to the bank for a particular purpose, and not for any other, and it was therefore impressed with a trust in the hands of the bank to carry out that purpose. A similar result followed in *Re Kayford Ltd.*,[17] a case in which the company was in process of liquidation. It was a mail order firm, which got into difficulties in 1972. At this point the company was advised by its accountants to open a separate bank account to be called the 'Customers' Trust Deposit Account', and to pay into it moneys received from the customers for goods not delivered, so that if the company went into liquidation, these moneys could be refunded to customers who had not received their goods. The company accepted this advice, but paid the money into a dormant deposit account. Megarry J. held that these moneys were impressed with a trust for the unsatisfied customers. After referring to the case of *Re Nanwa Gold Mines Ltd.*,[18] in which money was sent on the faith of a promise to keep it in a separate account, he added that there was nothing in that case, or in any other, which made the existence of a separate account essential. The advice was to

[17] [1975] 1 W.L.R. 279.
[18] [1955] 1 W.L.R. 1080.

establish a trust account at the bank, and the whole purpose of it was to ensure that the moneys remained in the beneficial ownership of those who sent them.

> 'No doubt the general rule is that if you send money to a company for goods which are not delivered, you are merely a creditor of the company unless a trust has been created. The sender may create a trust by using appropriate words when he sends the money (though I wonder how many do this, even if they are equity lawyers), or the company may do it by taking suitable steps on or before receiving the money. If either is done, the obligations in respect of the money are transformed from contract to property, from debt to trust.'

Later in his judgment, he added a general suggestion that when money is paid in advance to a company for future goods or services, it is a proper thing for the company to do to pay it into a separate account wherever there is a doubt that the company will be able to fulfil its obligations.

In another case arising at this period involving the position of an agent as constructive trustee, *Carl Zeiss Stiftung* v. *Herbert Smith & Co.*,[19] Edmund Davies L.J. in the Court of Appeal discussed the meaning of the term 'constructive trust'. He began by citing the meaning attributed to it in the American Restatement on Restitution:[20]

> 'Where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises.'

Continuing, he pointed out that there was no clear definition of the concept in English law, that its boundaries had been left vague, and that personal advantage was not a *sine qua non*. By way of illustration he cited *Nelson* v. *Larholt*.[21] In that case, over a period of time an executor fraudulently drew eight cheques in favour of defendant on the banking account of the testator's estate. They amounted to £135, and the executor received this sum in cash from the defendant. The beneficiaries of the estate sued the defendant for the £135, on the grounds that he was a trustee of this sum for them. The defendant had received the cheques for value, and in good faith. Denning J. held that for the

[19] [1969] 2 Ch. 276.
[20] (1st Ed., 1937) para. 160, p. 640.
[21] [1948] 1 K.B. 339.

defendant to escape liability it was necessary that he should have received the cheques without notice of the executor's want of authority, and on the evidence it appeared that he either knew or ought to have known of this. Denning J. explained the position in the following way:[22]

> 'The relevant legal principles have been much developed in the last thirty-five years. A man's money is property which is protected by law. It may exist in various forms, such as coins, treasury notes, cash at bank, or cheques, or bills of exchange of which he is "the holder" but, whatever its form, it is protected according to one uniform principle. If it is taken from the rightful owner, or, indeed, from the beneficial owner, without his authority, he can recover the amount from any person into whose hands it can be traced, unless and until it reaches one who receives it in good faith and for value and without notice of the want of authority. Even if the one who received it acted in good faith, nevertheless if he had notice – that is, if he knew of the want of authority or is to be taken to have known of it – he must repay. All the cases that occur in the books, of trustees or agents who draw cheques on the trust account or the principal's account for their own private purposes, or of directors who apply their company's cheques for their own account, fall within this one principle. The rightful owner can recover the amount from anyone who takes the money with notice, subject, of course, to the limitation that he cannot recover twice over. This principle has been evolved by the courts of law and equity side by side. In equity it took the form of an action to follow moneys impressed with an express trust, or with a constructive trust owing to a fiduciary relationship. In law it took the form of an action for money had and received or damages for conversion of a cheque. It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution, if the justice of the case so requires.'

This principle was applied by Danckwerts J. in *G.L. Baker Ltd.*

[22] at pp. 342-3.

v. *Medway Building and Supplies Ltd.*,[23] in a case in which a company had entrusted to their auditor sums amounting to £80,000. The auditor paid it into his bank account, and used part of it for his own purposes, paying cheques to the defendants (of which he was a director) in breach of trust. The plaintiffs claimed that these sums were traceable in equity, since they had been wrongfully paid to them. The defendants denied that they were constructive trustees of these sums, but Danckwerts J. gave judgment for the plaintiffs, subject to the possibility that the claim might be defeated by the Limitation Act 1939. In order to defeat the claim, said the judge, the defendant company must show that they received the money in good faith and for value, and without notice of the auditor's want of authority; and this they were unable to do. There was an appeal from the judgment of Danckwerts J., but solely on questions of procedure, but Willmer L.J. pointed out in the Court of Appeal that Denning J.'s dictum was not in fact necessary for the decision of the case.

In the *Carl Zeiss Stiftung Case*, Edmund Davies L.J. pointed out that the concept of unjust enrichment was one example among the cases in which a constructive trust has been held to exist, and he added:[24]

> 'It may be objected that, even assuming the correctness of the foregoing, it provides no assistance, inasmuch as reference to "unjust enrichment," "want of probity" and "the demands of justice and good conscience" merely introduces vague concepts which are in turn incapable of definition and which therefore provide no yardstick, I do not agree. Concepts may defy definition and yet the presence in or absence from a situation of that which they denote may be beyond doubt. The concept of "want of probity" appears to provide a useful touchstone in considering circumstances said to give rise to constructive trusts, and I have not found it misleading when applying it to many authorities cited to this court. It is because of such a concept that evidence as to "good faith," "knowledge" and "notice" plays so important a part in the reported decisions. It is true that not every situation where probity is lacking gives rise to a constructive trust. Nevertheless, the authorities appear to show that nothing short of it will do. Not even gross negligence will suffice.'

As an illustration of the last proportion, the learned Lord

[23] [1958] 1 W.L.R. 1216.
[24] at p. 301.

Justice cited *Williams* v. *Williams*[25] and *Re Blundell*.[26]

The *Carl Zeiss Stiftung Case* was of very great importance for, as Sachs L.J. said at the beginning of his judgment:[27]

> 'A claim of the nature made in the present case is well calculated to suspend a sword of Damocles over the head of a solicitor acting for a client bona fide seeking to defend his title to property of which he is in possession and which constitutes the bulk, and perhaps the entirety, of his assets.'

The action arose out of protracted proceedings between two German foundations, an East German foundation and a West German foundation, both known as the Carl Zeiss Stiftung. The plaintiffs, the East German foundation, claimed to be the original foundation, established in Jena in East Germany, and the defendants were solicitors acting for the West German foundation at Heidenheim in Wurtemburg, after the Russians had occupied East Germany. The main action between the two foundations was initiated in October 1955, and the proceedings were still in progress. The East German foundation was claiming from the West German foundation a declaration that its entire property and business belonged to the East German foundation, and also an account of all moneys arising from all dealings with that property.

The present action was a claim against the solicitors of the West German foundation for all fees and costs paid to them, as being the money of the East German foundation, and therefore held on trust for the foundation. The plaintiffs argued that by reason of acting for the West German foundation, the defendants knew all the facts and matters in the claim against the foundation, and therefore that the money so paid belonged to the plaintiffs. On this, Sachs L.J. commented:[28]

> 'If the plaintiffs succeed in their contention the result will be that the defendant solicitors could not safely make use of any of the moneys thus received by them until there had been determined the main action by what may well be in due course a decision of the House of Lords. In this way one might say that the moneys in question would be "frozen".'

The solicitors, as the professional advisers of the West German foundation, had given value for their services, but it was arguable that, even so, if they received notice that the property was sub-

[25] (1881) 17 Ch. D. 437, 445.
[26] (1888) 40 Ch. D. 370, 381.
[27] at pp. 293-4.
[28] at p. 294.

ject to a subsisting trust, they become constructive trustees of it. Knowledge of a claim is, however, not knowledge of the existence of a trust. In the words of Danckwerts L.J.:[29]

> 'Mr. Harman's contention was that the defendant solicitors knew where the moneys that they received came from and knew that the source was trust funds. In my view this contention fails at the outset. What the defendant solicitors knew was that the moneys came from the West German foundation and they knew of the allegations contained in the proceedings brought against that foundation by the plaintiffs in which they were instructed to act as solicitors for the West German foundation. They knew that claims were being made against the West German foundation that all their property and assets belonged to the plaintiffs or were held on trust for them. But claims are not the same thing as facts. Mr. Harman contended that for the purposes of the present issue all the allegations contained in the statements of claim in both the actions must be taken as true. That will not do. What we have to deal with is the state of the defendant solicitors' knowledge (actual or imputed) at the date when they received payments of their costs and disbursements. At that date they cannot have had more than knowledge of the claims above mentioned. It was not possible for them to know whether they were well-founded or not. The claims depended upon most complicated facts still to be proved or disproved, and very difficult questions of German and English law. It is not a case where the West German foundation were holding property upon any express trust. They were denying the existence of any trust or any right of property in the assets claimed by the plaintiffs. Why should the solicitors of the West German foundation assume anything against their clients?'

At the conclusion of his judgment, Edmund Davies L.J. adopted the submissions of counsel for the defendants, derived from the numerous cases, upon the liability of an agent as a constructive trustee.[30]

> '(A). A solicitor or other agent who receives money from his principal which belongs at law or in equity to a third party is not accountable as a constructive trustee to that third party unless he has been guilty of some wrongful act in relation to that money. (B). To act "wrongfully" he must be guilty of (i) knowingly participating in a breach of trust by his principal;

[29] at p. 293.
[30] pp. 303-4.

or (ii) intermeddling with the trust property otherwise than merely as an agent and thereby becomes a trustee de son tort; or (iii) receiving or dealing with the money knowing that his principal has no right to pay it over or to instruct him to deal with it in the manner indicated; or (iv) some dishonest act relating to the money.'

The important point of general application decided in this case is that mere notice of a claim asserted by a third party is insufficient to render an agent guilty of a wrongful act in dealing with property derived from his principal in accordance with the principal's instructions, unless the agent *knows* that the third party's claim is well-founded and that the principal therefore had no authority to give the instructions; to which it should be added that if the agent is under a duty to inquire into the validity of the third party's claim, and where, although the inquiry would have established that the claim is well-founded, no inquiry is made, the agent will be liable. In the *Carl Zeiss Stiftung Case* no such duty to inquire existed, since as Danckwerts L.J. pointed out the determination whether the claim was well-founded depended upon decisions upon matters of law, which could only be made by a court.