

## **PRIVY COUNCIL**

Egyptian Salt and Soda Co., Limited

Vs.

Port Said Salt Association, Limited

P.C.A.No.90 of 1930

(Lords Hanworth Macmillan and Sir Lancelot Sanderson JJ.)

21.04.1931

### **JUDGMENT**

#### **LORD MACMILLAN J.**

1. The sole question at issue in this appeal is whether it is permissible for the appellant company, having regard to the terms of its Memorandum of Association, to engage in the business of exporting salt from Egypt. The respondent company is a shareholder of the appellant company and as such asks and has obtained from His Britannic Majesty's Supreme Court for Egypt, an injunction restraining the appellant company from engaging in this branch of business. The present appeal is against the order so obtained.

2. To place the controversy in its due setting it is necessary to refer to the agreed documents in the case. From these the essential facts may be briefly extracted. It appears that by decree of 26th August 1886, the Khedive established a monopoly in Egypt of the extraction, manufacture and sale of salt and natron or native sodium carbonate. In 1897 an Egyptian limited company, the Societe Anonyme des Soudes Naturelles d'Egypte, which it will be convenient to call "the Egyptian Soda Company," was formed to operate a concession obtained by it from the Egyptian Government. This concession conferred on the Egyptian Soda Company the exclusive right to exploit the minerals and natural products in the lands or lakes of a domain known as Wadi-Natron, which is situated to the west of the Nile in lower Egypt, and in particular to manufacture and export soda. The concession expressly stipulated that the Egyptian Soda Company should on no account sell or export salt, this being a monopoly of the State. Thereafter an English syndicate, known as the Egyptian Syndicate Limited, acquired the undertaking of the Egyptian Soda Company, including its Wadi-Natron

concession, and shortly afterwards entered into an agreement with the Egyptian Government whereby the latter ratified the transfer to the Syndicate of the Egyptian Soda Company's Wadi-Natron concession and further conferred on the Syndicate the Government's monopoly right of manufacturing and selling salt in Egypt, the two concessions to be merged into one in the hands of the Syndicate. The salt was to be obtained by the Syndicate exclusively from the salines or salt deposits of Mex in the western part of Lake Mariout, and the sole right to export the salt so obtained was conferred on the Syndicate. In this agreement with the Syndicate the Egyptian Government expressly reserved the right on six months' notice to abolish the salt monopoly, in which case, however, the Syndicate was to continue to have the right of exploiting the salines of Mex and the Wadi-Natron concession was to remain in full force. The Syndicate thus came to hold both the Wadi-Natron concession with the right to manufacture and export soda and the Mex concession with the right to exercise the Government's monopoly of selling salt in Egypt and for export.

3. The Syndicate next proceeded to promote the appellant company and an agreement between the Syndicate and the company about to be formed was prepared, being the agreement referred to in Head 3 (A) of the appellant company's Memorandum of Association quoted below. The appellant company was duly incorporated under the English Companies Acts on 27th October 1899, and the agreement was executed three days later on 30th October 1899. It provided for the purchase by the appellant company from the Syndicate of: (1) the undertaking of the Egyptian Soda Company and its Wadi-Natron concession and (2) the rights of the Syndicate under the Mex concession :

"but with the reservation that the company shall not do any export trade in salt, such right of export being reserved by the Syndicate from the sale to the company. The Syndicate in exercise of such reserved rights of export of salt being bound by all the conditions imposed by the Government upon the export of salt under the terms of the said concessions."

4. Consequently, while the appellant company acquired the Syndicate's right to manufacture and sell salt in Egypt it did not acquire its right to export salt from Egypt, and was disabled from engaging in the exportation of salt so long at least as the Government monopoly continued in force. The monopoly right of exporting salt which the Syndicate had obtained from the Government and which it excluded from the sale to the appellant company was however subject to the Government's expressly reserved right to terminate the salt monopoly. This reserved right the Government subsequently

exercised and from 1st January 1906, the salt monopoly was entirely abolished, whereupon the reservation of the right of export in the agreement between the Syndicate and the appellant company ceased to operate as a restriction disabling the appellant company from engaging in the export of salt, except in so far as it had any contractual effect.

5. It is now necessary to set out at some length the material parts of the Memorandum of Association of the appellant company on the construction of which the determination of the question at issue depends. Head 3 declares " the objects for which the company is established " to be inter alia as follows :

"(A) To acquire and take over as a going concern and work the undertaking of La Societe Anonyme des Soudes Naturelles d'Egypte, a corporation constituted in Egypt under the local laws, and all or any of the assets of that company, and to enter into, with or without modification, the agreement mentioned in Article 3 of the Articles of Association of the company filed with this Memorandum, and to do all acts in relation to the working in Egypt and its dependencies of salines and of natron deposits, and selling and importing salt and natron, and otherwise, and to enter into any further agreements in relation to the same matters, or any of them or to the manufacture of oil, soap and other oleaginous or similar substances or products.

" (B) To obtain from the Government of Egypt, and any other governments, authorities and powers, concessions, rights, powers, authorities and privileges to carry on any trade, manufacture, business or monopoly.

" (D) To carry on the business of miners, quarriers, explorers, prospectors, manufacturers of and dealers in salt and soda in its various forms, iodine and other products, chemists, druggists, drysalters, importers and exporters of and dealers in produce of wells, mines and quarries, smelters, glass manufacturers, reducers of minerals and metals, mineral and metal merchants and agents, engineers, general storekeepers, carriers and merchants, agents for the acquisition, sale, disposal of, and management of mines or other property, or any business which may be conducive to or assist in carrying out the objects of the company or developing any property acquired by the company. "

6. In subsequent paragraphs further objects of the company are defined, including under (E) the working of deposits of salt or natron in any part of the world and the extraction and rendering marketable of salt or natron and other produce whether obtained by the company or others; under (J) the undertaking and carrying into effect

of all such commercial, trading or other operations or businesses in connexion with the objects of the company as the company might think fit; and under (T) the making of agreements with any company, firm or person in connexion with the production, manufacture, sale or other dealings in salt, natron or other products. The last paragraph of Head 3 is as follows :

(U) To carry out the above objects or any of them either on account of the company alone or in conjunction with any other company, association, firm, persons, or person and in any part of the world and generally to do all such acts and things as are incidental or conducive to the attainment of all or any of the above objects. "

7. It will be observed that the Memorandum of Association nowhere in terms prohibits the appellant company from exporting salt from Egypt, but the learned Judge in the Court below has held as the result of a carefully reasoned judgment that the export of salt is inferentially excluded from the contemplated or permitted objects of the company. This inference is drawn from a consideration of the language of the memorandum, the terms of the agreement referred to in Clause (A), and the surrounding circumstances at the time when the memorandum was framed. The learned Judge says that " the memorandum is to be construed strictly. " If by this he meant merely that the memorandum must be construed in accordance with the accepted principles applicable to the interpretation of all legal documents no exception need be taken to his statement, but if he meant that a specially rigid canon of construction is to be applied to the Memoranda of Association of limited companies their Lordships do not agree. A memorandum of Association like any other document must be read fairly and its import derived from a reasonable interpretation of the language which it employs.

8. As regards the aid to interpretation to be derived from surrounding circumstances the learned Judge has in their Lordships' view taken too wide a scope. It must be borne in mind that the purpose of the memorandum is to enable shareholders, creditors and those who deal with the company to know what is its permitted range of enterprise, and for this information they are entitled to rely on the constituent documents of the company. They have not access to other sources of information such as the antecedent transactions which the learned Judge invokes and have no means of knowing, for example,

" that the intention of the promoters that the company should not export salt was known to the defendant company, "

a circumstance which the learned Judge adduces. The intention of the framers of the memorandum must be gathered from the language in which they have chosen to express it.

9. Turning then to the memorandum, their Lordships recognize that one of the objects placed in the forefront of Head 3 is to enter into the agreement mentioned in Clause (A) and that agreement when examined is found to contain an express exclusion of the right to export salt. But the question to be decided is not one as to the contractual relations between the parties to the agreement. As between the company and the vendors to it the restriction may have imposed a limitation on the company's activities, but it is another matter to infer that the company intended for all time to exclude itself from the export trade in salt even should it otherwise become permissible for it to engage in this business. The language of the agreement itself in reserving to the vendors the right of exporting salt assumes the existence of their monopoly right and that monopoly was terminable at any time. It is unlikely that the appellant company should have intended to disable itself from exporting salt even if the monopoly should be abolished, as it has in fact been. Moreover the agreement was subject to modification or even cancellation by the parties to it and the reservation as between them of the right to export salt might at any time have been abrogated.

10. While it is true that the "original first object" of the appellant company, to quote the words of Warrington, J. (as he then was) in *Pedlar v. Road Block Gold Mines of India* at p. 435, was to acquire the concessionary rights of the Syndicate except the right to export salt, the memorandum goes a great deal further. It states it to be one of the objects of the company to carry on the business of manufacturers of and dealers in salt and soda, iodine and other products and this it may do in any part of the world. The business of dealing in salt in ordinary mercantile parlance plainly includes the sale of salt to purchasers abroad, without any express mention of exportation. As Lord Wrenbury said in *Cotman v. Brougham*

"Powers are not required to be and ought not to be specified in the memorandum. The Act intended that the company, if it be a trading company, should by its memorandum define the trade, not that it should specify the various acts which it should be within the power of the company to do in carrying on the trade."

11. It was conceded that the company could under its memorandum legitimately acquire salt deposits outside Egypt and there engage in the exportation of salt, so that the export of salt is not outside the objects of the company. It is only, it was contended,

the exporting of salt from Egypt which is not within the ambit of the company's objects, a quite special limitation to be derived, not from the terms of the memorandum, but from the agreement to which it refers.

12. The respondents' argument was supported by references to passages in the memorandum where mention is expressly made of the importing of salt and the exporting of other produce and the omission of any mention of the exporting of salt was thus said to be significant of an intention to exclude it from the company's objects. But once it is conceded that it is permissible for the company to export salt from countries other than Egypt this argument fails. In any case it involves the attribution to the draftsman of a degree of precision in the use of language which other parts of the document do not warrant and to the reader of it a refinement of it a perception not usually possessed by those to whom such documents are addressed.

13. The company as its name denotes is a trading and commercial company dealing in salt and soda. Prima facie one would expect it to have among its permitted objects all the ordinary transactions of trade, domestic and foreign, in the commodities in which it is established to deal. In their Lordships' view no ordinary reader of the memorandum would infer from it that the company was under a special prohibition not to engage in the export of salt from Egypt. The learned Judge below after finding that there was an agreed intention to form a company which should not do any export trade in salt, goes on to say :

"The obvious way to carry out that agreement was to phrase the memorandum of the company to be formed in such a way that the company should not have the right to export salt"

and states, very properly, that the "point for decision" is

"whether the obvious method was adopted and the intention was effectively carried out by the memorandum."

14. He then finds by inference from the intention of the promoters, which was known to the company, and from the fact that one of the company's main objects was to enter into the agreement in which the restriction was set forth that the memorandum must be read as if it contained the express words "but not exporting from Egypt."

15. Their Lordships cannot accept this interpretation. In their view the "obvious method" was not adopted and the memorandum does not effectively carry out the intention, if intention there was, to exclude from the permitted objects of the company the export of salt from Egypt. Their Lordships will therefore humbly advise His

Majesty that the appeal should be allowed and the injunction granted by the Court below dissolved. The appellant company will have their costs here and below.

Appeal allowed.

Cases Referred.

[1905] 2 Ch 427=74 LJ Ch 753=93 LT 605=54 WR 44

[1918] AC 514=87 LJ Ch 379=119 LT 162=62 SJ 834=34 TLR 413 at p. 522