

The \$200 may be taken fairly to represent the value of the additional parcel, so that the profit on the transaction was the difference between the original price, \$1,080, and \$1,400—\$320. The measure of liability in respect of the transaction would then be the amount of the profit on the resale, \$320: *Fox v. Mackreith*, 2 W. & T.L.C. 709. Interest, occupation rent, and improvements, etc., may be set off against each other. We think that for this sum both Casserley and McGoeys are liable. McGoeys received this sum, and, knowing it was trust money, was bound to see that it reached its proper destination; and, when he paid it to Casserley (if in fact he has yet paid it) in his personal capacity, he was guilty of wrong-doing. Upon the evidence, it was in his hands when the action was begun, and his executors are answerable.

With reference to the parcel bought in Campbell's name, the solution is more difficult. Part of this property has been sold for \$200. Had none been disposed of, the plaintiff's remedy would have been to have it declared that the property still remained subject to the trust, and to have an account on that footing; or he might have had a resale ordered, taking the increased price realised and holding the defendants to the purchase if no more was realised. The defendants are ready to submit to this, but contend that the Court cannot force them to retain the property at a price which may now be found to have been the actual value at the time of the transaction complained of—this being the remedy granted by the trial Judge.

Authority upon the question is extremely meagre. Godefroi, 3rd ed., p. 416, says: "If the estate, or any part of it, has been resold to a purchaser without notice, the trustee is ordered to pay the value of the estate and the profit made by him on the resale, with interest at four per cent." For this are cited: *Hall v. Hallett*, 1 Cox Eq. 134; *Ex p. Reynolds*, 5 Ves. 707; *Randall v. Ettington*, 10 Ves. 423; and *Armstrong v. Armstrong*, 7 L.R. Ir. 207. Lewin, 11th ed., p. 573, does not mention the case where part only has been sold, but gives as alternative remedies the right to compel the trustee to account for the difference in price or "the difference between the sum the trustee paid and the real value of the estate at the time of purchase"—citing for this *Hardwicke v. Vernon*, 4 Ves. 411 . . . where Lord Chancellor Loughborough said that "the plain rule of justice is, that he should be charged with the actual value of the estate."

It may be that this measure of relief bears hardly upon the trustee, but it must be kept in mind that he is the wrong-doer. The sale of a portion of the property, which prevents restitution,