

1941

Present: Moseley S.P.J. and Keuneman J.

THE ASSOCIATED NEWSPAPERS OF CEYLON, LTD.  
V. COMMISSIONER OF STAMPS

IN THE MATTER OF AN APPEAL UNDER SECTION 31  
OF THE STAMP ORDINANCE

*Stamps—Distribution of assets in payment of dividend—No conveyance of movable property for pecuniary consideration—Stamp Ordinance (Cap. 189), item 23 (2) and (8) of Part I. of Schedule A*

The Associated Newspapers of Ceylon, Ltd., at an extraordinary meeting passed a resolution authorizing the distribution, as a special dividend, among the ordinary shareholders of the Company the asset consisting of 19,500 ordinary shares of the Landscape Estate, Ltd., held by the Company.

The resolution was passed in virtue of Article 152 of the Articles of Association of the Company which is as follows:—

Any general meeting may direct payment of any dividend wholly or in part in currency other than that of Ceylon, by means of drafts or cheques or by the distribution of specific assets and in particular of paid up shares debentures . . . . . of the Company or of any other company or in any other form of specie or in any one or more of such ways.

In pursuance of this resolution a transfer of the ordinary shares of the Landscape Estates Company, Ltd., was made to a shareholder of the Associated Newspapers of Ceylon, Ltd.

*Held*, that the instrument in question was not a conveyance of movable property for a pecuniary consideration within the meaning of item 23 (2) of Part I., Schedule A of the Stamp Ordinance and that it was liable to duty under item 23 (8) of Part I. of Schedule A.

**A** PPEAL from an order of the Commissioner of Stamps under section 29 of the Stamp Ordinance.

*N. E. Weerasooria, K.C.* (with him *A. R. H. Canekeratne, K.C.*, and *N. M. de Silva*), for appellant.—The adjudication of the Commissioner of Stamps proceeds on a wrong basis. Table A of the Companies Ordinance has no application as the Company has expressly excluded Table A and is not bound by it. The Articles of Association of the Company authorise the distribution of assets in specie by way of a dividend. That is all the resolution of the Company seeks to do. The conveyance of the shares of Landscape Estates, Ltd., by way of a dividend is not a conveyance for consideration. There is no consideration as known to law for such a transfer. The conveyance therefore comes under item 23 (8) of Part I. of Schedule A of the Stamps Ordinance and should be stamped at only Rs. 10.

It was not a cash dividend that was distributed but specific assets of the Company, namely, its holdings in another Company. The shareholders were not entitled to receive or demand a cash payment in lieu of the dividend declared. The Commissioner proceeding on Table A has misconceived the whole situation.

*H. H. Basnayake, C.C.*, for respondent.—Article 151 of the Articles of Association of the Associated Newspapers of Ceylon, Ltd., authorises

the shareholders to declare a dividend. Article 152 authorises the shareholders to direct the payment of a dividend in kind instead of in money. A dividend must be paid in cash unless there is power to direct payment of a dividend in kind. (*Wood v. Odessa Waterworks Company*<sup>1</sup>.) In this case the appellant Company has taken power to pay a dividend in kind. The shareholders cannot therefore refuse to take shares in lieu of cash. But the resolution authorising the payment of the dividend in shares should be preceded by the declaration of a dividend in cash. In the present case the Company has not declared a dividend under Article 151, but in considering the instrument under consideration the Company shall be deemed to have declared a dividend under Article 151 because it is a *sine qua non* to a resolution under Article 152. The transfer of shares in pursuance of a resolution under Article 152 is therefore for a money consideration, the consideration being the amount of dividend in cash the shareholder is entitled to.

*Cur. adv. vult.*

February 14, 1941. KEUNEMAN J.—

This is an appeal from an adjudication by the Commissioner of Stamps under section 29 of the Stamp Ordinance (Cap. 189).

The facts are as follows :—

The Associated Newspapers of Ceylon, Ltd., at an Extraordinary General Meeting, passed the following resolution :

“That it is desirable to distribute, as a special dividend, among the holders of 7,000 ordinary shares of the Company, the asset consisting of 19,500 ordinary shares of The Landscape Estates, Limited, of the value of ten rupees per share, held by the Company, and that the said shares of The Landscape Estates, Limited, be distributed among the holders of the 7,000 ordinary shares according to the number of ordinary shares now held by them in the proportion which 19,500 bears to 7,000 . . . .”

This resolution was passed in virtue of Article 152 of the Articles of Association of the Company which runs as follows :—

“Any General Meeting may direct payment of any dividend . . . wholly or in part in a currency other than that of Ceylon, by means of drafts or cheques or by the distribution of specific assets and in particular of paid-up shares, debentures, or debenture stock of the Company or of any other Company or in any other form of specie or in any one or more of such ways . . . .”

Our attention has also been drawn to Article 151 (not referred to by the Commissioner), which *inter alia* confers upon the Company in general meeting the power to “declare a dividend to be paid to the members”, and declares that “no dividend shall be payable out of the capital of the Company”.

In pursuance of this resolution, a transfer of 15,471 ordinary shares of The Landscape Estates, Limited, was made to Don Richard Wijewardene

<sup>1</sup> 42 L. R. Ch. D. 636.

as a shareholder of The Associated Newspapers of Ceylon, Limited (Document "A"). It is the stamping of this instrument which is in question.

The Commissioner ruled that the instrument in question was a conveyance of movable property for a pecuniary consideration under item 23 (2) of Part I. of Schedule A of the Stamp Ordinance.

It is conceded that if the instrument in question does not come within this item, it must fall under item 23 (8) of Part I. of Schedule A, namely, "conveyance or transfer of property of any kind whatsoever not charged in the schedule".

In arriving at the decision that there was consideration within the meaning of the English law, the Commissioner took into account Regulations 91 and 95 in Table A of the First Schedule of the Companies Ordinance, No. 51 of 1938, which stated (a) that no dividend shall be paid otherwise than out of profits, and (b) that a dividend may be paid by cheque or warrant. He argued that on the declaration of the dividend the shareholder become vested with the right to receive payment out of profits, *i.e.*, in cash, and that the mere distribution of assets is illegal. In this case, he said, "there is consideration for the conveyance of these shares in the sense that the conveyance is made in satisfaction of a claim to payment of a dividend; or, in other words, the real transaction is that the company has sold to the shareholders some of its assets in consideration of sums payable as dividend".

It is clear that this finding is based upon a mistaken view. If the Commissioner held that the shares in The Landscape Estates, Limited, were not profits, or, to put it in the language of Article 151, were capital, there was no evidence whatever to support his view, and in this appeal this point has not been urged. Further, the reference to Regulations 91 and 95 (*supra*) is unwarranted. Sections 9 and 307 (3) of the Companies Ordinance show that Table A of the Ordinance does not apply unless adopted by special resolution. In this case, not only was Table A not adopted, but Article 152 gave a general meeting the power to direct payment of any dividend by the distribution of specific assets including paid-up shares in other companies or in any other form of specie. Crown Counsel did not seek to support the adjudication in this respect.

Driven from this position, Crown Counsel sought to support the adjudication on grounds not urged by the Commissioner. I have some doubts as to whether such a course is permissible in a special appeal of this nature, but I do not think it necessary to determine that point. Shortly stated the argument is as follows:—Under Article 151, the general meeting has to declare a dividend. This means a dividend in cash. When the general meeting resolves to pay the dividend by distribution of assets, it is substituting for payment in cash payment in a different medium. Accordingly, there is consideration for the latter transaction.

This argument is ingenious, but I do not think it is sound. My opinion is that the declaration of the dividend and the declaration of the manner of payment of the dividend are two phases of the same matter. I do not agree that on the declaration of the dividend the shareholder is entitled to payment in cash. The general meeting decides not only what dividend is to be paid, but also how it is to be paid. The manner in which the

shareholder is entitled to payment is governed by Article 152, and where the general meeting resolves that the payment is to be by distribution of assets there is no substitution of one method of payment for another.

Crown Counsel depended on *Wood v. Odessa Waterworks Co.*<sup>1</sup> for the proposition that, where the Articles of Association provide that the directors may with the sanction of the general meeting declare a dividend to be paid to the shareholders, that prima facie means to be paid in cash. I do not think the argument is correct. Article 151 must be read with Article 152 which sets out the method of payment, not only in cash but otherwise, and where the general meeting adopts by resolution payment by distribution of assets, which is permitted by Article 152, there is not and never has been any right on the part of the shareholder to receive payment in any other manner.

Further, if we examine the resolution (Document B), it appears clear that the "special dividend" declared by the Company was "the asset consisting of 19,500 ordinary shares of The Landscape Estates, Limited". There was no declaration of a cash dividend. The 19,500 shares were to be distributed to the shareholders of the Company in proportion to the shares held by them. It was suggested by Crown Counsel that the Company had no authority to declare a dividend in this manner, but we are not here concerned with that question. The only matter before us relates to the stamping of the transfer, and we have to examine the question whether this was a transfer "for any consideration".

I am of opinion that the argument of Crown Counsel fails. I hold that the instrument in question in this case must be stamped in accordance with item 23 (8) of Part I. of Schedule A.

The appeal is allowed with costs.

MOSELEY S.P.J.—I agree.

*Appeal allowed.*

---