

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 117/09

**BEFORE: THE HON. MR JUSTICE COOKE, J.A.
 THE HON. MR JUSTICE HARRISON, J.A.
 THE HON. MRS. JUSTICE HARRIS, J.A.**

**BETWEEN TRUSTEE IN BANKRUPTCY AND LIQUIDATOR
 OF ADVANCED PRODUCTS LIMITED APPELLANT**

**AND DEG DEUTSCHE INVESTITIONS UND
 ENTWICKLUNGSGESELLSCHAFT MBH RESPONDENT**

**Hugh Wildman, instructed by the Trustee in Bankruptcy for the
appellant**

Gavin Goffe, instructed by Myers, Fletcher & Gordon for the respondent

November 30, December 1, 2009 and February 5, 2010

COOKE, J.A.

[1] This appeal concerns the construction of section 15 (5) of the Bankruptcy Act. The appellant is the Trustee in Bankruptcy and also the liquidator of Advanced Products Limited. The respondent is a petitioning creditor. By notice of application for court orders, the latter sought in paragraph (i) that:-

"The Trustee in Bankruptcy is to restore to the trust
for the benefit of the creditors of Advanced Products

Limited (in Liquidation) the sum of \$580,138.96, or such other amount as this Court thinks fit.”

The ground on which this application was based was that: -

“Section 15 (5) of the Bankruptcy Act prohibits the charging of any expenses to the trust, including travelling expenses without such expenses being prescribed or specially sanctioned or allowed by the Court.”

On the 13th September 2009 the court below (Sykes J) upheld the contention of the respondent (then applicant) as to the proper interpretation of section 15 (5).

The Trustee in Bankruptcy now appeals.

[2] At this juncture section 15 subsections 1, 4 and 5 of the Act will be set out:

- “1. The Trustee may, on such terms as to remuneration and otherwise as may be prescribed, and with the approval of the Court, appoint a proper person to act as his agent in respect of any estate vested in or administered by him under this Act, or in respect of any part of the business thereof
2. ...
3. ...
4. The Trustee shall be entitled, on the grant of a provisional order in bankruptcy, to a commission of six percent on all dividends of any estate or trust paid by him in the administration of a bankrupt’s estate under this Act, and a commission of six percent on all dividends of any estate or trust paid by him (or sanctioned by the Court) in the administration of a debtor’s estate under a deed of arrangement under this Act.

5. Such remuneration shall be for the time and responsibility of the Trustee in the general administration of the estate or trust, and the estate or trust shall not be subject to any other charge in respect thereof, but any expenses in respect of any other matters, including travelling expenses relating to any estate or trust, may be charged against the estate or trust in such manner and to such extent as may be prescribed or specially sanctioned or allowed by the Court."

[3] In his judgment, Sykes J. summarized the stance of the Trustee in Bankruptcy as follows: -

- "10. Mr. Wildman submitted that *prescribed* in this provision should be read as if the words 'by the Minister or other authority' appeared immediately after the word *prescribed* and before the word 'or'. This would mean that the words 'specially sanctioned or allowed' would be qualified by the expression 'by the Court'.
11. The reason put forward for this construction was that section 15 (5) makes allowance for traveling and other expenses relating to the general administration of the estate or trust to (sic) charged against the estate or trust 'in such manner and to such extent as may be prescribed.' Apparently, the practice of the Trustee has been to use the rates set for travelling officers in Central Government as his rates."

As will be demonstrated subsequently, the submissions of the Trustee in Bankruptcy in this court were somewhat different from those in the court below. Sykes, J. also recorded the contention of the petitioning creditor which was: -

- "12. Mr. Goffe on the other hand contends that the words 'by the Court' applies to the entire

expression, that is to say, it governs 'as may be prescribed' as well as 'or specially sanctioned or allowed.'

[4] In respect of his determination of the issue before the court, Sykes J. said:

- "20. Section 15 appreciated that it may be necessary for the Trustee to appoint agents to assist him in his functions. The Trustee is authorised to appoint agents on such terms as to remuneration as may be prescribed. However the approval of the Court is necessary before the appointment of the agent becomes effective. Section 15 (1) does not expressly (sic) who prescribes the remuneration but the clear intention is that the Court should have a say in the matter of the appointment and the remuneration. This does not mean that the Court dictates the remuneration but it is implicit that some evidence of the proposed remuneration and how it was arrived at is presented to the Court.
21. Where the Trustee is appointed by the Court he is under the control of the Court and has to account to the Court for his stewardship. It must be remembered that the estate or trust is being administered so that the creditors get back as much of their money as is possible. The estate or trust is not for the benefit of the Trustee or his agent.
22. Section 15 (5) makes provision for the remuneration to be charged on the estate or trust because it says that 'the estate or trust shall not be subject to any other charge.' Up to this point, the only charge in view is the remuneration of the agent. There is no "any other charge" other than the remuneration. Then the provision goes on to say that any expenses including travelling may be charged against the estate or trust. What this means is that the only charges that can come from the

estate or trust are (a) remuneration and (b) any expenses including traveling.

23. Section 15 prevents the Trustee from being his own gatekeeper. The provision wishes to have independent scrutiny of the remuneration and appointment of the Trustee's agent. The provision also wishes to have control and scrutiny of the other expenses that may be charged against the estate or trust.
24. If this is the rationale of section 15 then it makes perfect sense for section 15 (5) to be read as Mr. Goffe contends.

Disposition

25. I conclude on this preliminary point that the *prescribed* is controlled by the last three words "by the Court." It does not mean *prescribed* by the Minister as contended for by Mr. Wildman."

[5] The ground of appeal was that:

"The Learned Trial judge was wrong in law, when he held that Section 15 (5) of the Bankruptcy Act, requires the Trustee in Bankruptcy to obtain the sanction of the Court in respect of expenditure made in the administration of the estate of Advanced Products Limited."

[6] The appellant's written submissions succinctly set out the criticism of the decision of the court below. Paragraphs 4 – 12 are now reproduced: -

"4. These separate and distinct ways are:

1. Expenditure prescribed extra judicially
2. Expenditure specially sanctioned extra judicially, and
3. Expenditure allowed by the Court

5. This interpretation, it is respectfully submitted, is consistent with other methods of expenditure that are permitted under Section 15(1) of the Act. Section 15(1) allows for the Trustee to be remunerated on such terms as may be *prescribed*, and secondly, with the approval of the Court. In that context, two acts are critical to the remuneration of the Trustee, they provide the *sine qua non*: the act must be prescribed by some other person or entity and secondly, it must meet the approval of the Court. What is important is that both are separate and distinct acts. In this case, the prescribed act must be subsequently ratified by the Court.
6. In the instant case, Section 15(5), does not create an overriding arch of ratification by the Court. The Court's ratification stands on its own. It is a separate head whereby the Trustee may seek to justify a particular expenditure, which may not be covered under what is prescribed or specially sanctioned by an extra judicial body, such as the Executive.
7. It is well established that it is the Executive that prescribes rates for travelling and subsistence by public officers. Those rates govern all public officers including the Appellant, and his staff. Those rates are prescribed by the Ministry of Finance and the Public Service. They are subject to review from time to time in keeping with changes in inflation and other circumstances. It is not in dispute that the charges in question fall within the ambit of those rates.
8. The Appellant contends that those rates are independent of any judicial intervention. Section 15 recognises and concedes a separation of powers: the Executive and Judicial functions. Whatever act of

expenditure is authorised by the Executive, need not get the approval of the judiciary. This is the plain and literal meaning of Section 15(5). It is a cardinal rule of statutory interpretation that where a statute is plain and unambiguous in its language, one need not employ another rule of interpretation in its construction. To do otherwise would be tantamount to the usurpation of the will of Parliament.

9. It is respectfully submitted, that it is not the role of a trial judge to impose his philosophical and jurisprudential thinking in disregard of the will of Parliament.
10. Justice Sykes clearly erred in holding that the words *allowed by the Court* are controlling words of *prescribed or specially sanctioned*.
11. The Learned Judge fell into error and was patently wrong in holding that Section 15 *prevents the Trustee from being his own gatekeeper, and that the provision wishes to have independent scrutiny of the remuneration and appointment of the Trustee's agent, and that the provision also wishes to have control and scrutiny of the other expenses that may be changed (sic) against the estate or trust*.
12. The Learned Judge clearly was attempting to rewrite the plain meaning of the section. The contentious words in Section 15(5) are to be read disjunctively; creating three independent heads. *Prescribed*, in the context of the section, must import a predetermined set of costs defined by some independent body other than the Courts. If they are so prescribed, one need not go to the Court for permission to justify these costs. Where it is not prescribed, it may be sanctioned by an independent body as in the case of the Executive sanctioning expenditure to be made by public officers. Again, one may not resort to the Court for

approval. However, where neither of the former obtains, the Trustee may approach the Court to approve or allow a particular expenditure in respect of the administration of an estate. All three heads are in the alternative."

[7] Section 15 (5) of the Act speaks to and governs the circumstances in which the Trustee in Bankruptcy is able to subject the estate or trust to charges in the general administration pursuant to its statutory duty. Firstly, there is "such remuneration". This remuneration pertains to commissions as set out in section 15 (4) of the Act. Accordingly, I do not agree with the learned trial judge that "remuneration" as stated in section 15 (5) of the Act is relevant to "remuneration" in section 15 (1). Secondly, there are charges "as may be prescribed". Thirdly, there are charges which are "specially sanctioned" or "allowed by the Court". As yet, in the context of section 15 (5), I cannot detect a distinction between "specially sanctioned" or "allowed by the Court". Based on my analysis of this section, I am unable to agree with the learned trial judge that "prescribed" is controlled by the last three words "by the Court". In my view, charges which are prescribed take effect independently of the supervision of the court. This can be illustrated by reference to section 13 of the Act which states as follows:-

"13 - The fees to be charged for any business done under this Act shall be according to a scale to be prescribed by the Minister, who shall have power to direct by whom and in what manner the same shall be collected, accounted for, and appropriated. The Minister may, at any time, alter the amount of any of the fees prescribed under this Act, and notice of such alteration shall be given in the Gazette, and the scale so altered shall come into operation at such time as may be specified in such notice."

In the Jamaica Gazette dated December 20, 2001 at No. 306, the Minister prescribed the fees to be charged within section 13 of the Act.

[8] The appellant sought to persuade the court that the sum of \$580,138.96 was chargeable, either as "prescribed extra judicially" or as "sanctioned extra judicially". It is (as I have indicated previously), clear that that sanctioning is entirely within the purview of the court. It therefore only remains to determine if there has been a prescription as, for example, such as is relevant to section 13 of the Act (see paragraph 7 supra). The burden of the appellant's submission was that the Trustee in Bankruptcy was entitled to recover legitimate travelling and subsistence expenses since the amount claimed was in accordance with the executive "prescribed" rates as enumerated in various circulars (see paragraph 7 of the appellant's written submission). This submission finds no favour with me. The Bankruptcy Act established its own definitive regime. It would be wrong to transpose directions pertaining to civil servants generally as being relevant to the staff of the Trustee in Bankruptcy. The word "prescribed" in section 15 (5) must mean prescription by an authorized person or entity within the ambit of the Act. Further, it must be unambiguously clear that such prescription is directed specifically to the section of the Act in which the word "prescribed" is used. This was achieved in respect of section 13 of the Act. In section 2 of the Act, it is stated that "prescribed" means prescribed by rules of court. There are no rules of court which set out any criteria for charging in respect of expenses relating to the general administration of the trust or estate. Further, if it is permissible, there is no directive from the appropriate Minister as to recovery of expenses. I am therefore impelled to the conclusion that the Trustee in Bankruptcy is not

allowed to deduct expenses from the estate or trust unless such expenses have been sanctioned or allowed by the court.

[9] Finally, I would dismiss this appeal for the reasons given above. It is to be noted that in so doing I have disagreed with the analysis of the learned trial judge who, nevertheless, made the correct determination. The respondent should have the costs of the appeal.

HARRISON, J.A.

[10] I have read the judgment of my brother Cooke J.A. I agree with his reasoning and conclusion and have nothing further to add.

HARRIS, J.A.

[11]. This is an appeal from an order of Sykes, J., arising from a preliminary point, in which he ordered that the Trustee in Bankruptcy requires the sanction of the court for any expenditure made by him.

[12] On the 7th April, 1994 an order was made by the court for the winding up of a company called Advanced Products Limited. The Trustee in Bankruptcy (hereinafter called 'the Trustee') was, on May 10, 1995, at the first meeting of the creditors, appointed liquidator of the company. Subsequently, an application was made by the Trustee to the court for an order for the dissolution of the company. An affidavit was sworn by him that he had realized the asset of the

company, had declared a final dividend of 90.84 cents in the dollar which had been paid to the creditors and had incurred certain expenses in his administration of the estate.

[13] On the 2nd June, 2009 the respondent filed an application for court orders, seeking among other things, an order for the restoration to the estate the sum of \$580,138.96 or such other amount as the court deems fit, on the ground that section 15 (5) of the Bankruptcy Act prohibits the charging of expenses, unless such expenses were prescribed or specially sanctioned or allowed by the court.

The learned judge ordered that:

“On the preliminary issue of the proper interpretation of section 15 (5) of the Bankruptcy Act the word ‘prescribed’ in section 15 (5) of the Bankruptcy Act is controlled by the last three words of that provision, ‘by the court.’”

[14] The following ground of appeal was filed:

“The Learned Trial Judge was wrong in law, when he held that section 15(5) of the Bankruptcy Act requires the Trustee in Bankruptcy to obtain the sanction of the Court in respect of expenditure made in the administration of the estate of Advanced Products Limited

It is submitted that on a proper interpretation of Section 15(5) of the Bankruptcy Act, three (3) distinct bases exist on which the Trustee in Bankruptcy may justify any expenditure made in respect of the administration of an estate:

1. That the expenditure may be one prescribed by the Executive without the intervention of the Court;

2. That the expenditure may be one specially sanctioned by the Executive, without the intervention of the Court;
3. That the expenditure may be one in which the Trustee may seek the sanction of the Court to justify the expenditure in respect of the administration of an estate."

[15] Mr. Wildman submitted that no prior approval of the court is required by the Trustee when he claims his expenses. The Bankruptcy Act, he argued, provides three separate and distinct methods whereby the Trustee may recover his fees. It was also his submission that the Trustee's expenditure may be one prescribed by or specially sanctioned by the Executive, or, it may be one in which the Trustee seeks the court's sanction to justify his remuneration. He further argued that section 13 of the Act identifies a role for the Executive in the determination of the scale of fees to be charged by the Trustee and the expenses which the Trustee seeks to recover are sanctioned by the Executive. He further contended that section 18 bolsters section 13 whereby it permits the Trustee to recover expenses from the Consolidated Funds where there are no funds from the estate to cover them.

[16] It was Mr. Goffe's submission that as a general rule, the Act envisages that all expenses incurred by the Trustee are to be paid out of the Consolidated Fund. Under section 15 (4), he submitted, the Trustee is entitled to a 6% commission. This represents remuneration of the Trustee for his time and responsibility for administering the estate, he argued. It was further argued by

him that, there may be a departure from the general position under section 15 (5) which permits the Trustee to recover expenses but only as specially sanctioned by the court. Section 13 speaks to fees and the reference to fees therein means money paid for services rendered as distinct from remuneration, he argued. The prescribed scale of fees mentioned in section 13, he argued, specifies the type of matters which fall within the category of fees but expenses are not included.

[17] It was further submitted by him that section 18 does not give the Trustee unrestrained permission to charge expenses to the estate, for the reason that, under that section, if the Trustee cannot lawfully charge expenses to the estate, then he would have to look to section 15 (5).

The learned Judge in dealing with the issue said:

"20. Section 15 appreciated that it may be necessary for the Trustee to appoint agents to assist him in his functions. The Trustee is authorized to appoint agents on such terms as to remuneration as may be prescribed. However the approval of the Court is necessary before the appointment of the agent becomes effective. Section 15 (1) does not expressly (sic) who prescribes the remuneration but the clear intention is that the Court should have a say in the matter of the appointment and the remuneration. This does not mean that the Court dictates the remuneration but it is implicit that some evidence of the proposed remuneration and how it was arrived at is presented to the Court.

21. Where the Trustee is appointed by the Court he is under the control of the Court and has to account to the Court for his stewardship. It must be remembered that the estate or trust is being

administered so that the creditors get back as much of their money as is possible. The estate or trust is not for the benefit of the Trustee or his agent.

22. Section 15 (5) makes provision for the remuneration to be charged on the estate or trust because it says that 'the estate or trust shall not be subject to any other charge.' Up to this point, the only charge in view is the remuneration of the agent. There is no 'any other charge' other than the remuneration. Then the provision goes on to say that any expenses including traveling may be charged against the estate or trust. What this means is that the only charges that can come from the estate or trust are (a) remuneration and (b) any expenses including traveling.
23. Section 15 prevents the Trustee from being his own gatekeeper. The provision wishes to have independent scrutiny of the remuneration and appointment of the Trustee's agent. The provision also wishes to have control and scrutiny of the other expenses that may be charged against the estate or trust."

[18] This appeal raises an essential point which turns on the construction of section 15 (5) of the Bankruptcy Act. The question is whether on a true construction of the section, the court's approval is mandatory for the Trustee recovering expenses for services rendered in the administration of the estate of a debtor or a trust. The resolution of this question demands an inquiry into the meaning of section 15 (5). Such inquiry requires not only an examination of section 15 but also an exploration of other relevant provisions of the Act.

[19] The approach to questions of construction of a statutory instrument is to ascertain the intention of the legislator. This process demands an inquiry into the

meaning of the words which the statute conveys. It is a well established principle that in the interpretation of a statute the words contained therein should be given their natural and ordinary meaning, as it is presumed that the legislators exercised care and precision in their use of language. Once the words are clear and admit of only one meaning, then that meaning should be ascribed to them.

[20] Under section 13 of the Act, the Minister may fix fees for the work done.

The section provides:

"The fees to be charged for any business done under this Act shall be according to a scale to be prescribed by the Minister, who shall have power to direct by whom and in what manner the same shall be collected, accounted for, and appropriated. The Minister may, at any time, alter the amount of any of the fees prescribed under this Act, and notice of such alteration shall be given in the Gazette, and the scale so altered shall come into operation at such time as may be specified in such notice."

[21] Section 14 makes provision for, among other things, the payment of the expenses of the Trustee in Bankruptcy, including his salary. Section 14 (2) reads:

"14. (1) (a) ...

(2) the Minister shall provide the Trustee with a suitable office in Kingston and all expenses of that office including the salary of the Trustee and all expenses incurred by him in the performance of his functions shall be defrayed out of the Consolidated Fund."

[22] Section 15 provides for the remuneration of the Trustee and agents appointed by him. It provides:

- "1. The Trustee may, on such terms as to remuneration and otherwise as may be prescribed, and with the approval of the Court, appoint a proper person to act as his agent in respect of any estate vested in or administered by him under this Act, or in respect of any part of the business thereof
- 2 ...
3. ...
4. The Trustee shall be entitled on the grant of a provisional order in bankruptcy, to a commission of six percent on all dividends of any estate or trust paid by him in the administration of a bankrupt's estate under this Act, and a commission of six percent on all dividends of any estate or trust paid by him (or sanctioned by the Court) in the administration of a debtor's estate under a deed of arrangement under this Act.
5. Such remuneration shall be for the time and responsibility of the Trustee in the general administration of the estate or trust, and the estate or trust shall not be subject to any other charge in respect thereof, but any expenses in respect of any other matters, including traveling expenses relating to any estate or trust, may be charged against the estate or trust in such manner and to such extent as may be prescribed or specially sanctioned or allowed by the Court."

[23] Section 18 deals with the reimbursement of the Trustee of expenses where there is no fund from which he could be lawfully reimbursed. The section states:

"When in the performance of the duties of his office the Trustee has incurred any expense or made himself liable to any claim or demand, and there is no fund out of which he may or can lawfully reimburse himself in respect of same, then on any Judge of the Supreme

Court or Resident Magistrate, as the case may be, certifying that such expense was properly incurred or that such liability was properly undertaken as aforesaid, it shall lawful for the Minister to order that such expenses shall be reimbursed out of, or such liability be provided for from the Consolidated Fund."

[24] The foregoing sections show that the Trustee is entitled to remuneration for his services and may recover expenses incurred thereby. The question however, is by what means can expenses be recovered? Is the Trustee at liberty to charge and recover fees without the consent of the court?

[25] The first question to be answered is whether, in determining the true construction of section 15 (5), the word "prescribed" as used therein is capable of the limited construction placed thereon by Mr. Wildman. This leads me to consider the meaning of the word. The word "prescribed" is used in various provisions of the Act. However, it does not convey the same meaning in each provision. In my quest for an interpretation which will yield a just result, I must investigate the intention of Parliament in its use of the word as it appears in section 15 (5).

[26] The word "prescribed" is defined in section 2 of the Act as meaning "prescribed by rules of court". Looking at this phrase, one is bound to presume that Parliament intended to restrict the phrase to such matters as are ordained by rules of court. Consequently, one is entitled to adopt a preference for a reasonable interpretation of the word "prescribed" as appearing in section 15

(5) by saying that it permits a course of action, as dictated by the definition of that word in section 2.

[27] Section 15 (5) creates three distinct methods by which the Trustee may proceed in recovering expenses. In my view, the legislators, in specifying these separate methods of procedure, would have intended that expenditure by the Trustee may be recovered in such manner as dictated by the rules of court, or by special sanction of the court, or as allowed by the court. There is absolutely no reason for presuming that the phrase, so construed, would make nonsense of section 15 (5).

[28] It could not be that the Trustee's remuneration as prescribed by section 15 (5) should be subject to the court's approval only in circumstances where the Trustee seeks the court's approval, as contended for by Mr. Wildman. I must also add that the construction of the word "prescribed" within the context of section 15 (5) as found by the learned judge does not meet the meaning which ought to be placed on it.

A further issue for consideration is whether the language of section 15 (5), taken with that of sections 13 and 18 show that the Trustee may obtain reimbursement of expenditure without the court's intervention. Mr. Wildman contended that section 13 of the Act offers some guidance in interpreting section 15 (5). He argued that by section 13, the Trustee is constrained by the fees prescribed by the Minister. The Act, he contended, specifically names the Minister as part of

the Executive performing administrative functions and in so doing, draws a distinction between the judicial, the executive and administrative functions in relation to the fixing of the Trustee's fees. It was his further contention that the Bankruptcy Rules having made no provisions for the setting of a scale of fees by the court, the fixing of fees such as the Trustee's travelling expenses and cost of subsistence would fall within the purview of the Executive. He sought to bolster his argument by placing reliance on section 18 also.

[29] Mr. Wildman, in his effort to prevail upon this court to accept that reimbursement of the Trustee for expenses for travelling and subsistence does not require judicial approval made reference to the prescribed scale of fees by the Ministry of Finance and the Public Service which are authorized by the Executive.

[30] It cannot be denied that, as dictated by section 13, the Executive plays a role in providing a scale of fees but such scale is clearly for business done under the Bankruptcy Act. The scale of fees as contemplated by the Act extends only to a scale for business executed under the Act. Mr. Wildman's attempt to import the scale of fees fixed by the Ministry of Finance and the Public Service into the provisions of section 13 of the Bankruptcy Act is devoid of merit.

[31] It is of importance to state that the Minister, by Gazette Notice of the 20th December, 2001 fixed a scale of fees for the following: the cost of statement of affairs, searches, sale agreement for land, land transfers, and preparation of

discharges for mortgages. These fees, prescribed by the Minister, relate to business done in respect of the estate. None speaks to the cost of travelling or subsistence. Further, the expenses which the Trustee seeks to recover include items other than travelling and subsistence, which are also not covered by the schedule of gazetted fees.

[32] Section 13 contemplates that the Minister would provide a scale with respect to those charges, as specified in the Gazette Notice, which the Trustee or his agent is likely to incur in the conduct of the business of the estate as distinct from other expenses. It appears to me that, even in circumstances where the Trustee does work in the business of the estate, section 13 does not empower the Minister to order payment to him for any charges which he may incur. If the legislators had so intended, they would have expressly stated.

[33] There can be no dispute that under section 18, the Trustee may recover his expenses from the Consolidated Fund in circumstances where there are no funds in an estate or a trust to meet those expenses. It is obvious that where there are outstanding expenses, they must be recovered from the estate however, one may resort to the Consolidated Fund only if the funds of the estate are depleted. The section makes it very clear that, in the absence of funds from the estate for the reimbursement of the Trustee's expenses, the Minister may order that it be paid from the Consolidated Fund but the intervention of the court, is without doubt, a necessary prerequisite to such an order.

[34] The Bankruptcy Rules are silent as to a scale of the fees payable to the Trustee for his administration of an estate. This does not mean that the Trustee is at large in charging fees. The operation of section 15 (5) cannot be controlled by restricting it to that which is contended for by Mr. Wildman. It would have been the legislative intent that the creditors of an estate or the beneficiaries under a trust be protected and that as a result, a Trustee's charges would be supervised and controlled by the intervention of the court. In my opinion, such intervention would either be in the form of a scale of fees as prescribed by rules of court, or by special sanction, or permission of the court, as authorized by section 15 (5).

[35] Section 15 (5) is clear. There is no reason to presume that the section as construed would run contrary to that which was reasonably contemplated by the legislature. There is absolutely no cause to refrain from permitting the language of the section its full effect. In my opinion, the word "prescribed" should be given the meaning as directed by section 2. On a proper construction, the phrase "as may be prescribed or specially sanctioned or allowed by the court," should read: "as may be prescribed by rules of court, or specially sanctioned by the court, or allowed by the court". Since there are no rules of court to satisfy the word "prescribed", then the Trustee's expenses should be specially sanctioned or allowed by the court.

[36] I would dismiss the appeal with costs to the respondent.

ORDER

COOKE, J.A.

Appeal dismissed with costs to the respondent to be agreed or taxed.