

# **EQUITY AND TRUSTS**

## **CASE NOTES**



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## Contents

<i>Barnes v Addy</i> (1874) LR 9 Ch App 244 .....	3
<i>Norman v Federal Commissioner of Taxation</i> (1963) 109 CLR 9 .....	7
<i>Coco v AN Clark (Engineers)</i> [1969] RPC 41 .....	10
<i>Commercial Bank of Australia v Amadio</i> (1983) 151 CLR 387 .....	14
<i>Calverley v Green</i> (1984) 155 CLR 242 .....	18
<i>Nelson v Nelson</i> (1995) 184 CLR 538 .....	22
<i>The Hancock Family Memorial Foundation Ltd v Porteous &amp; Anor</i> [1999] WASC 55 .....	26

SAMPLE

## ***Barnes v Addy (1874) LR 9 Ch App 244***

**Source:** Hard copy via your law library or electronically via a subscription service

**Court details:** Court of Chancery, United Kingdom

**Procedural history:** The case was an appeal to the decision of Vice-Chancellor Wickens. It concerned the estate of William Addy (testator).

**Facts:**

- The plaintiffs were the testator's grandchildren, the children of Henry and Ann Barnes.
- The defendants were John Addy (died during the suit), William Duffield and William Preston (solicitors).
- The testator appointed, by will, William Crush, John Lugar and John Addy as executors and trustees. His realty and personalty were devised with clear instructions (discussed on at page 245).
- The will appointed the new trustees but contained no provision to alter the number of trustees.
- William Crush renounced probate and disclaimed the trust. As a result, the estate was passed to John Lugar and John Addy who appointed George Clark as a trustee in place of William Crush.
- John Lugar died in 1852 and George Clark died in 1857 – John Addy became the sole trustee.
- Henry Barnes did not get along with John Addy and commenced an action against him claiming breaches of trust. This action was dropped and John Addy decided to retire citing, 'he wished to get rid of the expense and annoyance to which he had been so long put by the Barnes family' (page 247).
- John Addy instructed his solicitor, William Duffield, to appoint Henry Barnes as the trustee to replace him.
- William Duffield advised John Addy against this course of action and advised that independent legal advice should be considered. John Addy did not seek subsequent counsel and directed William Duffield to complete the necessary deeds.
- Henry Barnes' solicitor, William Preston, refused to action the deeds on receipt from William Duffield citing personal reasons. Henry Barnes later took action to persuade William Preston. When William Preston later received the drafts of the deeds, he

wrote to Ann Barnes detailing the planned course of action and seeking her consent to enact the plan in writing (noting all previous instructions had been provided by Henry Barnes).

- Ann Barnes replied stating her desire was to have Henry Barnes appointed.
- John Addy remained a beneficiary under the will and together with his wife, 'had no issue, and they had from time to time received the whole of their share of the estate' (page 249).
- Henry Barnes depleted the trust funds and was declared bankrupt on 8 Feb 1859.
- An action sought a declaration that John Addy had breached his duty and trust by appointing Henry Barnes as the sole trustee and inter alia, that John Addy, William Duffield and William Preston were liable and bound to make good the funds that had been depleted.
- John Addy died in 1872 and his widow administered his estate – the suit was revived against her.
- In the court of first instance, the suit was dismissed against William Duffield and William Preston but it was declared, 'John Addy's estate was liable to replace the fund which had been lost, and directed that if the administratrix did not admit assets the accounts of the estate should be taken, and his assets applied in due course of administration'.
- The plaintiffs appealed the decision to dismiss the action against William Duffield and William Preston.

**Issue:** The case considered the circumstances in which a third party or stranger will be held liable as a constructive trustee.

**Reasoning / Decision (Commentary):** The case stands as authority that a third party may become liable as if a trustee in the following three circumstances:

- 1) Where a third party receives trust property with the knowledge that it was held under trust (knowing receipt rule);
- 2) Where a third party does not receive trust property but assisted a trustee in breaching their duty or fiduciary obligations (knowing assistance rule); or
- 3) Where a stranger acts as a trustee without authority (trustee de son tort).

Here, the suit was dismissed because the solicitors did not receive property, they advised independent counsel should be sought and it could not be established they were aware nor could reasonably expect to know what Henry Barnes would do as trustee.

**Ratio:**

- Lord Selbourne L.C. (Sir W.M. James L.J. and Sir G. Mellish L.J. concurring): With respect to William Preston, his Honour stated, 'There is not the slightest trace of whatever of knowledge or suspicion on his part of an improper or dishonest design in the transaction. There was nothing to lead him to suppose that Mr. Barnes, when had so appointed a trustee ...intended to sell out the fund and put the money in his own pocket' (pages 252-3).
- Lord Selbourne L.C (Sir W.M. James L.J. and Sir G. Mellish L.J. concurring): With respect to William Duffield, his Honour stated, 'All these circumstances, and his own honest advice to his client, pointing out the risk and the dangers, and recommending that the transaction should not proceed, prove that he thought that was all which he, as solicitor, was bound to do. He did not think he incurred responsibility by settling the form of the deed, which, after all, did not increase the power of Mr. *Addy*, who was then sole trustee, to commit a breach of trust. We cannot consistently with the evidence, or with justice, or reason, disbelieve Mr. *Duffield*, when he says he never knew nor suspected any dishonest purpose, or believed that any actual fraud would result from what was done; and if that be a true interpretation of the facts, I certainly, for one, am unable to hold him responsible. With respect to the receipt of the money, he received nothing' (page 254).

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