

JUNE 5

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 77/96

BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.
 THE HON. MR. JUSTICE GORDON, J.A.
 THE HON. MR. JUSTICE WALKER, J.A. (Ag.)

BETWEEN	BARBARA MCNAMEE	✓ APPELLANT
AND	THE ATTORNEY GENERAL FOR JAMAICA	
AND	THE ACCOUNTANT GENERAL	RESPONDENTS

David Batts and Daniella Gentles for the appellant,
instructed by Livingston, Alexander & Levy

Lackston Robinson, Assistant Attorney General,
for the respondents, instructed by the Director
of State Proceedings

June 30, 1997 and November 18, 1997

DOWNER, J.A.:

Is Barbara McNamee entitled to commercial rates of interest on
money paid into court pursuant to settlement of her suit against Stiebel

How did the issue originate?

Here is the unchallenged evidence of the appellant, Barbara

McNamee:

"2. That on or about the 18th day of November, 1991 a Writ of Summons was filed in Common Law action by Suit No. C.L. M-348 of 1991 - BARBARA McNAMEE V. STIEBEL & COMPANY LIMITED. That by Notice of Payment into Court dated the 19th March, 1992 the Defendant's attorneys paid the sum of Two Hundred and Thirty Seven Thousand Five Hundred Dollars (\$237,500.00) into court. The said Notice is attached hereto as Exhibit 'BM-1' for identity."

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18
97

It is a notice prepared by the Attorneys-at-law making the payment into court and the Registrar signs the notice pursuant to section 1(q) of the Schedule of the Judicature (Supreme Court) Additional Powers of the Registrar Act. It should be noted that this notice was not included in the record. The affidavit continues:

"3. That on the 16th day of February, 1995 this matter came on for trial and an Order was made by the Honourable Mr. Justice Courtney Orr by and with the consent of the parties that the sum paid into court along with interest accrued thereon at the prevailing bank rate in respect thereof from the date of payment in to the date of payment out be paid to myself or my Attorneys-at-Law. A copy of the said Formal Order is attached hereto as Exhibit 'BM-2' for identity."

To understand how the issue came before Ellis, J. and to appreciate what it was necessary for him to construe, reference must be

made to the order of Courtenay Orr, J. dated 15th and 16th February,

1995. It reads:

"UPON THE TRIAL of this matter coming on for hearing this day AND UPON hearing Mr. David Batts, Attorney-at-Law of Livingston, Alexander & Levy for and on behalf of the Plaintiff and Mr. Andrew Rattray, Attorney-at-Law of Rattray, Patterson, Rattray for and on behalf of the Defendant herein, IT IS HEREBY ORDERED:

1. Matter settled on terms endorsed on Counsel's Brief.
2. The money paid into court in the sum of \$237,500.00 together with interest accrued thereon at the prevailing Bank rate in respect thereof from the date of payment in to the date of payment out be paid to the Plaintiff, BARBARA McNAMEE or to her Attorneys-at-Law, MESSRS. LIVINGSTON, ALEXANDER & LEVY."

The next stage is aptly summarised by the appellant Barbara

McNamee thus:

"4. That by letter dated 6th June, 1995 and 19th June, 1995 copies attached as Exhibit 'BM-3' my attorneys requested payment of the sum paid in with interest accrued thereon. By letter dated 21st June, 1995 with enclosure, copies of which are attached as Exhibit 'BM-4' the Accountant General advised that same was not payable.

5. That I am advised by my Attorneys-at-Law and do verily believe that all money paid into court is to be deposited with the Government Savings Bank. I am further advised that the Government Savings Bank is the Workers Bank Limited. Further that the interest earned on sums paid into court is to be dealt with in accordance with the Order of this

Honourable Court and that it is only in the absence of an Order in respect thereof that the Crown is entitled to retain the interest."

In his written submission, Mr. Batts explains how the Government Savings Bank became the Workers Savings and Loan Bank and I quote:

"The Government Savings Bank is the Workers Bank, see Section 18(1) Workers Savings and Loan Bank Act,

In relation to any period commencing on or after the 1st day of August, 1973, every reference in any law to the Government Savings Bank shall, subject to subsection (2) be deemed to be a reference to the Bank.

(2) The Minister may, by order, with effect from any date specified in the order, not being earlier than the 15th day of August, 1973, make such adaptations and modifications in a law containing any reference to the Government Savings Bank or the Government Savings Bank Law (now repealed) as he considers necessary or expedient in consequence of anything in this Act.

(3) Any order under subsection (2) shall be subject to negative resolution.

(4) In this section 'law' includes any instrument having the force of law but does not include this Act."

It was against this background that the appellant boldly stated her claims as follows:

"6. That I am advised by the Workers Bank and do verily believe that in the period March 1992 to the present the interest rate payable on deposits has averaged 29.4% and on the

sum of \$237,500.00 if invested, the interest would have totalled \$280,348.52."

So stated, the issue to be determined is of general public importance and must be of great interest to the profession.

The correspondence which raised the issue between the appellant Barbara McNamee and the Accountant General is at the heart of this dispute. The relevant part reads thus:

"June 19, 1995

The Accountant General
13 King Street
Kingston

Dear Sirs:

*Re: Suit No. C.L. M-348 of 1991
Barbara McNamee vs Stiebel &
Company Ltd.*

We acknowledge receipt of your cheque no. 0243099 in the sum of \$235,125.00 which purports to represent payment in respect of Suit No. C.L. M-348 of 1991 for Mrs. Barbara McNamee. However, same appears to have been erroneously computed, as the Final Judgment orders payment out of court of the sum of \$237,500.00 together with interest accrued thereon at the prevailing bank rate in respect thereof.

Money paid into court is invested with the Workers Savings & Loan Bank (Part I Rule 19 Supreme Court General Rules Act) and the interest earned thereon is to be dealt with in accordance with the Order of the Court Practice Note (1988) 3 ALLER 896.

We shall hold the said cheque uncashed and are prepared to return same in exchange for a cheque in the correct amount. Enclosed for

your ease of reference is a copy of the Final Judgment as well as a copy of our Notice of Payment into Court with respect to this matter.

Kindly and as a matter of urgency attend to this matter on our behalf.

Yours faithfully,
LIVINGSTON, ALEXANDER & LEVY.

Per: DAVID G. BATTS"

The final judgment referred to is the order of Courtenay Orr, J. cited earlier. One comment ought to be made at this stage. Livingston, Alexander & Levy should have encashed the cheque and made a claim for the balance and the interest. This was done in all cases where interest was in dispute, see *Woolwich Equitable Building Society v. Inland Revenue Commissioner* [1993] A.C. 70; [1991] 3 W.L.R. 790; [1991] 4 All E.R. 737. Was the cheque returned or retained? This issue does not appear to have been explored in the court below.

The response of the Accountant General reads as follows:

"21st June, 1995

Messrs. Livingston, Alexander & Levy
72, Harbour Street
Kingston

*Re: Suit # C.L.M. - 348 of 1991
Barbara McNamee vs. Stiebel &
Company Limited*

I refer to your letter dated June 19, 1995 in connection with the above suit. The amount of Two Thousand Three Hundred and Seventy Five Dollars, (\$2,375.00) represents one per centum deducted from Two Hundred and Thirty Seven Thousand and Five Hundred

Dollars, (\$237,500) as commission to the Accountant General under section two (2) of the investment of suitors money act.

Interest is only paid where the payment into court order stipulates that the amount should be invested. [Emphasis supplied]

Yours faithfully,

Actg. Accountant General."

There was a time in the eighteenth century when the Paymaster General in the British Cabinet was allowed to retain the interest on Government deposits. That was the foundation of the Fox family fortune and accounts for the splendour of Holland House, their famous family seat.

The Accountant General of Jamaica should be reminded that those days are long past. The interest on suitors' accounts belongs to the suitors, not to the Government or anyone else. It is under the control of the court and is to be paid out pursuant to the court's direction. Here the Accountant General seems to have ignored Section 11 of The Investment of Suitors' Moneys Act (the Act). It was against the background of her unchallenged evidence that the appellant Barbara McNamee instituted proceedings by way of Originating Summons seeking:

1. "A Declaration that the Plaintiff is entitled to the sum of \$237,500.00 together with interest accrued thereon at the prevailing Bank rate in respect thereof from the date of payment in to the date of payment out same to be paid to the Plaintiff, BARBARA McNAMEE or to her Attorneys-at-Law, MESSRS. LIVINGSTON, ALEXANDER & LEVY.

2. A Declaration that the Accountant General is obliged to abide by an Order of this Honourable Court as to the disposition of interest earned upon sums paid into court.
3. That there be an Order for costs of this Application."

What did Ellis, J. decide?

The learned judge's oral judgment was reduced to writing and stated thus:

"THE HONOURABLE MR. JUSTICE ELLIS

Grateful for Arguments and Research of attorneys. Arguments were helpful.

I find,

1. The Accountant General is not obliged to invest or deposit in the Workers Savings and Loan Bank without an Order of the Court. Investment of Suitors Money Act.
2. No Order to do so emerged from the arguments and the documents.
3. It is trite that Rule 19, emphasised by Mr. Batts, being subsidiary and adjectival law must be subject to the Substantive Legislation which is the Investment of Suitors Money Act.

In any event, Section 2 of the Investment of Suitors Money Act is an enabling section which can only come into operation by a party provoking a Judge to make an Order. In light of substantive finding the Declarations sought are refused and Summons stands dismissed.

On question of costs wish to have argument. Attorney General seeks an Order.

J.: No Order as to Costs." [Emphasis supplied]

It does not appear that the learned judge's attention was directed to section 11 of the Act or section 219(1) of the Civil Procedure Code. The order which reflected the learned judge's reasons states:

"UPON THE ORIGINATING SUMMONS coming on for hearing this day AND UPON hearing Mr. David Batts and Miss Daniella Gentles, Attorneys-at-Law of Livingston, Alexander & Levy for and on behalf of the Plaintiff and Mr. Laxton Robinson and Mr. H. Wells, Attorneys-at-Law for and on behalf of the Second Defendant, the First Defendant not present or being represented, IT IS HEREBY ORDERED that:

1. The Declarations sought are refused and the Summons stands dismissed.
2. No order as to costs.
3. Leave to appeal granted."

Was the order of Ellis, J. correct?

Section 2 of the Act makes provision for the investment of monies paid into court. It was stated in the appellant's affidavit that Rattray, Patterson, Rattray paid \$237,500 into court on 19th March, 1992. The Accountant General gives a different date. This is revealed in his enquiry addressed to the Attorney General of 20th June, 1995. Here is the enquiry:

"Attorney General
Attorney General's Chambers
King Street
Kingston

Attention: Miss Sharon Foga

Sir,

*Re: Suit # C.L.M. - 348 of 1991,
Barbara McNamee vs. Stiebel &
Company Limited*

I forward herewith copies of the relevant documents in connection with the above for your perusal and advise.

On the 29th May, 1992 an amount of Two Hundred and Thirty Seven Thousand, Five Hundred Dollars, (\$237,500.00) was received from Messrs. Rattray, Patterson, Rattray, Attorneys-at-Law in respect of the aforementioned suit to be held by the Accountant General until the final order was received from the Court.

An amount of Two Thousand, Three Hundred and Seventy Five, (J\$2,375.00) was netted from this sum representing One percent (1%) commission earned by this Department for keeping of the records.

On the 7th June, 1995 the final order was received for the payment of \$237,500.00 together with interest accrued thereon at the prevailing Bank rate in respect thereof. We were not privy to this information prior to the 7th instant.

The amount paid out was \$235,125.00 as there were no instructions to invest from inception of receipt.

Submitted for your guidance.

Yours faithfully,

Actg. Accountant General

JE/cs

c.c. Messrs. Livingston, Alexander & Levy
Attorneys-at-Law & Notaries Public
72-76, Harbour Street."

Here again section 11 of the Act does not seem to have been considered by the Accountant General.

It is now necessary to advert to section 2 of the Act. It reads:

"2. After the passing of this Act it shall be lawful for the Supreme Court, or a Judge thereof, at Chambers, to direct that any money paid into or under the control of the Court, or any money which is now or hereafter may be standing to the credit of any suit or party in the books of the Accountant-General, or may hereafter be paid to such Accountant-General to the credit of any suit or parties under any order of the Court or a Judge thereof, shall be invested by the Accountant-General in the Workers Savings and Loan Bank, anything contained in any enactment relating to Chancery deposits to the contrary notwithstanding.

3. Such investment shall be made by the Accountant-General to the credit of the suit or parties to which such money belongs; or such other manner as may be directed by the Court or Judge at Chambers."
[Emphasis supplied]

On the crucial issue of the interest, the Act states:

"5. Interest shall be allowed on all money paid into the Workers Savings and Loan Bank under this Act, in the same way (except that there shall be no limit as to amount) that

interest would be allowed on such money if paid in by a private person.

6. Money invested under this Act in the Workers Savings and Loan Bank shall be drawn out by the Accountant-General, and paid by him in the same way that other money of the Court is paid by him."

The relevant sub-section of section 2 pertinent to this case, as emphasised above, reads:

"After the passing of this Act it shall be lawful... for... any money which is now or hereafter may be standing to the credit of any suit or party in the books of the Accountant-General... shall be invested by the Accountant-General in the Workers Savings and Loan Bank."

Such an account, if opened, would have to be to the credit of the suit between *Barbara McNamee v. Stiebel & Co. Ltd.*

Section 219(1) of the Civil Procedure Code is also relevant as the payment into court in the instant case was made pursuant to this provision. It reads:

"219. (1) In any action for a debt or damages the defendant may at any time after appearance upon notice to the plaintiff pay into Court a sum of money in satisfaction of the claim or (where several causes of action are joined in one action) in satisfaction of one or more of the causes of action..."

It is patent that this procedural rule was made pursuant to section 2 of the Act.

There is a conflict in the dates as to when the money was paid into court. The 19th March, 1992, on the account of the appellant Barbara

McNamee in contrast to 29th May, 1992, on the admission of the Accountant General. I will rely on the latter date at this stage as it was the duty of the appellant to adduce the evidence that the money was paid in at the earlier date. Ellis, J. made no finding on the matter and it was unnecessary for him to do so having regard to his findings.

It seems that the onus was formerly on the Attorneys-at-law to obtain the judge's order to pay the money to the Treasury and rule 19 of the General Rules and Orders, made pursuant to the Judicature Law, 1879, published in 1882 in The Jamaica Gazette, at page 215, states the obligation on the Treasury thus:

"19. When a party desires or is directed to pay money into Court he shall, when the amount exceeds £5, obtain a Judge's Order for the payment of the same into the Treasury, and the Treasurer shall forthwith invest the same in the Government Savings Bank to the credit of the particular suit or matter, or as may be directed by the Order.

20. In the case of any payment out of the Treasury in respect of any moneys directed to be paid thereout by any Decree or Order, the name of the person entitled thereto and the particular sum payable to such person shall be specified in such Order; and before any payment out of the Treasury shall be made upon any Decree or Order, there shall be lodged with the Auditor General, by the Solicitor or person having the carriage of the suit, an attested copy of such Decree or Order."

Section 43 of the Judicature Law, in so far as is applicable to the facts of this case, reads:

"43. The Chief Justice, with the concurrence of a majority of the other Judges, may from time to time make, and when made revoke, add to or alter, general Rules and Orders, for all or any of the purposes hereinafter mentioned.

Such Rules shall be subject to the approval of the Governor in Privy Council, who may allow, disallow, alter or add to, such Rules or any of them.

Such Rules when approved shall be published in the *Gazette*, and shall come into operation at the date mentioned in the publication."

Then section 47 reads:

"47. Where any provisions in respect of the practice or procedure of any Courts, the jurisdiction of which is by this Law transferred to the Supreme Court, are contained in any Law of this Island, Rules of Court shall be made for modifying the application of such provisions to such extent as may be deemed necessary for adapting the same to the Supreme Court.

Any provisions relating to the payment, deposit or transfer into or in or out of, any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to procedure and practice."

To understand the force and effect of these provisions recourse must be had to section 219(1) of the Civil Procedure Code as well as section 1(q) of the Schedule to the Judicature (Supreme Court) Additional Powers of the Registrar Act. Both these provisions were referred to previously.

This legislative history accounts for the gazetted rules above. In his written submissions, Mr. Batts gave an excellent explanation of how these rules are preserved and I quote:

"The Judicature Law 1880 became the Judicature Supreme Court Act and Sections 43 and 47 were deleted. The Judicature (Rules of Court) Act was enacted when the power to make Rules of Court was transferred to the Rules Committee of the Supreme Court.

Section 4(7) of that Act provides,

'Any rules of court made under any law or enactment and in force immediately before the commencement of this Act shall continue in force as if they had been made under this section and may be altered or annulled accordingly. A reference in any law or enactment made after the commencement of this Act to rules of court shall be construed in the absence of a contrary intention as a reference to rules of court made under this section or having effect as if so made'."

Section 1(q) to the Schedule of the Judicature (Supreme Court) Additional Powers of the Registrar Act empowers the Registrar to sign the order for payment into court and to that extent Rule 19, requiring the order of a judge for payment into court, is only partly necessary. The Rule is important, however, to demonstrate that section 2 of the Act has always contemplated that money paid into court should be invested forthwith. It was the failure to grasp this essential why there was an error in the court below.

There is a further affidavit which must be cited. It stated:

"I, BARBARA McNAMEE, being duly sworn DO MAKE OATH AND SAY as follows:

1. That on or about the 16th day of February, 1995 when the settlement of this matter was negotiated myself and my attorneys were informed by Mr. Andrew Rattray, Attorney-at-Law of the Law Firm of Rattray, Patterson, Rattray, the Attorneys-at-Law for the Defendant in suit No. C.L. M-348 of 1991 - Barbara McNamee vs Stiebel & Company Limited that the Accountant General's Office had informed him that money paid into court was deposited at the Workers Savings and Loan Bank. Mr. Rattray further advised myself and my Attorneys-at-Law that he was also told that the Accountant General would pay out interest on the sums paid in provided the Order for payment out of court so provided.

2. In the premises I pray that the court will grant the Declaration as ordered herein."

The Accountant General did not reply to this affidavit, perhaps because the officer who gave the information to Mr. Andrew Rattray was not named. If this affidavit was to have significant evidential value, the name of the officer ought to have been disclosed.

The upshot of all this was that the Accountant General stated that the money was deposited with the Bank of Jamaica on 17th June, 1992.

Here is how that evidence emerged:

"I, JUNIOR EBANKS, being duly sworn, DO MAKE OATH AND SAY AS FOLLOWS:

1. That I reside and have my true place of abode and postal address at Passage Fort in the parish of St. Catherine, and I am Director of

Corporate Services at the Accountant General's Department located at Public Buildings West, King Street, in the parish of Kingston.

2. That on the 17th day of June, 1992 the sum of Two Hundred and Thirty-seven Thousand, Five Hundred Dollars (\$237,500.00) paid to the Accountant General's Department in respect of the matter of BARBARA McNAMEE v STIEBEL COMPANY LIMITED (C.L. M-348 of 1991), was deposited in the Bank of Jamaica. A copy of the lodgement slip evidencing this transaction is hereto attached as Exhibit 'JE 1'.

3. That the said sum aforementioned at paragraph two (2), being so deposited, attracted interest at a rate of four percent (4%) per annum, and that by the 13th day of June, 1995 interest accrued on this said sum was Twenty-eight Thousand, One Hundred and Twenty-three Dollars and Seventy-four Cents (\$28,123.74)."

This is an unusual affidavit and I am sure there must have been an oversight why it was presented to the court below. It does not seem to have been adverted to before Ellis, J. and it was certainly not explored in the submission of counsel in this court. The lodgement slip exhibited from the Bank of Jamaica is not for \$237,500 as stated in all the affidavits and correspondence but \$253,710.11. There is no indication that that sum was credited to the suit of the parties as stipulated by section 3 or 11 of the Act, nor is there any explanation why monies which were received on 29th May, as previously stated, was not lodged until 17th June, 1992. There is a further problem. There are seventeen (17) cheques which make up the lodgement exhibited. It would be most unusual for the

attorneys concerned to lodge seventeen (17) cheques for settling the total amount recorded. The upshot of all this is that there is no evidence as to what the Accountant General did with the suitor's money which he admitted he received. This is a serious gap in the respondent's evidence and this matter ought to have been investigated by the Attorney General. The conclusion on this aspect of the matter is that although there was an admission that the \$237,500 was paid over from 29th May, 1992, there is no evidence that it was deposited with the Workers Bank forthwith. Despite the failure to comply with the law the Accountant General collected the statutory commission.

The stance of the Accountant General is curious. Under the Financial Administration and Audit Act, section 15 reads:

"15.--(1) The Governor-General acting upon the advice of the Public Service Commission, may from time to time appoint a fit and proper person to be Accountant-General who shall hold office during pleasure.

(2) The Accountant-General shall be the custodian of the Consolidated Fund and shall perform such functions as are conferred upon him by this or any other enactment.

(3) The Accountant-General shall be responsible for ensuring that--

(a) such balances are kept in the Consolidated Fund as may be required by law and as may be necessary for the conduct of Government business;

(b) no disbursement is made from the assets of the Consolidated Fund except in accordance with law.

(4) The Accountant-General shall submit to the Minister such statements of account on the financial position of the Consolidated Fund, at such times and in such form as the Minister may require."

Be it noted that suitors' monies are not part of the Consolidated Fund. As regards suitors' funds, the Accountant General is in the nature of a trustee and he is under control of the court. Moreover, a suitor can institute proceedings against the Accountant General, as in this case, or institute proceedings pursuant to the Crown Proceedings Act.

Then section 35(1) of the Bank of Jamaica Act reads:

"35.--(1) The Bank may act as banker to the Government and shall be entrusted with such Government banking business in Jamaica and abroad as may be assigned to it by the Minister."

Despite the breath of the language, this section does alter the specific provisions made for suitors' monies embodied in the Act. The Accountant General cannot ignore these special provisions. If he does he is acting ultra vires. What is worse, there is no evidence so far as to what he has done with the suitor's money in this case. There is, however, a further provision in section 11 of the Act which will be considered later. Its terms are wider than section 2.

What were the consequences of the order of Courtenay Orr, J?

For ease of reference, it is pertinent to cite again the order of Courtenay Orr, J. It reads:

"1. Matter settled on terms endorsed on Counsel's Brief.

2. The money paid into court in the sum of \$237,500.00 together with interest accrued thereon at the prevailing Bank rate in respect thereof from the date of payment in to the date of payment out be paid to the Plaintiff, BARBARA McNAMEE or to her Attorneys-at-Law, MESSRS. LIVINGSTON, ALEXANDER & LEVY."

It is clear that Courtenay Orr, J. assumed that the money having been paid over to the Accountant General he would, as a matter of course, have lodged it to the Workers Savings and Loan Bank in a fixed deposit account or some other interest-bearing account. Indeed, there is some evidence that an officer of the Accountant General said that was done. It is not generally realised that there are, apart from the provision for suitors' funds, other legislative arrangements between the Workers Bank and the Government. For instance, section 7 of the Workers Savings and Loan Bank Act provides for Government shareholding and section 21(2) reads:

"21(2) The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of Jamaica to any office with the Bank and any public officer so appointed shall, in relation to pension and to other rights as a public officer, be treated as continuing in the service of the Government."

It is unusual for lawyers to act in a leisurely manner where money is at stake since they are accustomed to saying that interest accrues even

while they are asleep. Yet the above order dated 15th and 16th February, 1995, was not sent to the Accountant General until June 6, 1995. Here is how the order was sent:

"June 6, 1995

The Accountant General
13 King Street
Kingston

Dear Sirs:

*Re: Suit No. C.L. M-348 of 1991
Barbara McNamee vs Stiebel &
Company Ltd.*

Enclosed is Attested Copy Final Judgment
with respect to the aboverferenced matter.

Kindly let us have early receipt of your
cheque in settlement.

Yours faithfully,
LIVINGSTON, ALEXANDER & LEVY

Per: DAVID G. BATTS"

It would have been useful if the order drawn up had mentioned Workers Savings and Loan Bank but section 2 of the Act supplies that omission. The bank rate must have referred to the rate on fixed deposits by the bank named in the statute. If the suitors' monies were invested in some other bank which gave a rate less favourable than the bank named in the statute, the Accountant General would be obliged to give an account why this was done. He would be liable for any shortfall. It should be borne in mind that the Accountant General is paid for his

statutory services. So by virtue of the order of Courtenay Orr, J., and the notification of Livingston, Alexander and Levy, the appellant Barbara McNamee would be entitled to interest from 17th June, 1992, according to the affidavit of Junior Ebanks, until when payment was made presumably between the 6th and 19th June, 1995. A declaration as to the appellant's entitlement cannot be made until it is ascertained whether her lawyers encashed the cheque, retained or returned it to the Accountant General. If it was returned, an enquiry must determine where it was lodged.

What ought to be done?
The alternative interpretation
of the order of Courtenay Orr, J.

Is all lost as far as the appellant Barbara McNamee is concerned? Despite the errors that have occurred, there is a way out. It was envisaged in paragraphs 7 and 9 of the grounds of appeal. Here they are:

"7. That the Accountant General having been given the authority by law it is no longer necessary for the parties to seek an Order of the Court in order to have money paid into court deposited with the Government Savings Bank."

The pleader could have added "especially since the amendments (a) section 219(1) of the Civil Procedure Code and (b) section 1(q) to the Schedule of the Judicature (Supreme Court) Additional Powers of the Registrar Act." These provisions were never brought to the attention of

Ellis, J. in the court below. It was the collective experience of this court which brought these sections into play.

Then ground 9 reads:

"9. That the learned trial judge failed to appreciate that an Order for payment of money into court requires no judicial intervention and that it is unjust, inequitable and contrary to the clear intention of the Legislature for the Accountant General to hold money paid into court at the Bank of Jamaica earning thereon interest at 4% per annum."

The relevant provision which reinforces section 2 of the Act is section 11 of the Act. It reads:

"11. The Accountant-General shall render half-yearly to the Registrar of the Supreme Court a full account of all money of the Court, whether invested under this Act or not, showing the amount standing to the credit of each suit or party; and the Accountant-General shall be entitled to one *per centum* on all money hereafter paid into the Treasury on account of the Court, in consideration for his trouble in keeping the accounts of such money."

Be it noted that this section envisages that suitors' money will be invested and that the interest which accrues goes to swell the suitors' accounts. In the performance of his statutory duty, the Accountant General is like a trustee and he ought to have sought the opinion of the Attorney General in the first instance and ultimately the court. It is also obvious that it would be in the interest of the suitors and the Accountant General to benefit from the high interest rates which commercial bankers such as Workers

Savings and Loan Bank paid out during this period. The provision for half-yearly accounts to be provided to the Registrar of the Supreme Court emphasises the safeguard provided by the law. Did the Accountant General carry out his statutory duty in this regard in this case? Certainly, the Registrar as part of her ministerial duties would keep a record of the payment into court so as to check on the statutory returns of the Accountant General.

In the light of this provision, I would therefore set aside the order of the court below. The hearing of the appeal on this summons is adjourned. I would direct the Registrar of the Supreme Court, pursuant to section 12 of the Judicature (Supreme Court) Act,

to make such investigations and take such accounts in relation to proceedings in the Supreme Court.

Also that she should render a full account as to how the monies standing to the credit of the suit in *Barbara McNamee v. Stiebel* was invested as from 29th May, 1992, as the evidence discloses or the earlier date of 19th March which the appellant has stated. The closing periods should coincide with the findings suggested in this judgment.

A qualified accountant should be retained to calculate the interest which would accrue to the suitor's account if it were in an account at the Workers Savings and Loan Bank during the periods envisaged by this judgment. At this stage, the costs to retain the accountant should be met by the appellant. When that is done the

Registrar of the Supreme Court should forward a report of her investigations to the Registrar of this court after which, upon the resumed hearing, a decision will be taken as to the declaration to which the appellant is entitled. The issue of costs is reserved at this stage.

GORDON, J.A.:

I agree.

WALKER, J.A. (Ag.):

I also agree.