

PRIVY COUNCIL

Jacobson

Vs.

Jamaica Times

(Lord Buckmaster, CJ, Lord Dunedin and Lord Shaw. JJ.)

18.1.1921

JUDGMENT

Lord Buckmaster CJ.

1. On 11th April, 1907, a company known as "The Jamaica Times, Lim," was duly incorporated with a capital which then stood at £ 2,000. It was formed for the purpose of acquiring and taking over "The Jamaica Times" newspaper and the business which had formerly been carried on at Kingston by a Mr. Walter Randolph Durie as a general stationer, printer, publisher, book-binder and shop-keeper. The company was incorporated with a Memorandum and Articles of Association; and it is upon the true construction of some of these articles that the present dispute depends. Article 30 provided that whenever any member of the company (other than Walter Randolph Durie) ceased to be employed, then that member should transfer the ordinary shares held +by him to a person named by the directors on notice; and it was further provided that the consideration for the transfer was to be fixed in a prescribed manner defined by Article 45 in the following terms:

"The fair value of any ordinary shares within the meaning of Clauses 30 and 44 hereof shall be a sum equal to the proportion of the value of the assets of the Company (exclusive of good-will) appearing on the books of the Company to which the said shares shall be entitled on winding up. The certificate of the directors, or some person appointed by them for the purpose, as to such amount shall be binding and conclusive."

2. The appellant in this case bought forty ordinary shares in the year 1910, when he entered the service of the company and became a director. He subsequently acquired by purchase ten more shares, and ten further shares were allotted to him by way of bonus, thus making a holding of sixty ordinary shares. At all times relevant to the present dispute the capital of the company, which, as has already been stated, was originally £2,000, was fixed at £18,000, constituted by 12,000 preference shares of £1 each and 1,200 ordinary shares of £5 each. It was sixty of these latter shares which

were held by the present appellant. He ceased to be an employee of the company on 31st October, 1918, and on 30th November, 1918, there was a resolution that he should retire from being a director, and that his shares should be transferred.

3. Accordingly, two directors proceeded to assess the value of those shares pursuant to Article 45, and they issued, on 10th December, 1918, their certificate certifying the value at £347 16s. 6d. To this certificate the appellant objects, and his objection is based upon the ground that Article 45 compelled the directors to take the value of the assets as they appeared in the books of the company as the basis of their certificate, and that they were not at liberty having regard to the terms and provisions of that article, to express any opinion themselves upon the actual value of the share interest in the capital. What, in fact, they did was this: they took the whole of the assets, exclusive of good will as they appeared, and at the value shown in the balance-sheet of the year 1918.

4. They then proceeded to write off a sum of £ 3,971 7s. 8d. by way of depreciation. From the balance they deducted liabilities excluding certain sums which had been carried to reserve, and excluding the ordinary shares, and the surplus they apportioned so as to give an apportionment to each £ 5 share of £ 5 15s. 11 -d. Upon this, the value of the appellant's holding became the amount already mentioned.

5. The objection on the part of the appellant is to the deduction of depreciation. He says that, whatever may be the actual value of the assets appearing in the company's books, that value is the only one which can be taken into consideration for the purpose of fixing the amount under Article 45. If he is right upon that point, he is entitled to succeed upon this appeal. But their Lordships are unable to give effect to that contention. It appears to them that Article 45 must be read by taking the phrase "appearing on the books of the company" as a qualification of the word "assets," and consequently that the information which must be accepted as fact is the statement in the books of the company of what the assets actually are, and not their value, and that the certificate of the directors must be a certificate as to the amount of the value of such assets. That, of course, is exactly what the certificate does. It takes the assets from the books and assesses a value upon them, and unless, it can be said that the value was to be once and for all determined by the figures as they appear in the books, there can be no complaint made against the certificate.

6. Further, not only does the strict grammatical construction of the article support the certificate, but the other view would lead to the unreasonable result that assets, which

often appear in the books of a company at figures which, on the one side or the other, do not bear any close relationship to their actual value, should, for the purpose of this article, which is directed to ascertaining a real purchase price, be accepted as forming a fixed, immoveable standard by which the value of the ordinary shares is to be determined. In certain circumstances such a construction would operate with great injustice against a shareholder compelled to part with his property, and the article cannot be construed by considering what in fact occurred, but what in the normal conditions of a company's business might reasonably occur.

7. In the present case it also appears that there have, from time to time, been several sums carried to reserve, and the evidence which was given at the trial showed that this had been done for the purpose of providing for depreciation which had actually occurred, instead of reducing the assets as they stood in the books. The actual amount of the sums so carried to reserve is very nearly the amount which the directors have in fact fixed as the depreciation.

8. Their Lordships do not think it necessary to determine the contention that these sums appearing on the reserve account are necessarily items of value appearing in the books which have to be taken into account under Article 45. They prefer to base their opinion upon the construction of the article, which, in their opinion, confines what must be accepted in the books of the company to the assets of the company, and leaves the value to be determined by the directors. For these reasons their Lordships will humbly advise His Majesty that this appeal fails, and should be dismissed with costs.

Appeal dismissed.