1976/8

IN THE PRIVY COUNCIL (8) No.12 of 1974

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

THE TRUSTEES OF SERAMCO LIMITED SUPERANNUATION FUND — Appellants

- and -

THE COMMISSIONER OF INCOME TAX — Respondent

RECORD OF PROCEEDINGS

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Solicitors for the
Appellants.

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Solicitors for the
Respondent.

IN THE PRIVY COUNCIL No.12 of 1974

ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN:

THE TRUSTEES OF SERAMCO LIMITED SUPERANNUATION FUND — APPELLANTS

and

THE COMMISSIONER OF INCOME TAX — RESPONDENT

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

EXHIBITS

Minute of Order (C.A.V.)	18th June 1973
Minute of Judgment	20th December 1973
Notice of Motion on application for leave to Appeal to Privy Council	8th January 1974
Affidavit of Noel D. Levy in support of Notice of Motion	7th January 1974
Minute of Order of Conditional Leave to Appeal	15th February 1974
Formal Order granting Conditional leave to Appeal	15th February 1974

EXHIBITS EXCLUDED

Copy letter from Legal Officer, Income Tax Department to Mr. D. Myers	20th April 1967
Copy letter from Messrs. Myers Fletcher & Gordon to Income Tax Department	1st May 1967
Bank Statement	1964 - 1965
Copy letter from Legal Officer to Income Tax Department	8th May 1967
Copy letter from Messrs. Myers Fletcher & Gordon to Income Tax Department	9th May 1967
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IN THE PRIVY COUNCIL

No. 12 of 1974

ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

THE TRUSTEES OF SERAMCO LIMITED SUPERANNUATION FUND — Appellants

- and -

THE COMMISSIONER OF INCOME TAX — Respondent

RECORD OF PROCEEDINGS

In the Supreme Court of Jamaica

No. 1

Statement of Facts and Judgment of the Income Tax Appeal Board

6th March 1967

No. 1

STATEMENT OF FACTS AND JUDGMENT OF THE INCOME TAX APPEAL BOARD

6th March, 67

Sirs,

Appeal: The Trustees of the Seramco Ltd. Superannuation Fund
v.
Commissioner of Income Tax

I am directed to refer to the notice of appeal herein and to the hearing before the Appeal Board on the 20th September, 1965, 22nd September, 1965, 23rd September, 1965, 18th October, 1965, 19th October, 1965, 20th October, 1965, 1st November, 1965, 2nd November, 1965, 6th November, 1965 and 9th November, 1965.

After hearing the arguments adduced by Counsel on both sides the Board reserved its decision.

On the 6th March, 1967 the Board, by judgment which was delivered in writing, gave its decision

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6th March 1967

(continued)

that the decision of the Commissioner of Income Tax is reversed and the appeal allowed.

A copy of the judgment is enclosed.

I am, Sirs,
Your obedient Servant,

sgd. C. Barrett
Clerk, Income Tax Appeal Board.

Messrs. Myers, Fletcher & Gordon,
P.O. Box 162,
Kingston.

c.c. Commissioner of Income Tax.

INCOME TAX APPEAL BOARD

JUDGMENT

Trustees of Seramco Limited — Appellants

v.

Commissioner of Income Tax — Respondent

Mr. D. Coore, Q.C. with Mr. R. Mahfood instructed by Messrs. Myers, Fletcher and Gordon for the Appellant

Mr. D. Marsh for the Respondent

This is an appeal against the refusal of the Respondent to make a refund of tax which the Appellants say they were not liable to pay.

The Respondent took a preliminary objection to the hearing of the appeal, the ground being that the Board has no jurisdiction to hear such an appeal. The Board heard the arguments on the objection and decided to hear the appeal on its merit and to reserve its decision on the objection. The Board adopted this course (with the consent of the parties) as it seemed advisable to have a decision on the whole matter in a case of such importance which, in all probability, will be taken on a further appeal and in doing so save a possible duplicity of appeals.

The Appellants are the trustees named in a Deed of Trust dated the 16th day of January, 1964, and made between Seramco Limited a company duly registered in Jamaica and having its registered office in Kingston of the one part and the Appellants of the other part. Seramco Limited was incorporated in August, 1963, and in October of that year decided to set up a Superannuation Fund for its male employees and in furtherance of that decision submitted a draft trust deed to the Respondent for his approval. By letter dated the 8th January, 1964, the Respondent approved the scheme under section of the Income Tax Law with effect from the 1st January, 1964. The effect of that approval was to exempt the income of the Appellants from income tax. In due course the trust deed was engrossed and executed on the 16th day of January, 1964 by the parties thereto.

In about March, 1964, the shareholders of Seaforth Sugar and Rum Limited (hereinafter called the Company) approached the Appellants with a view of selling all the shares of that company to them. On the 22nd June, 1964, the Appellants entered into an agreement with the shareholders of the company whereby they agreed to purchase all the issued shares of the company for the sum of £407,934. It was a term of the agreement that upon the signing thereof the vendors would deliver completed and executed transfers to the purchasers of their nominees of all the issued shares in the Company together with the relevant share certificates. It was also agreed that the purchasers would pay for the shares by instalments of £54,500 on or before the first day of July, 1964, £62,500 on or before the 31st day of January, 1965, £62,500 on or before the 30th day of June, 1965, £12,500 on or before the 31st day of July, 1965, £62,500 on or before the 30th day of September, 1965, £62,500 on or before the 31st day of October, 1965, £62,500 on or before the 30th day of November, 1965 and £28,434 on or before the 31st day of December, 1965. The agreement also gave an option (exercisable at anytime before the 31st day of December, 1965) to the vendors to repurchase all the shares of the Company for the sum of £215,904. At the date of the agreement the Company had a very large sum of unappropriated profits.

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(continued)

At all relevant times the authorised capital of Seramco Limited was £100, the issued capital was £22 and when the matter of the purchase of the shares in the Company was discussed the amount in the superannuation fund was about £400. The purchase price of the shares, less the amount of £215,904, (the price at which the shares could be repurchased by the vendors) could only have come from the unappropriated profits of the Company. In fact it was admitted in the Appellant's case that the Appellants and the vendors of the shares were engaged in a dividend stripping exercise.

There was a meeting of the directors of the Company on the 23rd day of June, 1964, at which meeting the Secretary presented transfers pursuant to the agreement of the 22nd day of June, 1964. The transfers were approved and the necessary entries were made in the Share Register of the Company. After this was done Mr. F.L.Myers gave the Secretary a letter addressed to the Company and signed by the holders of at least one half of the issued shares of the Company. This letter sought the removal of Mr. D.P. Elder as a permanent director. Mr. D.P. Elder thereupon vacated his position as Chairman of the Board of Directors and Mr. F.L. Myers produced another letter addressed to the Secretary of the Company and signed by the holders of at least one third of the issued shares of the Company, this letter appointed Mr. F.L. Myers a permanent director of the Company. Attached to this letter was a letter signed by Mr. F.L. Myers consenting to his appointment. The Secretary was then instructed to record the letters in the minute book and Mr. F.L. Myers took on the duties of Chairman of the meeting. After this was done Mr. F.L. Myers in his capacity as Permanent Director by means of a letter signed by him, removed Mrs. A.M. Elder from the position of a director of the Company and appointed Mr. D.P. Elder, Mr. P.H.O. Rousseau and Mr. D.W.B. Myers as directors. That having been accomplished it was proposed and seconded that a dividend of 48½ be paid out of the undistributed profits of the Company up to the 30th September, 1963. The three Elders opposed the proposal but it was carried with the help of the Chairman's casting vote. The Secretary was then instructed to personally deliver notices for the Annual General Meeting to be held on the

1st day of July, 1964. The Annual General Meeting was held on that date and it was resolved that the directors having recommended a dividend of 48½% gross that this recommendation be adopted and the Company declare a final dividend of 48½% out of the undistributed profits to all shareholders appearing on the list as at 1st July, 1964.

On the 23rd June, 1964, Myers, Fletcher and Gordon wrote to the Respondent and informed him that the Trustees of Seramco Limited Superannuation Fund have purchased shares in the Company and asked him to authorise the Company in writing to pay any dividend due in respect of shares owned by the Fund without deduction of tax and to allow the amount which would otherwise have been deducted as a credit to the Company in respect of its own income tax liability. This request was based on his approval of the trust deed under section 25 of the Income Tax Law. By letter dated 25th day of June, 1964 the Respondent authorised the Company to make payments of dividends to the Trustees of Seramco Limited Superannuation Fund without deduction of income tax. That letter was followed by one dated the 2nd July, 1964 from the Secretary of the Company to the Respondent in which it is stated that consequent on the authority given in the letter of the 25th June to make payments of dividends to the Trustees of Seramco Limited Superannuation Fund without deduction of income tax dividends in the sum of £100,686 have been paid to them. The letter went on to ask the Respondent to credit the company's 1964 assessment with the sum of £37,757.5.-, being the amount that would have been deducted from the dividends and to advise the Collector of Taxes accordingly.

It would seem that the letter of the 2nd July, 1964, opened the eyes of the Respondent to what was going on and he asked Mr. D.W.B. Myers to come and see him. Mr. Myers complied with the request and there was an interview at which the Respondent asked what had happened in the transactions and how the Trustees had invested in the Company. He also asked for the memorandum and articles of association. Mr. Myers offered to give all the information he may require including evidence on oath. He was not called upon to do so but on the 28th July, 1964, the Respondent wrote to the Secretary of the

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Company advising him that the authority to make payment of dividends to the Trustees of Seramco Limited Superannuation Fund without deduction of income tax contained in the letter of the 25th June, 1964, is revoked. On that same day the Respondent wrote another letter to the Secretary of the Company in reply to the letter of the 2nd July, 1964, and asked for -

(a) a copy of the Company's resolution authorising the dividends,

(b) a list of the shareholders, the number of shares held by each and the amount of dividends paid to each shareholder,

(c) a copy of the dividend certificates relating to the dividends.

On the 11th day of December, 1964 the directors of the Company held a meeting at which it was proposed to recommend to the shareholders that a dividend of £62,280 net which represents a gross dividend of 48%, less tax be paid out of the accumulated profits of the Company up to the 30th September, 1964. Once again the three Elders opposed the proposal which was passed on the casting vote of the Chairman. A General Meeting of the Company was held on the 28th day of December, 1964 when the declaration of the dividend was approved. On the 5th January, 1965, Myers, Fletcher and Gordon wrote to the Respondent and informed him that on the 28th December, 1964, a dividend of 48%, being £99,648 less £37,368 of tax was declared at the General Meeting of the Company and that the dividend was paid to the Trustees of Seramco Limited Superannuation Fund - shareholders on the 29th December, 1964 less deduction of tax. The letter went on to state that the income of the Fund is exempt from income tax and made claim to £37,368 being the amount of tax withheld on the dividend. The reaction of the Respondent to that letter is contained in his letter of the 9th February, 1965, to the Secretary of Seramco Limited in which he advised that the approval of the scheme is thereby withdrawn with effect from the 8th day of January, 1964. On that same day the Respondent wrote to Myers, Fletcher and Gordon and advised them that their claim for a refund of £37,368. 0. 0. under section 63 of the Income Tax Law is refused. The

letter also stated that if they are dissatisfied with his refusal they have a right of appeal to the Income Tax Appeal Board.

We now direct our attention to the preliminary objection and in doing so we must construe sub section (3) of section 63 of the Income Tax Law, 1954. This sub section provides -

> "Any person who objects to the amount of any repayment made by the Commissioner may appeal to the Appeal Board in the same manner as an appeal may be made against an assessment."

For the Respondent it was contended that the language of the sub section is clear and unambiguous and must therefore be interpreted in its ordinary sense. That no repayment was made by the Respondent and consequently there is no right of appeal. The Appellants on the other hand argued that section 63 sub section (1) makes it obligatory for the Respondent to refund tax which the taxpayer is not liable to pay and that sub section 3 gives the right to challenge the Respondents decision and that the form of words used is designed to give a right of appeal in all circumstances and if the Respondent refuses to make any payment the amount is nil. They also referred us to pages 1 and 17 of the 8th Edition of Maxwell on Interpretation of Statutes and to page 108 of the 5th Edition of Craie on Statute Law and to the case of Shannon Realties Ltd. v. Ville De St.Michel (1924) A.C.185 at 192 and 193. They further submitted that a statute must be construed so as to avoid a manifest absurdity and cited re Lockwood (1957) 3 A.E.R. 520. Thompson v. Thompson (1956) 1 A.E.R. 603 at 607 R. v. Oaks (1959) 2 A.E.R. 92, Luke v. Inland Revenue Commissioners (1963) 1 A.E.R. 655 at 664 and 666 and Whitney v. Inland Revenue Commissioners 10 T.C. 88 at 110.

In reply the Respondent submitted that section 63 requires him to do two things. In the first place he must exercise a statutory discretion to find out if a person has been charged in excess of what is the proper charge and when he is satisfied that the person has been overcharged he must then ascertain the amount to which he has been overcharged. Having done that he then performs the administrative act of making a refund. He then referred us to section 30 of chapter 201 and further submitted that there is no absurdity about

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(continued)

the view put up by him. The Respondent also pointed out that the taxpayer is given a right of appeal under section 25 of the Law where the Commissioner refuses approval of a superannuation fund but no such right of appeal is given when the Commissioner withdraws his approval. And he went on to contend that a part of the appeal deals with the withdrawal of the approved scheme.

When considering the preliminary objection we took note of two passages in the 10th edition of Maxwell on Interpretation of Statutes. The first is at page 1 and reads "A statute is the will of the legislature and the fundamental rule of interpretation to which all others are subordinate is that a statute is to be expounded according to the intent of them that made it. If the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense the words themselves in such case best declaring the intention of the legislature." The second passage is at page 229 in these words "Where the language of a statute is in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity hardship or injustice, presumably not intended a construction may be put upon it which modifies the meaning of the words or even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collacation or by rejecting them altogether under the influence no doubt of an irresistible conviction that the legislature could not possibly have intended what its words signify and that the modification thus made are corrections of careless language and really gives the true meaning. Where the main object and intention of the statute are clear it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law except in a case of the absolute intractability of the language used. Nevertheless the courts are very reluctant to substitute words in a statute or to add words to it and it has been said that they will only do so where there is a repugnancy to good sense.

The first passage says in part that if the words are precise and unambiguous no more is

necessary than to expound them in their ordinary and natural sense. If the passage says only that it would be difficult if not impossible to reconcile it with the second passage but it says more than that, it explains that precise and unambiguous words are the best means of expressing the intention of the legislature. It is the intention of the legislature that matters and this is made clearly manifest in the second passage. A passage, the first sentence of which, was quoted with approval by Sachs J. in Thompson v. Thompson (1956) I A.E.R. 603 at 607. And that passage is fully exemplified and even extended by the case of R.v. Ettridge (1909) 2 K.B. 24. In that case a man pleaded guilty to an offence with which he was charged and sought to appeal against the sentence passed on him. Section 4 of the Criminal Appeal Court Act 1907 gives a right of appeal against sentence following on a verdict. The question then arose as to whether the Court of Criminal Appeal had jurisdiction to hear his appeal against sentence. Be it observed that he pleaded guilty and there was no verdict but the fact that there was no verdict did not deprive him of a right to appeal. Darling J. in delivering the judgment of the Court said "Where no meaning can be given to certain words of a statute without rejecting some of those used in it or where the statute would become a nullity were all the words retained.. The Court has power to read a section as though the words which make it meaningless or nullify it were not there; for this it is enough to cite Fisher v. Val de Travers Asphalte Co. 1 C.P.D.259 and Lloyd v. Lloyd (1885) 14 Q.B.D. 725. This however does not nearly solve our present question, for the section even were the words "by the verdict" retained is not meaningless nor is the section a nullity for it would be operative in all cases in which the conviction is the effect of a verdict of the jury. We are distinctly of opinion that Parliament could hardly have intended that only those who should have been found guilty by a jury should be allowed to appeal against the sentence which is not the act of the jury at all but is fixed and awarded by the judge whether the conviction follow on a plea of guilty or a plea of not guilty and a verdict of guilty. We are of opinion that we may in reading this statute reject words transpose them or even imply words if this be necessary to give effect to the intention and meaning of the legislature". In the Ettridge

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(continued)

case the words are precise and unambiguous but the Court nonetheless took the view that the Legislature did not intend to restrict the right of appeal to persons who have been found guilty by a jury. In the instant case the Respondent is seeking to restrict the right of appeal to persons who object to the amount of any payment made by the Commissioner. To interpret the sub-section in that way would mean that where the Commissioner refuses to make any repayment there can be no appeal but if he decides to pay all but one penny of the sum the taxpayer claims and in fact pays that sum there can be an appeal. In other words an appeal will be given when the grievance is less and no appeal will be allowed when it is at its utmost. That interpretation has further disadvantage in that the right of appeal could be affected by the person from whom the appeal is made. All the Commissioner would need to say is that he will not make a refund and there could be no right of appeal. We are strongly of opinion that the legislature intended to give a right of appeal to a person who disagrees with the decision of the Commissioner in the matter of the making of a refund. The making of a repayment as pointed out by the Respondent is an administrative act and does not require the making of a decision. A decision must be taken before there can be a payment or a refusal to make a refund and it must be from that decision that a right of appeal can arise.

The result is that the preliminary objection fails.

We now come to the merits of the appeal and when considering them we must bear in mind the terms of the letter of the 8th January, 1964, which approved the scheme and the relevant provisions of the Income Tax Law namely the proviso to sub section (2) of section 25 and paragraph (b) of sub section (4) of section 25 as amended by Law 7 of 1956. The letter of the 8th January, 1964, is in these terms -

> " Your letter of the 18th December last with enclosures is hereby acknowledged.
>
> I have examined the trust deed submitted and I now approve the scheme under section 25 of the Income Tax Law 1954 with effect from

the 1st January, 1964.

The following is to be supplied annually in connection with the scheme:

(a) a list showing names of members and amount contributed in each case.

(b) a list showing amount contributed by the employer on behalf of each member and the remuneration on which the contribution is based.

(c) particulars of any repayments made out of the fund, whether to employer or member.

(d) such other information as may be requested".

The proviso to sub section (2) of section 25 is in these words:-

> "Provided that the Commissioner may if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the approval approve a fund or any part of a fund as a superannuation fund for the purposes of this Law".

And paragraph (b) of sub section (4) provides:

> "The Commissioner may by notice in writing addressed to the trustees or other persons having the management of the fund, withdraw his approval in the case of any fund which ceases to satisfy the requirements of this section or the conditions under which the fund was approved, and from the date of such notice the provisions of this law granting the exemption from income tax in respect of the income of the fund and allowing as a deduction from income the contributions to the fund shall cease to have effect in relation to the fund."

It is clear from paragraph (b) of sub section (4) of section 25 that before the Respondent can withdraw his approval of a scheme he must first serve

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(continued)

a notice on the trustees or other persons having the management of the fund and that the provisions of the Law granting exemptions from income tax shall cease as from the date of the notice.

An argument was addressed to us which sought to justify the act of the Respondent in withdrawing his approval on the 9th February, 1965, with effect as of the 8th January, 1964, on the ground that regulation 6 of the regulations made on the 19th May, 1955, under the Income Tax Law 1954 gives him the right or power to do so. We do not see any such right in that regulation but if it in fact purported to give it the regulation would be clearly ultra vires the Law.

The Appellants case is that once the superannuation fund is approved by the Respondent the income of the fund is exempt from taxation. That being so they are entitled to the refund of the tax deducted from the income of the fund. They went on to say that the Respondent had no power to withdraw his approval as he attempted to do and most certainly he had no power to withdraw it retroactively.

The Respondent on his part referred to section 10 of the Income Tax Law 1954 and contended that the transaction between the Appellants and the Company is artificial or fictitious and could be disregarded by the Respondents. Section 10 provides that "Where the Commissioner is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that full effect has not in fact been given to any disposition the Commissioner may disregard any such transaction or disposition and the persons concerned shall be assessable accordingly."

This brings us to the point where we must decide whether the transaction between the Appellants and the Company is artificial or fictitious. The transaction is evidenced by a carefully prepared agreement which has been duly executed by the parties to it. On the face of it it has every appearance of genuineness. It is a document that a Court would recognise as being

enforceable. Is the transaction that it evidences artificial or fictitious? We think not. Shortly put artificial or fictitious means not genuine, the transaction proved before us is certainly genuine, and there is nothing artificial or fictitious about it. Artificial we understand to mean "not natural, assumed, false affected and fictitious has the meaning of imaginary, made up, not real, false assumed in order to deceive. The transaction does not come within the meaning of those words. It is genuine as we have already pointed out to the extent that a Court would enforce it. It is also so genuine that both parties to the agreement counted on making money out of it - the appellants share amounted to about £8000.

The Respondent further submitted that the Appellants by taking part in a dividend stripping operation destroyed the bona fides of the application for approval. And he also submitted that the Trustees acted beyond the powers given by the Trust Deed when they took on the management of the Company. Dealing with the last submission first one need only point out that the Trustees invested in shares of the Company and that three of the persons who were appointed Trustees were appointed directors of the Company along with three other persons. The Trustees as such did not take on the management of the Company. It is not clear to us what the Respondent meant when he submitted that by taking part in a dividend stripping operation the Appellants destroyed the bona fides of the application for approval by the Respondent. Dividend stripping is not ipso facto fraudulent or even unlawful why then should it destroy the bona fides of the application that was made months before the dividend stripping was given thought of.

For these reasons we entertain no doubt that the appeal on the merit should succeed.

The appeal is accordingly allowed.

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In the Supreme Court of Judicature of Jamaica

No. 2

Notice of Appeal dated 3rd April 1967

No. 2

NOTICE OF APPEAL

INCOME TAX APPEAL Suit No. M61 of 1967

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

BETWEEN

THE COMMISSIONER OF INCOME TAX

Appellant

AND

FRANK MYERS)
DOUGLAS FLETCHER) Trustees of the
WILLIAM GORDON) Seramco Limited
PATRICK ROUSSEAU) Superannuation Fund
ERIC BELL)
DARRYL MYERS)

Respondents

NOTICE OF APPEAL

This is an appeal against a decision of the Income Tax Appeal Board made on the 6th day of March, 1967, allowing the appeal of the Respondents against a decision of the Appellant dated the 9th day of February 1965 refusing the Respondents' claim for a refund of £37,368 under Section 63 of the Income Tax Law, Law 59 of 1954.

FACTS

The Respondents are the Trustees (hereinafter referred to as the Trustees) of a Superannuation Fund established for the benefit of the male employees of Seramco Limited (hereinafter referred to as the Company). The Respondents are also Directors of the Company which was registered and incorporated under the Company Law, Cap.89 in or about January 1963. The Company, at all material time, had an authorised capital of £100 and an issued capital of £22.

On the 21st of October, 1963 the Board of Directors of the Company at a meeting held at 36 Duke Street in the parish of Kingston resolved that Carp Corporation should be consulted with a

view to setting up a Superannuation Scheme for the male staff of the Company.

By letter dated 18th December, 1963, the said Carp Corporation submitted to the Appellant a Draft Trust Deed for a Superannuation Scheme and an application for approval of the said Draft Trust Deed under Section 25 of the Income Tax Law, Law 59 of 1954.

By letter dated 8th January, 1964, the Appellant purported to approve the said Draft Trust Deed.

By a Deed of Trust made on the 16th January, 1964, a Trust for the said Superannuation Fund was established.

On the 22nd June, 1964, the Trustees bought all the shares in Seaforth Sugar and Rum Limited for the sum of £407,934 and held them as Trustees for the said Superannuation Fund - the amount of which, at that time, stood at £400. At or about the same date the Trustees became Directors of the said Seaforth Sugar and Rum Limited.

On the 28th December, 1964, the said Seaforth Sugar and Rum Limited declared a gross dividend of £99,648 of this accumulated profits. By letter dated 5th January, 1965, the Trustees made a claim under Section 63 of the Income Tax Law for a refund of the sum of £37,368 being the amount of tax withheld from the said dividend of £99,648.

By two letters dated 9th February, 1965, the Appellant firstly gave notice of withdrawal of approval of the scheme with effect from the 8th of January, 1964 to the Trustees and secondly refused their claim for a refund of the said £37,368. The Trustees, thereupon, appealed under Sub-section 2 of the said Section 63.

The Income Tax Appeal Board dismissed a preliminary point of law taken by the Appellant that on the true and natural construction of the said Section 63 the Trustees had no right of appeal and proceeded to hold that the Trustees were entitled to the said refund as at all material times, the income of the said Superannuation Fund was exempt from tax under Section (1) (sic) of the Income Tax Law, Law 59 of 1954 and the transactions described above were not "artificial"

In the Supreme Court of Judicature of Jamaica

No. 2

Notice of Appeal dated 3rd April 1967 (continued)

within the intendment of Section 10(1) of the Income Tax Law, Law 59 of 1965.

The Appellant, the Commissioner, now appeals.

GROUNDS OF APPEAL

TAKE NOTICE that the following are, inter alia, the grounds of appeal on which the Appellant will rely at the hearing of the Appeal:-

1. That the Income Tax Appeal Board is wrong in law in interpreting Section 63 of the Income Tax, Law 59 of 1954, so as to confer a right on the Trustees to appeal against the Appellants refusal of their claim for the said refund.

2. that, further and in the alternative, the said Superannuation Fund is not "an approved Superannuation Fund" within the meaning of Section 7(1) of the Income Tax Law, Law 59 of 1954 as the said Superannuation Fund established by the said Deed of Trust on the 16th January, 1964 was never approved by the Appellant; and so the said refund was not due to the Trustees

3. that, further and in the alternative, the Appellant was right in refusing the refund, having regard to his further powers of assessment contained in Section 47(4) of the Income Tax Law, Law 59 of 1954. Accordingly, the Appellant acted properly in withdrawing his approval with retroactive effect by the said letter dated 9th February, 1965; and

4, that, further, and in the alternative, the Income Tax Appeal Board interpreted Section 10(1) of the Income Tax Law incorrectly in holding that the transactions described above do not come within the meaning of the words "artificial" as used in the said Section 10(1).

RELIEF SOUGHT

1. That the decision of the Income Tax Appeal Board made on the 6th March, 1967 and referred to above be set aside.

2. That the Appellant's decision refusing the Trustees claim for the said refund of £37,368 be restored.

3. That the Respondent do pay the Appellant the costs of and incident to the hearing of the appeal to this Honourable Court.

4. Such further or other relief as this Honourable Court may deem just.

DATED this 3rd day of April, 1967.

Crown Solicitor.

TO: The Clerk of the Income Tax Appeal Board,
40 Duke Street,
KINGSTON

AND

TO: Messrs. Myers, Fletcher & Gordon,
Solicitors,
P.O. Box 162,
KINGSTON.

Filed by the CROWN SOLICITOR of Public Buildings East, Kingston, Solicitor for the abovenamed Appellant whose address for service is that of its said Solicitor.

In the Supreme Court of Judicature of Jamaica

No. 2

Notice of Appeal dated 3rd April 1967 (continued)

No. 3

AFFIDAVIT OF DARRYL WAYNE BRANDON MYERS

Suit M61 of 1967

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

BETWEEN

THE COMMISSIONER OF INCOME TAX

Appellant

No. 3

Affidavit of Darryl Wayne Brandon Myers sworn 3rd May 1967

In the Supreme Court of Judicature of Jamaica

No. 3

Affidavit of Darryl Wayne Brandon Myers sworn 3rd May 1967

(continued)

AND

FRANK MYERS
DOUGLAS FLETCHER
WILLIAM GORDON
PATRICK ROUSSEAU
ERIC BELL
DARRYL MYERS
} Trustees of the Seramco Limited Superannuation Fund

I. DARRYL WAYNE BRANDON MYERS being duly sworn make oath and say as follows:-

1. I reside and have my true place of abode at 53 Keble Crescent in the Parish of St. Andrew and my postal address is 53 Keble Crescent, Kingston 6. I am a partner in the firm of Myers, Fletcher & Gordon, the Respondents' Solicitors and I am one of the Respondents.

2. Seramco Limited was incorporated under the Companies Law, Chapter 69, on the 28th day of August, 1963 and the Certificate of Incorporation is exhibited hereto marked "A". The Company commenced business on 1st October, 1963 and have since that date continued to carry on business.

3. The Respondents are trustees under a Deed of Trust dated 16th January, 1964 made between Seramco Limited (hereinafter called "Seramco") of the one part and the Respondents of the other part, a copy of which is exhibited hereto marked "B".

4. In October of 1963 Seramco decided to set up a superannuation fund for its male employees. In furtherance of that decision it retained the services of Carp Corporation Limited to prepare a draft trust deed for submission to the Commissioner of Income Tax for his approval.

5. By letter dated 8th January, 1964, exhibited hereto marked "C" the Commissioner of Income Tax stated that he had approved the superannuation fund pursuant to Section 25 of the Income Tax Law 1954 with effect from 1st January, 1964. The effect of that approval was to exempt the income of the Trustees of the superannuation fund from income tax pursuant to Section 7(L) of the Income Tax Law 1954 as amended by Law 7 of 1956.

6. Some time in March, 1964 the shareholders (being certain members of the Elder family) of Seaforth Sugar & Rum Limited (hereinafter called "the Company") approached the Trustees with a view to selling to the Trustees all the shares in the Company.

7. On the 22nd of June, 1964 the Trustees entered into an agreement with the shareholders of the Company whereby they agreed to purchase all the issued shares of the Company for the sum of £407,934. A copy of the Agreement is exhibited hereto and marked "D". On the execution of the agreement, share transfers in favour of the Trustees were executed, completed and stamped and all the issued shares were transferred to or held by nominees on behalf of the Trustees. The relevant Share transfers are exhibited hereto marked "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", respectively. The share transfers were entered in the Register of the Company and the necessary share certificates were issued to the Trustees.

8. The agreement for sale of the shares gave in clause 7 thereof an option exercisable at any time before the 31st day of December, 1965 to the vendors to re-purchase all the shares in the Company for the sum of £215,904.

9. At the date of agreement the Company had a large sum of unappropriated profits. At the time that the agreement was signed contributions standing to the credit of the superannuation fund amounted to some £400. The Trustees admit that the purchase money to pay for the shares could only have come from income derived from the shares by way of dividend. The Trustees agreed before the Appeal Board that the purchase and sale of the shares amounted to a dividend stripping exercise.

10. At a meeting of the Board of Directors of the Company held on the 23rd of June, 1964 the share transfers executed pursuant to the agreement were presented and approved. Minutes of the meeting are exhibited hereto marked "P". The necessary entries were made in the Share Register of the Company. The appropriate new share certificates were issued to the Trustees. These Share certificates are exhibited hereto marked "Q", "R", "S", "T", "U", "V", "W".

In the Supreme Court of Judicature of Jamaica

No. 3

Affidavit of Darryl Wayne Brandon Myers sworn 3rd May 1967

(continued)

11. After this was done Mr. F.L. Myers, one of the Trustees, gave the Secretary a letter addressed to the Company signed by at least one-half of the holders of the issued shares of the Company effecting the removal of Mr. D.P. Elder as a permanent Director of the Company. The letter is exhibited hereto marked "X". This was done pursuant to the Articles of Association of the Company. Mr. D.P. Elder thereupon vacated his position as Chairman and Mr. F.L. Myers produced another letter exhibited hereto and marked "Y" addressed to the Secretary of the Company and signed by the holders of at least one-third of the issued shares of the Company appointing Mr. F.L. Myers a permanent Director of the Company in accordance with the Articles of Association Attached to this letter was a letter exhibited hereto marked "Z" signed by Mr. F.L. Myers consenting to his appointment.

12. After this was done Mr. F.L. Myers in his capacity as permanent Director by means of a letter signed by him removed Mrs. A.M. Elder from the position of a Director of the Company and appointed Mr. D.P. Elder, Mr. P.H.O.Rousseau and Mr. D.W.B. Myers as Directors. This letter is exhibited hereto and marked "AA".

13. It was then proposed and seconded that a dividend of 48½ per cent be paid out of the undistributed profits of the Company up to 30th September, 1963. This proposal was opposed by Messrs. D.P. Elder, Conrad Elder and Michael Elder but was carried with the help of the Chairman's casting vote. On the 1st day of July, 1964 the Annual General Meeting of the Company was held and it was resolved that the Directors having recommended a dividend of 48½ per cent gross that this recommendation be adopted and the Company declare a final dividend of 48½ per cent out of the undistributed profits of the Company to all shareholders appearing on the Register as at 1st July, 1964.

14. On the 23rd of June, 1964 Myers, Fletcher & Gordon on behalf of the Trustees wrote to the Commissioner of Income Tax and informed him that the Trustees had purchased shares in the Company and asked him to authorise the Company in writing to pay any dividend due in respect of shares owned by the fund without deduction of tax and to allow

the amount which should otherwise have been deducted as a credit to the Company in respect of its own income tax liability. The letter is exhibited hereto marked "BB". This request was based on the Commissioner's letter of the 8th January, 1964 stating that he had approved the Superannuation Fund. (See exhibit "C").

15. By letter dated 25th June, 1964, exhibited hereto marked "CC" the Commissioner of Income Tax authorised the Company to make payments of dividend to the Trustees of the Seramco Limited Superannuation Fund without deduction of income tax. On the 1st July, 1964 the Company in general meeting declared the dividend of 48½% as recommended by the Directors and a copy of the Minutes are exhibited hereto marked "DD". On the 2nd of July, 1964, the Secretary of the Company wrote to the Commissioner of Income Tax stating that on the authority given in the letter of the 25th June to make payments of dividends to the Trustees without deduction of tax, that a gross dividend of £100,686 had been paid by way of dividend. This letter briefed hereto marked "EE", went on to request the Commissioner to credit the Company's 1964 assessment with the sum of £37,357. 5. 0. being the amount which would have been deducted from the dividends and to advise the Collector of Taxes accordingly.

16. Within a few days of receiving the letter of 2nd July, 1964, the Commissioner of Income Tax, at the time Mr. C.C. Jones, requested me to come and see him. I complied with the request and there was an interview at which the Commissioner of Income Tax (Mr. Jones) and his Legal Officer, Mr. D.W. Marsh, asked various questions relating to how the Trustees had come to own the shares in the Company. He also asked for copies of the Memorandum and Articles of Association of Seramco, a copy of the Deed of Trust and Rules of the Superannuation Fund, a list of the Directors of the Company before and after the date of the agreement for sale of the shares and a list of the shareholders of the Company before and after the date of the agreement for sale of the shares. The Commissioner then told me when this information was furnished Mr. Marsh could look into the matter and get in touch with him again. The information was furnished within 2 days of the request being made. Meanwhile the Company's Directors at a

In the Supreme Court of Judicature of Jamaica

No. 3

Affidavit of Darryl Wayne Brandon Myers sworn 3rd May 1967

(continued)

meeting held on 24th July, 1964, resolved to borrow £984,270. 0. 0. being the 1965 crop lien. The Minutes of the meeting are exhibited hereto marked "FF".

17. Some time later in July Mr. Marsh telephoned me and requested me to attend a meeting with the Commissioner of Income Tax on Monday, the 27th of July, 1964. At this meeting the persons present were the Commissioner of Income Tax, Mr. C.C. Jones, the Legal Officer of the Income Tax Department, Mr. D.W. Marsh, myself, Mr. Frank Myers and Mr. Jack Ashenheim of Price Waterhouse & Co., Chartered Accountants representing the Trustees. At this interview the Trustees were informed by Mr. Marsh that he proposed to disregard the sale and transfer of the shares for tax purposes on the ground that it was artificial and fictitious, and that the Commissioner proposed to retroactively withdraw the approval of the Superannuation Fund which had been approved by letter of 8th January, 1964 on the ground that the Fund had not been established as a bona fide fund for the purpose of paying pensions and annuities and that the Commissioner would oppose any attempted appeal by the Trustees because the situation was a desperate one and called for a desperate remedy and this was one way to defeat the Trustees.

18. I offered to give all the information that the Commissioner might require concerning the facts of the case including evidence on oath that the fund had been established as a bona fide fund for the purpose of paying pensions and that the fund had been established months before the Trustees were approached and negotiations began for the purchase of the shares. I was never called upon to do so but on the 28th of July, 1964 the Commissioner wrote to the Secretary of the Company advising that the authority to make payments of dividends to the Trustees without deduction of tax as per his letter of 25th June, 1964 was revoked. This letter is exhibited hereto and marked "GG".

19. On the 11th of December, 1964 the Directors of the Company held a meeting at which it was proposed to recommend to the shareholders that a dividend of £62,280 net which represents a

gross dividend of 48 per cent less income tax be paid out of the accumulated profits of the Company up to 30th September, 1964. The Minutes are exhibited hereto and marked "HH". Once again the Elders opposed the proposal which was passed on the casting vote of the Chairman. At a General Meeting of the Company held on the 28th day of December, 1964, the declaration of the dividend was approved. The Minutes of the General Meeting are annexed hereto marked "II".

20. On the 5th day of January, 1965 Myers, Fletcher & Gordon on behalf of the Trustees wrote to the Commissioner of Income Tax informing him that on the 20th of December,1964 a dividend of 48 per cent, being £99,648 less tax of £37,368 had been declared at the General Meeting of the Company and that the dividend had been paid to the Trustees on the 29th of December, 1964 less deduction of income tax. The letter went on to state that the income of the fund is exempt from income tax and made a claim for a refund of £37,368 under Section 63 of the Income Tax Law, 1954, being the amount of tax withheld at source by the Company. This letter is exhibited hereto marked "JJ". By letter of 25th January, 1965, Myers, Fletcher & Gordon forwarded to the Commissioner dividend certificate in support of the claim and the letter is exhibited hereto marked "KK".

21. The Commissioner of Income Tax by letter of 9th February, 1965 exhibited hereto marked "LL" and addressed to the Secretary of Seramco advised that the approval of the Superannuation Fund had been withdrawn with effect from 8th January, 1964. On the same day the Commissioner wrote to Myers, Fletcher & Gordon and advised them that their claim for refund under Section 63 of the Income Tax Law was refused. The letter exhibited hereto and marked "MM" stated that if they were dissatisfied with his refusal they have a right of appeal to the Income Tax Appeal Board under Section 63 of the Income Tax Law 1954.

22. The Trustees appealed to the Income Tax Appeal Board under Section 63 of the Income Tax Law and the appeal was heard on the 20th of September, 22nd September, 23rd September, 18th October, 19th October, 20th October, 1st November, 2nd November, 6th November and 9th November, 1965.

In the Supreme Court of Judicature of Jamaica

No. 3

Affidavit of Darryl Wayne Brandon Myers sworn 3rd May 1967

(continued)

After hearing arguments adduced by Counsel on both sides the Appeal Board reserved its decision.

23. On the 6th March, 1967 the Appeal Board by judgment which was delivered in writing by the Chairman, Sir Alfred Rennie, gave its unanimous decision that the decision of the Commissioner of Income Tax is reversed and that the appeal is allowed and that the Trustees are entitled to the refund of £37,368. A copy of the Judgment is annexed hereto and marked "NN". 10

SWORN to by the said DARRYL WAYNE BRANDON MYERS at Kingston in the Parish of Kingston this 3rd day of May 1967 before me:- Sgd. Darryl Myers

Sgd. W.R. Lawrence
Justice of the Peace

for the Parish of Kingston.

FILED by Myers, Fletcher & Gordon of No. 4 Duke Street, Kingston, Solicitors for the Respondents whose address for service is that of their said Solicitors. 20

No. 4

Affidavit of Arthur Anthony De Buc sworn 9th May 1967

No. 4

AFFIDAVIT OF ARTHUR ANTHONY DE BUC

Suit M61 of 1967

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

BETWEEN THE COMMISSIONER OF INCOME TAX
APPELLANT

AND FRANK MYERS, DOUGLAS FLETCHER, WILLIAM GORDON, PATRICK ROUSSEAU, ERIC BELL, DARRYL MYERS) Trustees of the Seramco Limited Superannuation Fund 30

RESPONDENTS

In the Supreme Court of Judicature of Jamaica

No. 4

Affidavit of Arthur Anthony De Buc sworn 9th May 1967

(continued)

I, ARTHUR ANTHONY DE BUC being duly sworn make oath and say as follows:

1. I reside and have my true place of abode at 20 Sullivan Avenue in the Parish of St. Andrew and my postal address is Kingston 8. I am a qualified accountant and an Assistant Commissioner of Income Tax.

2. In the course of my duties as Assistant Commissioner, I have examined the Final Accounts of the Superannuation Fund for 1964 and 1965 exhibited hereto marked "A" and "B". From the said Accounts I have prepared the documents headed Source and Application of Funds (exhibited hereto and marked "C") which shows that the Superannuation Fund wasused as a means of getting the accumulated profits of£153,413 of Seaforth Sugar and Rum Limited into the hands of the Shareholders referred to in para. 6 of the Affidavit of Darryl Wayne Brandon Myers.

SWORN to by the said ARTHUR ANTHONY DE BUC at Kingston in the parish of Kingston this 9th day of May, 1967 before me:-

(Sgd.) V.G. McCarthy
Justice of the Peace
for the parish of Kgn.

Registrar of Supreme Court

FILED by the Crown Solicitor of Public Buildings (East), King Street, Kingston, Solicitors for the Appellant whose address for service is that of their Solicitor.

In the Supreme Court of Judicature of Jamaica

No. 5

Affidavit of Kenrick Louis Robertson sworn 10th May 1967

No. 5

AFFIDAVIT OF KENRICK LOUIS ROBERTSON

Suit M 61 of 1967

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

BETWEEN THE COMMISSIONER OF INCOME TAX APPELLANT

AND FRANK MYERS, DOUGLAS FLETCHER, WILLIAM GORDON, PATRICK ROUSSEAU, ERIC BELL, DARRYL MYERS — Trustees of the Sermaco Limited Superannuation Fund RESPONDENTS

I. KENRICK LOUIS ROBERTSON being duly sworn make oath and say as follows:-

1. I reside and have my true place of abode at 2 Bramwell Drive in the Parish of St. Andrew and my postal address is 2 Bramwell Drive Kingston 8. I am a Senior Assistant Commissioner of Income Tax.

2. In December, 1963 and up to the end of June, 1964, it was part of my duties to review Superannuation Schemes for approval by the Commissioner of Income Tax under section 25 of the Income Tax Law.

3. On or about the 19th December, 1963, I received from Carp Corporation Ltd. a copy of the draft trust deed referred to in paragraph 4 of the Affidavit of Darryl Wayne Brandon Myers and exhibited hereto marked "A".

SWORN to by the said KENRICK LOUIS ROBERTSON at Kingston in the Parish of Kingston this tenth day of May, 1967, before me:- K.L.Robertson (sgd.)

(Sgd.) ? ? J.P.

Justice of the Peace
for the Parish of Kingston

FILED by Crown Solicitors of Public Buildings (East), King Street, Kingston solicitors for the Appellant whose address for service is that of the said Solicitors.

No. 6

In the Supreme Court of Judicature of Jamaica

No. 6

Affidavit of Harold Sullivan Carter sworn 10th November 1967

AFFIDAVIT OF HAROLD SULLIVAN CARTER

Suit M 61 of 1967

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

BETWEEN THE COMMISSIONER OF INCOME TAX APPELLANT

AND FRANK MYERS, DOUGLAS FLETCHER, WILLIAM GORDON, PATRICK ROUSSEAU, ERIC BELL, DARRYL MYERS — Trustees of the Seramco Limited Superannuation Fund RESPONDENTS

I, HAROLD SULLIVAN CARTER being duly sworn MAKE OATH AND SAY as follows:-

1. I reside and have my true place of abode at "Cloud's Hill", Diamond Road, Stony Hill in the Parish of Saint Andrew and my postal address is Kingston 8.

2. I am Managing Director of Carp Corporation Limited a company duly incorporated under the Laws of Jamaica in the year 1960. The business of Carp Corporation Limited is to act as consultants to employers on employee benefit schemes.

3. Sometime in October 1963 Carp Corporation Limited was retained by Sermaco Limited to set up a Superannuation Fund under Section 25 of the Income Tax Law 1954, to prepare an appropriate Trust Deed and Rules and to have same approved by the Commissioner of Income Tax.

4. Subsequently, I attended several meetings with Messrs. Darryl Myers, Frank Myers and Douglas Fletcher to discuss and settle the terms of the Trust Deed and Rules and the benefits to be provided by the Fund.

5. On the 18th day of December 1963 Carp Corporation Limited forwarded the Trust Deed and Rules to the Commissioner of Income Tax and copies

In the Supreme Court of Judicature of Jamaica

No. 6

Affidavit of Harold Sullivan Carter sworn 10th November 1967

(continued)

were also sent to Seramco Limited. On forwarding the Trust Deed and Rules to the Commissioner of Income Tax, I informed Mr. Darryl Myers by telephone that this had been done.

6. Subsequent to the 18th day of December 1963 I received several telephone calls from Mr. Darryl Myers asking if the Superannuation Fund had been approved and requesting that I urge the Commissioner of Income Tax to give approval to the Fund so that it could become operative on the 1st day of January 1964.

7. I made several telephone calls to the then Commissioner of Income Tax Mr. C.C. Jones and sometime late in December 1963 the Commissioner of Income Tax gave me his verbal approval of the Fund and his assurance that his formal letter of approval would be forthcoming as early as possible after his return to office following the festive season.

8. On receiving this verbal approval and assurance from the Commissioner of Income Tax, I immediately telephoned Mr. Darryl Myers and informed him of the Commissioner's verbal approval to me and gave my assurance that the Trust Deed and Rules submitted on behalf of Seramco Limited would meet with the Commissioner's requirements in all respects.

9. Sometime in January 1964 I received a letter from the Commissioner of Income Tax dated 8th January 1964 giving his formal approval to the Superannuation Fund of Seramco Limited subject to certain conditions which were set out in the letter.

SWORN to by the said HAROLD SULLIVAN CARTER at Kingston in the Parish of Kingston this 10th day of November 1967 before me: Sgd. Harold S.Carter

(Sgd.) Wm. R.T. Lawrence
JUSTICE OF THE PEACE FOR THE PARISH OF KGN.

FILED by Myers, Fletcher & Gordon of No.36 Duke Street, Kingston, Solicitors for the abovenamed respondents whose address for service is that of their said Solicitors.

No. 7

In the Supreme Court of Judicature of Jamaica

No. 7

Affidavit of Darryl Wayne Brandon Myers sworn 10th November 1967

AFFIDAVIT OF DARRYL WAYNE BRANDON MYERS

Suit No. M 61 of 1967

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

BETWEEN THE COMMISSIONER OF INCOME TAX
APPELLANT

AND FRANK MYERS, DOUGLAS FLETCHER, WILLIAM GORDON, PATRICK ROUSSEAU, ERIC BELL, DARRYL MYERS) Trustees of the Seramco Limited Superannuation Fund
RESPONDENTS

I, DARRYL WAYNE BRANDON MYERS being duly sworn MAKE OATH AND SAY as follows:-

1. I reside and have my true place of abode at 53 Keble Crescent in the Parish of Saint Andrew and my postal address is Kingston 6. I am a partner in the firm of Myers, Fletcher & Gordon, the Respondents' Solicitors and I am one of the Respondents.

2. I am a Director of Seramco Limited, a Company which was incorporated under the Companies Law, Chapter 69 on the 28th day of August 1963. At a meeting of the Board of Directors of Seramco Limited held on the 31st day of October 1963, the Directors resolved to establish a Superannuation Fund and to retain the services of Carp Corporation Limited to prepare the necessary Trust Deed and Rules and to obtain the approval of the Commissioner of Income Tax pursuant to Section 25 of the Income Tax Law 1954.

3. At a meeting of the Directors of Seramco Limited held on the 21st day of December 1963 the Directors appointed the following persons to be the first Trustees of the Fund:

Frank Myers,
Douglas Fletcher,
W.S.K. Gordon
P.H.O. Rousseau
E.O. Bell
Darryl Myers

In the Supreme Court of Judicature of Jamaica

No. 7

Affidavit of Darryl Wayne Brandon Myers sworn 10th November 1967

(continued)

4. After the 21st day of October 1963 several meetings were held with Mr. Harold Carter of Carp Corporation Limited at which myself, Frank Myers and Douglas Fletcher were present to discuss the terms of the Trust Deed and Rules and the provision of benefits under the proposed Superannuation Fund. On the 18th day of December 1963 Carp Corporation Limited forwarded the Trust Deed and Rules to the Commissioner of Income Tax and submitted a copy to the Directors of Seramco Limited and to the proposed Trustees of the Fund.

5. I was Chairman designate of the Trustees of the Superannuation Fund. I was anxious to have the Fund approved so that it would be operative by the 1st day of January, 1964. Accordingly, I telephoned Mr. Harold Carter of Carp Corporation Limited on several occasions between the 18th day of December 1963 and the 29th day of December 1963 and pressed him to obtain the Commissioner's approval.

6. At or about the 29th day of December 1963 Mr. Carter telephoned and informed me that the Commissioner of Income Tax had verbally approved the Trust Deed and Rules and that the Superannuation Fund could be operated as of the 1st day of January 1964 and that the Commissioner had promised to forward a formal letter of approval in the near future.

7. On receiving this information, I caused a meeting of the Trustees to be called to inform them that the Superannuation Fund would commence on the 1st day of January 1964 and that the Trustees would act on the terms of the Trust Deed and Rules which had been submitted to us and to deal with other matters. I exhibit herewith marked Exhibit "A" a copy of the Minutes of the Meeting held on the 30th day of December, 1963.

8. On the 8th day of January 1964 the Commissioner of Income Tax confirmed in writing to Carp Corporation Limited that the Superannuation Fund was formally approved and Mr. Carter of Carp Corporation Limited so informed me by telephone.

SWORN to by the said DARRYL WAYNE BRANDON MYERS at Kingston in the Parish of Kingston this 10th day of November 1967 before me:

(Sgd.) Darryl Myers

(Sgd.) Wm. R.T. Lawrence

JUSTICE OF THE PEACE FOR THE PARISH OF Kgn.

In the Supreme Court of Judicature of Jamaica

No. 7

Affidavit of Darryl Wayne Brandon Myers sworn 10th November 1967 (continued)

FILED by Myers, Fletcher & Gordon of No.36 Duke Street, Kingston, Solicitors for the Respondents whose address for service is that of their said Solicitors.

No. 8

No. 8

Written Judgment of Grannum J.

7th March 1967

WRITTEN JUDGMENT

Judgment in Seramco Limited given by Mr. Justice H.S. Grannum in Chambers on the 7th of March, 1969

Present were:

Justice H.S. Grannum - Judge

Mrs. A.C. Hudson-Phillips, Mr. A.A. DeBuc - Reptg. the Appellant

Mr. Darryl Myers, Mr. Frank Myers, Mrs. S. Khaleel - Reptg. the Respondents

Judgment

This is an appeal by the Commissioner of Income Tax against a decision of the Appeal Board constituted under the Income Tax Law 1954. The decision was dated the 6th of March, 1967. The facts are as follows:-

The Respondents are the Trustees of a Superannuation Fund established for the benefit of the male employees of Seramco Limited. (I will hereinafter refer to the Respondents as the Trustees and to Seramco Limited as the Company). By a letter dated the 8th of January, 1964, the Commissioner of

In the Superme Court of Judicature of Jamaica

No. 8

Written Judgment of Grannum J.

7th March 1969

(continued)

Income Tax approved the Superannuation Scheme under Section 25 of the Income Tax Law with effect from the 1st of January 1964. The effect of that approval was to exempt the income of the Trustees from Income Tax.

In June 1964, the Trustees entered into an agreement with the shareholders of a Company known as Seaforth Sugar and Rum Limited (hereinafter referred to as Seaforth) whereby the Trustees agreed to purchase all the issued shares of Seaforth Sugar and Rum Limited, for the sum of £407,934. It was a term of the agreement that upon the signing thereof, the vendors would deliver completed and executed transfers to the purchasers or their nominees of all the issued shares in Seaforth etc., together with the relevant share certificate. It was also agreed that the purchasers would pay for the shares by instalments of £54,500 on or before the 1st of July, 1964, £62,500 on or before the 30th September, 1965, £62,500 on or before the 31st of October, 1965, £62,500 on or before the 30th November, 1965, £28,434 on or before the 31st day of December, 1965, £62,500 on or before the 31st of October, 1965, £62,500 on or before the 30th of November, 1965 and £28,434 onor before the 31st of December, 1965. The agreement also gave an option (exercisable at any time before the 31st of December, 1965) to the vendors to repurchase all the shares of Seaforth etc. for the sum of £215,904. At the date of this agreement Seaforth etc. had a very large sum of unappropriated profits.

At all relevant times, the authorised capital of the Company was £100. The issued capital was £22 and when the matter of the purchase of the shares in Seaforth was being negotiated, the amount in the Superannuation Fund was about £400. The purchase price of the shares could only have come from the unappropriated profits of Seaforth. In fact it has been admitted in the case for the Trustees that the Trustees and the vendors of the shares in Seaforth were engaged in an operation of dividend stripping.

On the 23rd of June, 1964, there was held a meeting of the Company at which meeting transfers were presented pursuant to the above-mentioned agreement. The transfers were approved and entered in the Share Register of the Company.

After this was done Mr. F.L. Myers gave the Secretary a letter addressed to the Company and signed by the holders of at least one half of the issued shares of the Company. This letter sought the removal of Mr. D.P. Elder as Permanent Director. Mr.D.P. Elder then vacated his position as Chairman of the Board of Directors and Mr. F.L. Myers was then appointed Permanent Director of the Company. Mr. F.L. Myers in his capacity as Permanent Director then removed Mrs. A.M. Elder as Director and appointed Mr. D.P. Elder, Mr. P.H.O. Rousseau and Mr. W.D. Myers as Directors.

The Annual General Meeting of the Company was held on the 1st of July, 1964 and it was resolved that the Directors having recommended a dividend of 48½% gross, that this recommendation be adopted and the Company declare a final dividend of 48½% out of the undistributed profits to all shareholders. On the 23rd of June, 1964, Messrs. Myers, Fletcher & Gordon wrote to the Commissioner of Income Tax informing him that the Trustees of the Superannuation Fund had purchased shares in the Company and asking him to authorise the Company to pay any dividend due in respect of shares owned by the Fund without deduction of tax and to allow the amount which would otherwise be deducted as a credit to the Company in respect of its own income tax liability. This request was based on the approval of the Trust Deed.

By a letter dated the 25th of June, 1964, the Commissioner of Income Tax authorised the Company to make payment of dividends to the Trustees without deduction of income tax. This letter was followed by one dated 2nd of July, 1964 from the Secretary of the Company to the Commissioner of Income Tax stating that consequent on the authority given in the letter of the 25th of June, dividends in the sum of £100,686 had been paid to the Trustees without deduction of tax and asking the Commissioner of Income Tax to credit the Company's 1964 assessment with the sum of £37,757. 5/- being the amount that would have been deducted from the dividends. The letter of the 2nd of July appears to have made the Commissioner of Income Tax suspicious and on the 28th of July, 1964 he wrote to the Secretary of the Company advising him that the authority to make payment of dividends to the trustees without deduction of income tax contained in the letter of the 25th of June was

In the Supreme Court of Judicature of Jamaica

No. 8

Written Judgment of Gramnum J.

7th March 1969

(continued)

revoked. By two letters dated the 9th of February, 1965 the Commissioner of Income Tax gave notice to the Trustees of withdrawal of the approval of the scheme with effect from the 8th of January, 1964, and secondly refused the Trustees' claim for a refund of the said £37,368. The Trustees appealed under Sub-section 3 of Section 63 of the Income Tax Law.

The Income Tax Appeal Board dismissed a preliminary point of Law taken by the Appellant that on the true and natural construction of Section 63, the Trustee had no right of appeal and held that the Trustees were entitled to the said refund as at all material times the income of the said Superannuation Fund was exempt from tax under Section 1 of the Income Tax Law of 1954. And the transactions described above were not "artificial" with the intendment of Section 10 Sub-section 1 of the Income Tax Law 59 of 1954.

The Commissioner of Income Tax now appeals on the following grounds:-

(1) That the Income Tax Appeal Board was wrong in interpreting Section 63 of the Income Tax Law so as to confer a right of appeal on the Trustees against the refusal of their claim for the said refund.

(2) That further and in the alternative, the said Superannuation Fund was not an approved Superannuation Fund within the meaning of Section 7 (Sub-section 1) of the Income Tax Law as the said Superannuation Fund established by the said Deed of Trust on the 16th of January, 1964 was never approved by the Commissioner and so the said refund was not due to the Trustees.

(3) That further and in the alternative, the Commissioner of Income Tax was right in refusing the refund having regard to his further powers of Assessment contained in Section 47 (Sub-section 4) of the Income Tax Law and accordingly, the Commissioner acted properly in withdrawing his approval retroactively by the said letter dated 9th February, 1965;

and

(4) that further and in the alternative, the Appeal Board interpreted Section 10 (Sub-section 1) of the Income Tax Law incorrectly, in holding that the said transactions do not come within the meaning of the word "artificial" as used in that Section.

With regard to ground one, the Appellant contends that Section 63 of the Income Tax Law does not confer a right of appeal against the refusal of a claim and argues that where a statute confers jurisdiction on a Statutory Board such as the Income Tax Appeal Board the Statute must be construed strictly, regardless of the injustice or absurdity which results. The relevant provisions of Section 63 of the Income Tax Law 1954 are as follows:-

"(1) If it be proved to the satisfaction of the Commissioner that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such persons shall be entitled to have the amount so paid in excess refunded and the Commissioner shall make the refund accordingly. Every claim for repayment under this section shall be made within six years from the date of the year of assessment to which the claim relates.

(3) Any person who objects to the amount of any repayment made by the Commissioner may appeal to the Appeal Board in the same manner as an appeal may be made against an assessment."

Here the Commissioner is saying in effect, that since he has not made a repayment, there is no right of appeal. I myself think that it would lead to a most extraordinary result if the Legislature having given a right of appeal for a refund were to limit that right to persons whose claims had been partly met but to refuse it to those whose claims had been denied altogether and I agree with the submission that any construction of a statute which has such a manifestly absurd result can only be accepted if no possible construction can be found. To adopt the arguments of the Appellant, would mean that an appeal will lie when the grievance is less and no appeal would lie when the grievance is at its utmost.

In the Supreme Court of Judicature of Jamaica

No. 8

Written Judgment of Grannum J.

7th March 1969

(continued)

In rejecting the preliminary objection, the Appeal Board appear to have based their approach with regard to the interpretation of the section in a statement contained in the 10th Edition of Maxwell on the Interpretation of Statutes at page 229 which I quote hereunder:-

> "Where the language of a statute in its ordinary meaning and grammatical construction leads to manifest contradiction of the apparent purpose of the enactment or to some inconvenience, absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words or even the structure of the sentence."

The Board also appear to have been guided by the decision in the case of R.v. Ettridge (1909) 2 K.B.24.

In that case a man pleaded guilty to an offence with which he was charged and he sought to appeal against the sentence passed on him. The question then arose as to whether the Court of Criminal Appeal had jurisdiction to hear his appeal against sentence. Section 4 of the Criminal Appeal Court Act 1907 gives a right of appeal against the sentence following a verdict. The Court held that the fact that he had pleaded guilty and that there was no verdict, did not deprive him of his right of appeal.

Darling J. in delivering the Judgment of the Court said:

> "We are distinctly of opinion that Parliament could hardly have intended that only those who should have been found guilty by a jury should be allowed to appeal against the sentence which is not the act of the Jury at all but is fixed and awarded by the Judge whether the conviction follow a plea of guilty or a plea of not guilty and a verdict of guilty. We are of opinion that we may in reading this statute reject words transpose them or even imply words if it is necessary to give effect to the intention and meaning of the Legislature."

I respectfully agree with this approach and with the reasoning of the Appeal Board and I endorse the construction which they placed on Section 63 of the Income Tax Law, namely, that it conferred a right of appeal on the Trustees against the refusal of their claim for the said refund.

I agree with the view that the Legislature intended to give a right of appeal to a person who disagrees with the decision of the Commissioner of Income Tax in the matter of making a refund. Ground one, therefore, fails.

The second ground of appeal is that the said Superannuation Fund was not an approved Superannuation Fund within the meaning of Section 7 (subsection 1) of the Income Tax Law. The contention here is, as I understand it, that when the Commissioner signed the letter of the 8th of January, 1964, approving the Superannuation Scheme under section 25 of the Income Tax Law with effect from the 1st of January, 1964, thereby exempting the income of the Trustees from Income Tax, there was no fund established under an irrevocable trust so that the approval of the Commissioner was ultra vires. This was a point which was admittedly not taken before the Appeal Board. Section 25 of the Income Tax Law provides for approval by the Commissioner as follows inter alia:-

> "The Commissioner may, if he thinks fit, and subject to such conditions, if any, as he thinks proper to attach to the approval, approve a fund, or any part of a fund, as a Superannuation Fund for the purpose of this section:
>
> (i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund; or
>
> (ii) if the main purpose of the fund is the provision of such annuities, as aforesaid, notwithstanding that such provision is not its sole purpose; or
>
> (iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the Island and by a person not residing therein."

In the Supreme Court of Judicature of Jamaica

No. 8

Written Judgment of Grannum J.

7th March 1969

(continued)

I think the answer to this contention is that as far as I can see, the Law makes no provision as to the procedure to be followed when applying for and obtaining an approval; also, it is quite clear that the Commissioner has been given a very considerable discretion in the granting or refusal of approval as long as he is satisfied. I think that this view of the matter is fortified when one looks at the rules which are empowered under the Law and which appear to allow the Commissioner to approve a fund which in his opinion complies substantially with the conditions laid down in the Law.

Speaking for myself I would accept and adopt the argument of the Respondents that the real intention of the Income Tax Law was to give wide discretionary power to the Commissioner to ensure that the rules of the Superannuation Fund are not used as a medium for favouring special categories of employees or as a means of abusing the Income Tax concessions given to Superannuation Funds.

The third ground of appeal is that the Commissioner of Income Tax acted properly when he withdrew his approval retroactively by his letter of the 9th of February, 1965, and thereafter refused to make the said refund to the Respondents. Section 47, (subsection iv) of the Income Tax Law gives the Commissioner further powers of assessment. In considering this ground of appeal, I think one must do so within the context of the Commissioner's letter of the 8th January, 1964, which approved the Fund and the relevant provisions of the Income Tax Law. The letter of the 8th of January, 1964 which approved the Fund and the relevant provisions of the Income Tax Law is in these terms:

> "Your letter of the 18th of December last with enclosure is hereby acknowledged. I have examined the Trust Deed submitted and I approve the scheme under Section 25 of the Income Tax Law, 1954 with effect from the 1st of January, 1964. The following is to be supplied annually in connection with the scheme:
>
> (a) A list showing names of members and amount contributed in each case.

(b) A list showing amount contributed by the employer on behalf of each member and the remuneration on which the contribution is based.

(c) Particulars of any repayments made out of the Fund whether to employer or member.

(d) Such other information as may be requested."

The proviso to Subsection 2 of Section 25 is as follows:

"Provided that the Commissioner may, if he thinks fit, and subject to such conditions, if any, as he thinks proper to attach to the approval, approve a Fund, or a part of a Fund, as aSuperannuation Fund for the purposes of this Law."

And paragraph (b) of Sub-section 4 provides:

"The Commissioner may by notice in writing -

addressed to the Trustees with draw his approval in the case of any Fund which ceases to satisfy the requirements of this Section or the conditions under which the Fund was approved; and from the date of such notice the provisions of this Law, granting the exemption from income tax in respect of the income of the fund and allowing as a deduction from income the contributions to the Fund, shall cease to have effect."

It is clear from these provisions that before the Commissioner can withdraw his approval of a scheme he must first serve a notice on the Trustees or other persons having the management of the Fund; and that the exemption from income tax shall cease as from the date of the notice.

The fourth ground of appeal is that the Income Tax Appeal Board was wrong in holding that the transaction herein did not come within the meaning of the word "artificial", as used in Section 10 of the Income Tax Law.

Section 10 provides that:-

In the Supreme Court of Judicature of Jamaica

No. 8

Written Judgment of Gramnum J.

7th March 1969

(continued)

"Where the Commissioner is of opinion that any transaction which reduces or would reduce the amount of any tax payable by any persons is artificial or fictitious or that full effect has not been given in fact to any disposition, the Commissioner may disregard any such transaction or disposition and the persons concerned shall be assessable accordingly."

Is the transaction with which we are here dealing "articicial" or "fictitious"? It is evidenced by a carefully prepared document which has not only been duly executed but acted on by the parties. The onus is on the Appellant to establish that the transaction which is evidenced by such a document is "artificial" or fictitious. The Appeal Board have stated that they understood the word "artificial" to mean not genuine, not natural, assumed and fictitious to mean imaginery, made up, not real, falsely assumed in order to deceive and they held that the transaction did not come within the meaning of those words. I agree with that approach and with that finding. I think that the principle is well recognised through the authorities, that every man is entitled to enter into transactions which will have the effect of reducing his income tax but this rule is, of course, subject to the qualification that the transaction in question must be real and not a pretended transaction and the words "artificial" and "fictitious" are the words which have been used in the cases to describe a transaction which is a sham or pretence. If the agreement, deed or instrument in question is never meant to have effect I can well see that such a transaction may be described as artificial or fictitious but where as in this case you have an instrument drawn up, executed and acted upon by the parties, I fail to see how it can be described as artificial or fictitious.

As was stated in the case of Whitmore v. the Commissioners of Inland Revenue reported at 10 Tax Cases page 645, "I agree with the proposition that if these documents were mere pieces of paper to show to the Inland Revenue then the Court looks at the real transaction and decides whether it can regard the documents as mere pieces of paper but I do not think that this is the case here."

In the Supreme Court of Judicature of Jamaica

No. 8

Written Judgment of Grannum J.

7th March 1969

(continued)

Again as in the case of Dickenson v. Gross reported at 11 Tax Cases page 614 "where you have documents which appear to be perfectly legal documents but which the parties have completely ignored or where the whole agreement for the sale of the shares was a sham, I agree that this Court will readily say that the transaction is artificial. I regard the facts here as being quite different from those in Dickenson v. Gross, as Mr. Justice Rowlett said in that case, "People can arrange their affairs if they do really arrange them, so as to produce a state of facts in which the taxation is different and it is no answer - it is perfectly immaterial - to say that they have done it for that purpose. But in this case the facts show that in very many ways the deed was simply set on one side and disregarded."

The net result of my conclusions is that this appeal fails on every ground and the judgment of the Appeal Board is affirmed. The Appellant must pay the costs of the appeal fixed at £1,897.10.0d.

(H.S. Grannum) (sgd.)
.....

No. 9

Order

7th March 1969

No. 9

ORDER

Suit No. M61 of 1967

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

BETWEEN THE COMMISSIONER OF INCOME TAX
APPELLANT

AND FRANK MYERS, DOUGLAS FLETCHER, WILLIAM GORDON, PATRICK ROUSSEAU, ERIC BELL, DARRYL MYERS — Trustees of the Seramco Limited Superannuation Fund
RESPONDENTS

In the Supreme Court of Judicature of Jamaica

No. 9

Order

9th March 1969

(continued)

BEFORE MR. JUSTICE GRANNUM
THE 7TH DAY OF MARCH 1969
IN CHAMBERS

UPON THIS APPEAL coming on for hearing the 11th May, 1967, the 20th, 21st and 28th days of July, 1967, the 13th, 14th, 15th and 16th days of November, 1967, the 15th, 18th and 20th days of December 1967 and the 7th February, 1968 and 7th March 1969 AND UPON hearing Mr. Enos Grant of Counsel instructed by the Crown Solicitor, Solicitor for the Appellant AND UPON hearing Mr. David Coore and Mr. Richard Mahfood of Queen's Counsel instructed by Mr. Darryl Myers of the firm of Myers, Fletcher & Gordon, Solicitors for the Respondents IT IS HEREBY ORDERED:

1. That the said Appeal be dismissed.

2. That the costs of the Appeal, fixed at £1,897.10. 0. be paid by the Appellant to the Respondents.

3. Certificate for two Counsel.

BY THE COURT

L.S. (Sgd.) G.M. Miller

Deputy Registrar.

FILED by Myers, Fletcher & Gordon of No.36 Duke Street, Kingston, Solicitors for the Respondents whose address for service is that of their said Solicitors.

In the Court of Appeal of Jamaica

No.10

Notice of Appeal

21st March 1969

No. 10

NOTICE OF APPEAL

IN THE COURT OF APPEAL SUIT NO. M 61 OF 1967
C.A. 9/69

BETWEEN THE COMMISSIONER OF INCOME TAX
APPELLANT

AND THE TRUSTEES OF SERAMCO LIMITED SUPERANNUATION FUND
RESPONDENTS

TAKE NOTICE THAT the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the abovenamed Appellant on Appeal from the whole of the judgment herein of the Honourable Mr.Justice Grannum given at the hearing of this Appeal from the Income Tax Appeal Board on the 7th day of March, 1969 whereby it was adjudged that the said Appeal be dismissed, and ordered that the costs of the said Appeal be paid by the Appellant.

For an order -

(1) That the decision of the Income Tax Appeal Board made on the 6th day of March, 1967 be set aside;

(2) That the Appellant's decision made on the 9th day of February, 1965 refusing the Respondent's claim for a refund of £37,368 under Section 63 of the Income Tax Law, Law 59 of 1954 be restored;

(3) That the Appellant's Appeal be allowed with costs in this Court and before the Honourable Mr. Justice Grannum;

(4) That there be such further and other relief as may be just.

AND FURTHER TAKE NOTICE that the Grounds of this Appeal are:-

(1) That the learned Judge in Chambers erred and/or misdirected himself in law in "agreeing with the approach of", and endorsing "the construction which" the Income Tax Appeal Board "placed on Section 63 of the Income Tax Law", Law 59 of 1954;

(2) Further and in the alternative, that the learned Judge in Chambers erred and/or misdirected himself in law in holding that Section 63(3) of the Income Tax Law, Law 59 of 1954, gave the Income Tax Appeal Board and consequently the Judge in Chambers jurisdiction to hear this matter because "the Legislature intended to give a right of appeal to a person who disagrees with the decision of the Commissioner of Income Tax in the matter of making a refund;"

In the Court of Appeal of Jamaica

No.10

Notice of Appeal

21st March 1969

(continued)

(3) Further and in the alternative the learned Judge in Chambers erred in law in failing to address his mind to the requirements of Section 58 of the Income Tax Law, Law 59 of 1954, having regard to the decisions in Sir Alfred DaCosta v. Commissioner of Income Tax, 6 W.I.R. p.160, and O et al v. C.I.T. 1 East African Tax Cases, p.124 to which he was referred, and in failing to make the following findings of fact which were material to the proper determination of the appeal, namely inter alia:-

(i) whether the Seramco Limited Superannuation Fund was in fact established under a deed of trust before the Commissioner of Income Tax purported to grant his approval by the letter dated 8th January, 1964;

(ii) whether the events stated in the documents tendered by the Respondents did in fact take place.

(4) Further and in the alternative, that the learned Judge in Chambers erred and/or misdirected himself in law in holding that the Income Tax Law, Law 59 of 1954 "makes no provision as to the procedure to be followed when applying for and obtaining an approval" of a Superannuation Fund;

(5) Further and in the alternative, that the learned Judge in Chambers erred and/or misdirected himself in law in concluding that the Income Tax (Superannuation Fund) Rules, 1955 "fortified" the view that the Commissioner of Income Tax had been "given a very considerable discretion in the granting or refusing of approval of a Superannuation Fund as long as he is satisfied" with it;

(6) Further and in the alternative, the learned Judge in Chambers erred and/or misdirected himself in law in failing to hold that the Seramco Limited Superannuation Fund was not "an approved Superannuation Fund" within the meaning of Section 7(i) of the Income Tax Law, Law 59 of 1954;

(7) Further and in the alternative the learned Judge in Chambers erred and/or misdirected himself in law in concluding that the letter of the 8th January, 1964 from the Commissioner of Income Tax to Messrs. Carp Corporation Limited exempting the income of the Seramco Limited Superannuation Fund from liability to income taxation, created in law, an estoppel against the Commissioner of Income Tax;

(8) Further and in the alternative the learned Judge in Chambers erred in law in failing to direct his mind to and/or misdirected himself in law as to the full legal effect of Section 47(4) of the Income Tax Law, Law 59 of 1954;

(9) Further and in the alternative the learned Judge in Chambers erred and/or misdirected himself in law in misapplying the principles of law involved in Section 47(4) of the Income Tax Law, Law 59 of 1954, and consequently in concluding that the Commissioner of Income Tax had not acted properly in withdrawing his approval of the Seramco Limited Superannuation Fund with retroactive effect, by the letter dated 9th February, 1965;

(10) Further and in the alternative, the learned Judge in Chambers erred in law, and/or misapplied or misunderstood the Income Tax Law in holding that "the real intention of the Income Tax Law was to give wide discretionary powers to the Commissioner of Income Tax" in approving Superannuation Funds.

(11) Further and in the alternative, the learned Judge in Chambers erred and /or misdirected himself in law in holding that "the onus is on the Appellant to establish that the transaction which is evidenced by such a document is "artificial" or "fictitious".

(12) Further and in the alternative the learned Judge in Chambers erred and/or misdirected himself in law in concluding that there was no or no sufficient evidence on which to properly find that the transactions, the subject of the appeal, were not artificial or fictitious within the meaning of Section 10(1) of the Income Tax Law, Law 59 of 1954;

In the Court of Appeal of Jamaica

No.10

Notice of Appeal

21st March 1969

(continued)

(13) Further and in the alternative, the learned Judge in Chambers erred in law and/or failed to direct his mind to, or misdirected himself in law as to the full effect of Section 10(1) of the Income Tax Law, Law 59 of 1954 as it affects the transactions which are the subject of the Appeal;

(14) Further and in the alternative, the learned Judge in Chambers erred in law and/or failed to direct his mind to one of the most important tests in construing Section 10(1) of the Income Tax Law, Law 59 of 1954, that is, the test of whether or not the transactions, the subject of the Appeal, were bona fide;

(15) Further and in the alternative, the learned Judge in Chambers erred in law and/or failed to direct his mind as to the legal effect of the decision in Campbell v. C.I.R. (1967) 2 W.L.R. 1445, to which he was referred by counsel for the Appellant, as it affects the transactions which are the subject of the Appeal.

AND FURTHER TAKE NOTICE that at the hearing of the Appeal, the Appellant will crave leave of the Honourable Court to argue supplementary grounds of appeal.

DATED the 21st day of March, 1969.

Sgd. H. Patterson
for Crown Solicitor.

Solicitor for the abovenamed Appellant

TO: The above-named Respondents
or their Solicitors
Messrs. Myers, Fletcher & Gordon,
36 Duke Street,
Kingston.

AND TO:
The Clerk of the Income Tax Appeal Board,
40 Duke Street,
Kingston.

FILED by the CROWN SOLICITOR of 134-140 Tower Street (Upstairs), Kingston, Solicitor for and on behalf of the abovenamed Appellant, whose address for service is that of his said Solicitor.

In the Supreme Court of Judicature of Jamaica

No.11

Respondent's Notice and Grounds of Appeal

1st July 1969

No. 11

RESPONDENT'S NOTICE AND GROUNDS OF APPEAL

SUIT NO. M.61 of 1967

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

ON APPEAL

BETWEEN THE COMMISSIONER OF INCOME TAX
APPELLANT

AND FRANK MYERS)
DOUGLAS FLETCHER) Trustees of the
WILLIAM GORDON) Seramco Limited
PATRICK ROUSSEAU) Superannuation
ERIC BELL) Fund
DARRYL MYERS)
RESPONDENTS

TAKE NOTICE that upon the hearing of the above Appeal the Respondents herein intend to apply for leave to file and serve Notice out of Time to contend that the decision of the Court below should be confirmed on grounds other than those relied upon by that Court.

AND TAKE NOTICE that the Respondents contend that the decision of the Court below that the superannuation fund was an approved superannuation fund within the meaning of Section 7 Sub-Section(1) of the Income Tax Law is justified and correct on the following grounds:-

1. In the light of the evidence presented to the Court below the only conclusion open to the trial Judge was that the Seramco Limited superannuation fund was an approved superannuation fund within the meaning of the Income Tax Law, Law 59 of 1954.

2. The unchallenged affidavit of Mr. Darryl Myers dated the 10th day of November 1967 proved that before the formal approval of the Seramco Superannuation fund by the Commissioner of Income Tax by his letter dated the 8th day of January 1964 the terms of the trust deed and rules had been settled, the trust had been completely constituted and the superannuation fund had therefore come into existence.

In the Supreme Court of Judicature of Jamaica

No.11

Respondent's Notice and Grounds of Appeal

1st July 1969

(continued)

3. The unchallenged evidence aforesaid established as a question of fact that when the superannuation fund was approved by the Commissioner of Income Tax it was a superannuation fund within the meaning of the Income Tax Law.

4. Having failed to challenge the facts in the aforesaid affidavit by cross-examination or by presenting alternative evidence the Appellant cannot now contend that the superannuation fund was not an approved superannuation fund within the meaning of the Law.

5. Having conducted his case before the Income Tax Appeal Board on the basis that the superannuation fund was an approved superannuation fund within the meaning of the Income Tax Law the Appellant on appeal to the Court below was debarred from putting forward a contrary intention.

6. It was not open to the Appellant to contend that the superannuation fund was not an approved fund within the meaning of the Law, as his case before the Income Tax Appeal Board was presented on the basis that the superannuation fund had been validly established and approved in accordance with the provisions of the Income Tax Law.

DATED the 1st day of July 1969.

Settled by: Richard Mahfood, Q.C.

(Sgd.) Myers, Fletcher & Gordon
SOLICITORS FOR THE RESPONDENTS.

TO: The Registrar of the Court of Appeal,
Supreme Court Buildings,
King Street,
Kingston.

AND TO: The abovenamed Appellant,
The Commissioner of Income Tax,
OR
His Solicitor,
The Crown Solicitor,
134-140 Tower Street,
Kingston.

FILED BY: MYERS, FLETCHER & GORDON of No.36 Duke Street Kingston Solicitors for and on behalf of the Respondents whose address for service is that of their said Solicitors.

No. 12

In the Court of Appeal of Jamaica

No.12

Formal Judgment of Court of Appeal of Jamaica

20th December 1973

FORMAL JUDGMENT OF COURT OF APPEAL

IN THE COURT OF APPEAL
CIVIL APPEAL NO. 9 of 1969

BETWEEN THE COMMISSIONER OF INCOME TAX
APPELLANT

A N D THE TRUSTEES OF SERAMCO LIMITED SUPERANNUATION FUND
RESPONDENTS

BEFORE: Hon. Mr. Justice Luckhoo President (Ag.)
" " " Smith J.A.
" " " Edun J.A.

THE 20TH DAY OF DECEMBER 1973.

This Appeal having come on for hearing on the 4th, 5th, 6th, 7th, 8th, 11th, 12th, 13th, 14th, 15th and 18th days of June 1973 and it having been ordered by a majority on the 20th day of December 1973 that the Appeal be allowed. IT IS THIS DAY ADJUDGED that the Appeal herein be allowed. The Order of Grannum J. and of the Income Tax Appeal Board are set aside and the decision of the Commissioner of Income Tax is restored. Costs of the appeal to the Appellant to be taxed or agreed.

(Sgd.) MYERS, FLETCHER & GORDON

RESPONDENTS ATTORNEYS-AT-LAW

Entered by MYERS, FLETCHER & GORDON of 36 Duke Street, Kingston, Attorneys-at-Law for and on behalf of the Respondents herein.

In the Court of Appeal of Jamaica

No.13

Judgment of Luckhoo Ag.P.

20th December 1973

No. 13

JUDGMENT OF LUCKHOO Ag.P.

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 9 of 1969

BEFORE: The Hon. Mr.Justice Luckhoo, (Ag. P.)
The Hon. Mr.Justice Smith, J.A.
The Hon. Mr.Justice Edun, J.A.

THE COMMISSIONER OF INCOME TAX
APPELLANT

vs.

THE TRUSTEES OF SERAMCO LIMITED SUPERANNUATION FUND
RESPONDENTS

Mrs. A. Hudson-Phillips and B. Kiernan for the appellant.

R.A. Mahfood, Q.C. for the respondents.

June 4-8, 11-15, 18, 1973
20th December, 1973.

This is an appeal from the decision of Grannum, J. given on March 7, 1969 dismissing an appeal by the Commissioner of Income Tax, (hereinafter referred to as the Commissioner) against the decision of the Income Tax Appeal Board whereby the Appeal Board on March 6, 1967 allowed a claim by the respondents, the trustees of Seramco Limited Superannuation Fund, for a refund of tax in the sum of £37,368 which the respondents say they are not liable to pay.

The claim for a refund of tax made by the respondents and rejected by the Commissioner arose out of a dividend stripping operation carried out pursuant to a transaction purporting to be a sale and purchase of all of the issued shares in the Seaforth Sugar and Rum Company entered into on June 22, 1964 by and between the shareholders of that company as vendors and the respondents as purchasers. In the course of that operation the respondents secured the declaration of a dividend amounting to £99,648 less tax to be paid out of

the accumulated profits of the company. Accordingly a sum of £62,280 was paid the respondents and the remainder of £37,368 retained as tax. On the basis that the superannuation fund was an approved fund for the purposes of the Income Tax Law, 1954, (No.59) (the income of the superannuation fund thereby being exempt from income tax) the respondents claimed that the sum of £37,368 retained as tax should be refunded them by the Commissioner. The Commissioner informed the respondents that his approval of the fund was revoked with effect from January 8, 1964, the date such approval was communicated by letter to the respondents. The Commissioner refused to entertain the respondent's claim for a refund of tax. The respondents appealed to the Income Tax Appeal Board against the Commissioner's refusal. The Appeal Board allowed the respondents' appeal and held that the Commissioner should make the refund of tax claimed. Thereupon the Commissioner appealed unsuccessfully to a judge in Chambers (Grannum J.) against the decision of the Appeal Board. That in short is how the present appeal arose. However, in view of the nature of the arguments addressed to the Appeal Board, to the judge in chambers and to this Court, it is necessary to set out the history of the matter in some detail.

Seramco Limited (hereinafter referred to as Seramco) was registered as a company in Jamaica in August, 1963. The directors of Seramco decided to set up a superannuation fund for the benefit of the male employees of the company and in furtherance of that decision retained the services of Carp Corporation Limited to prepare a draft trust deed for submission to the Commissioner in order to seek, under s.25(2) of the Income Tax Law, 1954, his approval of the fund for the purposes of that Law. If so approved then, subject to the provisions of that Law and to any regulations and rules made thereunder, any sums of money paid by an employer or employed person by way of contribution towards the fund would, in computing profit or gains for the purpose of assessment to income tax, be allowed to be deducted as an expense incurred in the year in which it was paid (s.25(1)) and the income of the fund would be exempt from income tax (s.7(1)). On December 18, 1963 Carp sent the Commissioner a draft trust deed with a schedule containing draft rules of the proposed superannuation fund. On December 21, 1963, at a meeting of the directors of

In the Court of Appeal of Jamaica

No.13

Judgment of Luckhoo Ag.P.

20th December 1973

(continued)

Seramco it was proposed that the persons named in the draft trust deed as trustees be appointed the first trustees of the superannuation fund. These persons were all directors of Seramco. On or about December 29, 1963, the Commissioner verbally purported to approve the proposed superannuation scheme under s.25 of the Income Tax Law, 1954, with effect from January 1, 1964, and promised to forward in the near future a formal letter of his approval. Upon receipt of this information a meeting of the persons named as trustees in the draft deed was called for December 30, 1963. The meeting was duly held on that day. At the meeting the fact of the Commissioner's verbal approval of the proposed superannuation scheme was announced and a copy of the draft trust deed and schedule containing the draft rules was examined. It was then resolved that a superannuation fund be established on the terms contained in the draft trust deed and rules and that contributions payable thereunder be made with effect from January 1, 1964. Bankers, auditors and solicitors of the fund were appointed, the chairman undertaking to obtain an engrossment of the trust deed and rules for formal execution by the trustees and to make the necessary arrangements to open a bank account. Arrangements were also made by way of resolution to deal with contributions to the fund.

On January 8, 1964 the Commissioner wrote Carp acknowledging receipt of Carp's letter of December 18, 1963 with enclosures and informing Carp that he had examined the trust deed and rules submitted (in reality the draft deed and draft rules) and approved the scheme under s.25 of the Income Tax Law, 1954 with effect from January 1, 1964. The Commissioner in his letter required that certain particulars in connection with the scheme be supplied him annually.

On January 16, 1964, the trust deed (with rules) was engrossed and executed by the parties thereto.

In March, 1964, the shareholders of the Seaforth Sugar and Rum Company (hereinafter called the Company) approached the respondents with a view to selling them all their shares in the company. On June 22, 1964, the respondents entered into a written agreement with the

shareholders of the company (all shareholders being members of the Elder family) whereby the respondents agreed to purchase all of the issued shares of the company for the sum of £407,934. It was a term of the agreement that upon the signing thereof the vendors would deliver completed and executed transfers to the purchasers or their nominees of all the issued shares in the company together with the relevant share certificates. It was also agreed that the purchasers would pay for the shares by certain specified instalments the last such instalment to be paid on or about December 31, 1965. The agreement also gave an option to the vendors exercisable at any time before December 31, 1965 to re-purchase all the shares of the company for the sum of £215,904. This option we have been informed has duly been exercised. At the date of the agreement the company had a very large sum of unappropriated profits.

At all relevant times the authorised capital of Seramco was £100 the issued capital was £22 and when the matter of the purchase of the shares in the company was being negotiated the amount in the superannuation fund was about £400. The purchase price of the shares less the amount of £215,904 (the price at which the shares could be repurchased by the vendors) could only have come from the unappropriated profits of the company. In fact it has been admitted that the respondents and the vendors of the company's shares were engaged in a dividend stripping operation whereby the respondents expected to gain £8,334 by reason of the superannuation fund being an approved superannuation fund under s.25 of the Income Tax Law and the Elders expected to get nearly £200,000 as a capital receipt tax free.

On June 23, 1964 a meeting of the company's directors was held when transfers were presented pursuant to the abovementioned agreement. The transfers were approved and entered in the shares register of the company. Each of the three Elders now held one share as nominee shareholders on behalf of the respondents. F.L. Myers one of the respondents gave the secretary a letter addressed to the company and signed by the holders of at least one half of the issued shares of the company seeking the removal ofD.P. Elder as permanent director of the company. D.P. Elder vacated his position as chairman of the board of directors.

In the Court of Appeal of Jamaica

No.13

Judgment of Luckhoo Ag.P.

20th December 1973

(continued)

F.L. Myers was then appointed permanent director of the company and in that capacity removed Mrs. A.M. Elder as director and appointed D.P.Elder, P.H.O. Rousseau and W.D. Myers as directors. This having been done it was proposed and seconded that a dividend of 48½% be paid out of the undistributed profits of the company up to September 30, 1963. The three Elders (who each held one share as nominee shareholders on behalf of the respondents) voted in opposition to the proposal which was carried with the help of the chairman's casting vote. At the annual general meeting of the company held on July 1, 1964 it was resolved that the directors having recommended a dividend of 48½% gross this recommendation be adopted and the company declare a final dividend of 48½% out of the undistributed profits to all shareholders.

On June 23, 1964 the respondents' solicitors had written the Commissioner informing him of the respondents' purchase of shares in the company and asking him to authorise the company to pay any dividend due in respect of shares owned by the superannuation fund without deduction of tax and to allow the amount which would otherwise have been deducted as tax as a credit to the company in respect of its own income tax liability. This request, based on the Commissioner's approval of the superannuation scheme given under s.25 of the Income Tax Law, 1954, was granted. On July 2, 1964, the Secretary of the Company wrote the Commissioner stating that consequent on the authority given by him to make payments of dividends to the respondents without deduction of income tax, dividends in the sum of £100,686 had been paid the respondents. The secretary of the company asked the Commissioner to credit the company's 1964 assessment with £37,757.5s., being the amount that would have been deducted from the dividends, and to advise the Collector of Taxes accordingly. As the Appeal Board observed that letter seemed to open the eyes of the Commissioner as to what was going on and he asked D.W. Myers to come to see him. Myers did so. Thereafter on July 28, 1964, the Commissioner wrote the secretary of the company advising him that the authority given to make payment of dividends to the respondents without deduction of income tax was revoked.

On December 11, 1964, the directors of the

company held a meeting at which it was proposed to recommend to the shareholders that a dividend of £62,280 net representing a gross dividend of 48% less tax be paid out of accumulated profits of the company up to December 30, 1964. The three Elders voted in opposition to the proposal which was passed on the casting vote of the chairman. At a general meeting of the company held on December 28, 1964, the recommended dividendwas approved. On January 5, 1965, respondents wrote the Commissioner informing him that on December 28, 1964, a dividend of 48% being £99,648 less £37,368 of tax had been declared at the general meeting of the company and that the dividend less tax was paid the respondents' shareholders on December 29, 1964. That letter went on to state that the income of the fund was exempt from income tax and made claims to a refund in the sum of £37,368 being the amount of tax withheld on the dividend. On February 9, 1965, the Commissioner wrote the Secretary of Seramco advising him that his approval of the superannuation scheme was withdrawn with effect from January 8, 1964. On the same day the Commissioner wrote the respondents' solicitors and advised that the respondents' claim for a refund of £37,368 under S.63 of the Income Tax Law, 1954 was refused. In that letter it was also stated that if the respondents were dissatisfied with the Commissioner's refusal they had a right of appeal to the Income Tax Appeal Board. The respondents thereafter appealed under s.63(3) of the Income Tax Law, 1954, to the Income Tax Appeal Board against the Commissioner's refusal of their claim to a refund of tax. Before the Appeal Board, as indeed before the learned judge and before us, it was submitted in limine on behalf of the Commissioner that there is no right of appeal provided by the Income Tax Law in respect of the decision of the Commissioner refusing a claim to a refund of tax. That submission was rejected by the Appeal Board. It was contended on behalf of the Commissioner before the Appeal Board:-

(i) that the Commissioner's approval of the fund had been revoked with retrospective effect from January 8, 1964 by his letter of February 9, 1965;

(ii) that the transaction between the respondents and the company was an artificial transaction

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within the contemplation of s.10(1) of the Income Tax Law entitling the Commissioner to disregard the transaction as between the parties thereto;

(iii) that the dividend stripping operation between the respondents and the company destroyed the bona fides of the respondents' application to the Commissioner for his approval of the fund given under s.25(1) of the Income Tax Law,

whereby the respondents' claim for a refund of tax was properly rejected by the Commissioner. These contentions were rejected by the Appeal Board who accordingly allowed the respondents' appeal against the Commissioner's decision.

On appeal against the Appeal Board's decision, Grannum J. also rejected the objection in limine taken on behalf of the Commissioner that there was no right of appeal provided by the Income Tax Law against the decision of the Commissioner refusing the respondents' claim for a refund of tax. Before the learned judge it was contended on behalf of the Commissioner -

(i) that the fund was not an approved fund within the provisions of the Income Tax Law because:-

(a) it was established by a deed of trust executed on January 16, 1964 and that executed deed had not been approved by the Commissioner;

(b) that the trust was not an irrevocable trust as required by s.25(1) of the Income Tax Law before the Commissioner's approval of the fund could validly be given;

(ii) that the Commissioner's approval in any event had been retroactively withdrawn with effect from January 8, 1964;

(iii) that the transaction between the respondents and the company was an artificial transaction within the contemplation of s.10(1) of the Income Tax Law entitling the Commissioner to disregard the transaction as between the parties thereto,

whereby the respondents' claim for a refund of tax was properly rejected by the Commissioner. In rejecting the first of those contentions, Grannum J. stated that there was no prescribed procedure to be followed in the making of an application for the Commissioner's approval of a superannuation fund and that there was considerable discretion given the Commissioner in granting or refusing approval of a fund. Grannum J. also rejected the second and third of those contentions holding in the case of the third contention that the onus was upon the Commissioner to establish that the transaction was an artificial transaction within the contemplation of s.10(1) of the Income Tax Law and that the Commissioner had failed to discharge that onus. Grannum J., accordingly dismissed the Commissioner's appeal with costs fixed at £1,897.10s.

A number of interesting points arise for consideration in the present appeal. Logically, the first is whether there is a right of appeal given in respect of the Commissioner's refusal of a claim for refund of tax made pursuant to s.63 of the Income Tax Law. That point will be dealt with later in this judgment. It was conceded that the Commissioner was not empowered to withdraw his approval of the superannuation fund with retroactive effect, and so the Commissioner's refusal of the respondents' claim to a refund of tax was no longer supported on that ground. It was urged on behalf of the Commissioner that the Commissioner's approval of the fund was invalid because -

(i) there was in fact no trust in existence on January 8, 1964 when such approval was communicated by letter to Carp who were acting on behalf of Seramco, the deed of trust (and rules) having been executed on January 16, 1964;

(ii) in any event, the fund was not set up under irrevocable trust within the contemplation of s.25(2)(a) of the Income Tax Law, 1954.

Mr. Mahfood for the respondents contended that it was not competent for these points to be taken in this Court as neither of them had been raised before the Income Tax Appeal Board and further it was wrong for the second of these points (ii) to be urged before the learned judge in chambers, as

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it had been, the arguments before the Appeal Board having proceeded on the basis that the Commissioner's approval in its inception had validly been given.

Mrs. Hudson-Phillips for the Commissioner contended, however, that a judge in chambers on appeal from a decision of the Appeal Board has to approach every issue of fact as res integra and to make his own finding thereon. Support for that contention is to be found in the two undermentioned cases cited by her. In O et al v. The Commissioner of Income Tax (1953) (Civil Appeals Nos. 96, 97 and 98 of 1953) the East African Court of Appeal, on appeal from the decision of a judge of the High Court of Tanganyika allowing an appeal against decision of the Local Committee (the Tanganyika counterpart of the Jamaica Appeal Board) had this to say (per Briggs, J. of A; Worley V.P. and Cox, C.J. (Tanganyika) agreeing) -

> "It must be remembered that an appeal from a Local Committee differs from an ordinary appeal from a subordinate court in that the High Court is obliged, regardless of the findings of the Committee, to approach every issue of fact as res integra and to make its own findings thereon, and that in so doing it is bound by a provision that the onus is always on the taxpayer to show that the original assessment is excessive. This applies equally whether the taxpayer or the Crown is the appellant, and applies nonetheless although the Local Committee has reduced or quashed the original assessments. See the East African Income Tax (Management) Act, 1952, sections 77 and 78 and particularly section 78(5). The position is therefore that, in any appeal by the Crown to the High Court where the issue is one of disputed fact, unless the taxpayer adduces not merely some evidence, but sufficient evidence to satisfy the Court, the appeal automatically succeeds, the Local Committee's decision is set aside and the original assessment is restored."

Section 58(2) of the Income Tax Law, 1954 is the Jamaican counterpart of s.78(5) of the East African Income Tax (Management) Act, 1952, and by s.63(3) of the Income Tax Law, 1954, "any person who objects to the amount of any repayment made by the Commissioner may appeal to the Appeal Board in

the same manner as an appeal may be made against the assessment." I respectfully agree with the reasoning and conclusion of the East African Court of Appeal as contained in the extract set out above. In Sir Alfred D'Costa v. Commissioner of Income Tax (1965) (unreported) (before Duffus P., Lewis and Henriques J.J.A.) the appeal to the judge in chambers (the Chief Justice) had been argued on the basis of the primary facts found by the Board and no further evidence was tendered orally or by affidavit by either party. The Chief Justice after hearing submissions, arrived at the conclusion that the finding of the Appeal Board was wrong. The learned President of the Court of Appeal (in whose judgment the other members of the Court concurred) had this to say -

> "The finding of the learned Chief Justice is undoubtedly a finding of fact and this Court may only interfere if the appellant is able to show that there was no evidence to support the finding or that it was based on a misinterpretation of law .....
>
> The learned Chief Justice did not misconceive his functions but proceeded to a careful analysis of the primary facts as found by the Appeal Board, and to draw his own conclusions thereon, and this is what he was required to do on the hearing of the appeal."

In the instant case a number of affidavits and other documents were filed and oral testimony adduced in the proceedings before Grannum, J. It was for Grannum, J. to make findings of fact upon the evidence before him and from those findings of fact to reach his own conclusions. It is true that the matter had been argued before the Appeal Board on the basis that in the inception there had been a valid approval of the fund given by the Commissioner. That, however, could not prevent argument or indeed decision on appeal to a judge in chambers based upon the evidence placed before the judge in chambers even though argument addressed to the Board might have been put on a different basis. To do otherwise would be tantamount to ignoring evidence adduced which, under the procedure prescribed by law governing appeals from the Appeal Board to the judge in chambers, it is competent for the parties to adduce.

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Whether a power of revocation is reserved to the employers by the terms of the trust was a question properly for the determination of the judge in chambers and whether the provisions of s.25 of the Income Tax Law allows the Commissioner to give a valid approval of a fund set up under the trust was a question of law for the judge whose decision thereon can (assuming a right of appeal is given under s.63 of the Income Tax Law) be challenged in this Court.

Reverting to the submissions made on behalf of the Commissioner, as to (i) whether there was a trust in existence on January 8, 1964 this is a question of fact. The decision of the judge in chambers on any question of fact is final and only questions of law lie to this Court (s.58(6)). It can hardly be urged that there was no evidence on which Grannum, J. could conclude that at January 8, 1964 (indeed at January 1, 1964) a trust in the terms contained in the draft deed and rules had been created. While the Commissioner might not have been made aware of the events taking place when the directors of Seramco met in December, 1963 culminating in the creation of the trust and in the setting up of the superannuation fund thereunder he nevertheless gave his approval on the basis that a trust in those terms and a superannuation fund thereunder would be set up with effect from January 1, 1964 and that indeed was done. The execution of the deed and rules appended thereto was merely confirmatory of what had already occurred. As to (ii) whether the fund was set up under an irrevocable trust, it is clear that the Appeal Board and the judge in chambers found as a fact the terms of the trust to be those as contained in the trust deed and the rules appended thereto. No dispute arises as to those terms. The question is whether those being the terms the trust is irrevocable? Such a question as I see it is a question of law (see Edwards v. Bairstow and Harrison (1956) A.C. 14) and as Mrs. Hudson-Phillips contended, it was open to the Appeal Board and to the judge in chambers and it is now open to this Court to decide even without objection being raised on the part of the Commissioner that the trust is not irrevocable whereby the Commissioner is not permitted under s.25(2) of the Income Tax Law nor indeed under condition 1 contained in the Schedule to the Income Tax (Superannuation Funds) Rules, 1955

(made under s.73(3)(c) of the Income Tax Law, 1954) to approve a superannuation fund set up under such a trust.

Having concluded that it is open to this Court to determine whether or not the superannuation fund was set up under irrevocable trust it is necessary to examine the provisions of the trust which it is claimed bear on this question. The last paragraph - paragraph 6 - of the trust deed provides as follows -

> "Except as hereinafter provided the said trust shall continue during the life of the last survivor of the issue now living of Her Majesty Elizabeth II and twenty-one years after the death of such survivor and such further period, if any, as may be lawful. Upon the termination of the said trust the affairs thereof shall be wound-up and subject to the payment of all costs, charges and expenses which may then be owing, and to provision as the fund will admit being made for the payment of any benefits which are then payable the balance of the fund, if any, shall be dispersed in accordance with the said rules.

The opening words of that paragraph show that it cannot be ascertained from the deed itself that the trust is irrevocable. One must therefore have regard to the rules of the fund appended to the deed. The first of the rules relevant to this issue is rule 10(1). The first three paragraphs of rule 10(1) relate to benefits payable by the trustees upon termination of employment of an employee upon death or retirement and call for no comment. Paragraph (d) of the rule 10(1) is in the following terms:-

> "Where the termination of employment is by reason of any contingency other than death or retirement the terminating member shall receive from the fund a sum equal to the aggregate amount contributed by him to the fund with such interest as may have been credited to his account. The Employer may, at its sole discretion, leave the value of its contribution made on behalf of any member who terminates under this section in the fund

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to provide an annuity to the terminated member payable in the normal form upon the terminated member's attainment of his normal retirement age."

It is proviso (i) to s.25(d) of the Income Tax Law which enables the Commissioner in his discretion and subject to such conditions if any, which he may think proper to attach to the approval, to approve a fund or part of a fund, as a superannuation fund for the purpose of the Income Tax Law where the rules of the trust under which the fund is established provide for the return in a contingency of the kind mentioned in paragraph (d) of rule 10(1) of contributions paid to the fund. Paragraph 12 which the Commissioner claims is the one which renders the trust a revocable one is as follows -

"The Employer may at any time on giving three months notice in writing to the secretary cause contributions to cease to the fund and on such notice being given by the Employer the fund shall be wound-up and after all expenses incurred in connection with the fund have been paid, and any sum which have become payable under rule 10(a) have been paid and benefits in the process of payment or pending payment under rule 10(b), (c) or (d) have been purchased from a duly constituted insurance company, or otherwise secured, the residue, if any, shall be paid over by the trustees to the members as if they had terminated employment on the date of wind-up of the fund in accordance with rule 10(d). If any residue remains undistributed it shall be paid over to the Employer by the trustees."

Under this rule the employer reserves to himself the power to have the fund wound-up whereby each of the employees who is participating in the fund and whose employment in fact has not been terminated by any contingency would receive from the fund the aggregate amount contributed by him to the fund with such interest as may have been credited to his account. Any residue remaining undistributed after the fund is wound-up is to be paid over to the employer by the trustees. Thereafter the trust is at an end. Although a provision in the rules of a trust under which a

a superannuation fund is established providing for discontinuance of contributions to the fund does not render the trust a revocable one it does seem to me that paragraph 12 in expressly enabling the employer to bring the trust to an end by causing contributions to the fund to cease does render the trust a revocable one. Mr. Mahfood said that the terms of the trust in the instant case were drafted after consultation of precedents of trusts employed in England in connection with schemes under s.379 of the Finance Act, 1952, the English counterpart of s.25 of the Income Tax Law, 1954. Two such precedents were submitted for our consideration. One of these was contained in rules the sole provision which related to the determination of trust being as follows:-

> "At the expiration of 20 years from the death of the survivor of all the lineal descendants of His Late Majesty King George V who were living on the Commencing Date (in this Rule called 'the Trust Period') or on any earlier date on which the Company ceases to exist unless thereupon there is a successor of the Company which resolves to continue the Scheme the trusts constituted by the Scheme shall determine:
>
> Provided that instead of dissolving the Scheme on any date prior to the expiration of the Trust Period the Trustees may after consultation with the Members determine to continue the Scheme as a closed fund."

It will readily be seen that no power is reserved in those rules to the employer to revoke the trust. The other relates to a Life Office Scheme including life insurance where the whole cost is to be borne by the employer except voluntarily by a member for the purpose of augmenting his pension. The relevant provisions of the deed in such a case are as follows -

> "4. The Employer shall transmit to the Trustees all contributions collected by it from the Members and from time to time shall pay to the Trustees such moneys as the Actuary certifies to be necessary to supplement those contributions in providing the benefits under the Scheme other than the life assurance

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benefits and shall reimburse the Trustees the cost of managing and administering the Scheme subject to the right of the Employer hereby reserved to give six months notice of its intention to cease to contribute to the Scheme and for the life assurance policies to which Clause 10 hereof refers and so to cease at the expiration of that six months.

.....

15. The Scheme shall be wound up and the Fund dissolved -

(1) On the twentieth anniversary of the death of the last survivor of the issue living on the Commencing Date of his late Majesty King George V (which period is hereinafter called "the Trust Period") unless there has been legislation making it lawful for the trusts of the Scheme to continue

(2) On the making of an Order or an effective resolution being passed for the winding up of the Employer other than a resolution for the purpose of reconstruction or amalgamation

(3) On a New Employer succeeding on reconstruction or amalgamation to the business of the Employer and not being willing to enter into the agreement to which Clause 14 of this Deed refers

(4) At the expiration of six months after the giving of the notice by the Employer of its intention to cease to pay contributions to which Clause 4 of this Deed refers unless the Scheme is thereupon continued in a modified form as prescribed by Rule 31.

16. If and whenever the Scheme is wound up so much of the Fund as is not at that time invested in the purchase of annuity policies or contracts shall be realised and those annuity policies and contracts and the moneys then in hand shall be applied

so far as they permit to the following purposes and with the respective priorities indicated -

(1) In the provision by purchase or otherwise from the Government or from an insurance company of uncommutable non-assignable immediate annuities payable under the same conditions as payments receivable hereunder for those persons then entitled to pensions out of the fund such annuities to be of amounts equal to the pensions to which those persons are then entitled.

(2) In the purchase in like manner or the provision otherwise of uncommutable non-assignable deferred annuities for those Members entitled in anticipation to pension benefits out of the Fund regard being had to their respective prospects of becoming entitled to pensions and the amount thereof had the Fund continued to exist -

PROVIDED THAT in exceptional cases of ill-health or when an annuity would be of trivial amount a lump sum payment may be made in lieu of the provision of an annuity.

(3) Any moneys which remain after purposes (1) and (2) have been completed shall be returned to the Company. -

.....

and of the rules -

31. Under the provisions of the Deed the Employer has the right to give six months notice in writing to the Trustees and at the end of that six months to discontinue or suspend the Scheme in respect of new entrants or in respect of increases of benefits to existing Members or both or alternatively to discontinue contributions entirely whereupon the Scheme shall be dealt with in accordance with the provisions of the Deed."

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Although the employer may cease to pay contributions it is left to the discretion of the trustees to decide whether the Scheme is to be wound up and the fund dissolved. As such there is no power of revocation of the scheme reserved to the employer.

In the trust under consideration in the instant case no such discretion is given the trustees where the employer ceases to pay contributions to the fund.

For these reasons I would hold that the trust in the instant case is not irrevocable and the Commissioner could not validly approve the fund under s.25(2) of the Income Tax Law, 1954. If I am correct in that conclusion the respondents' claim for a refund of tax cannot be entertained.

Before leaving this aspect of the matter I should perhaps refer to a submission made by Mrs. Hudson-Phillips to the effect that the Commissioner's approval was not validly given because he was not made aware by the respondents that the superannuation scheme relates to both directors and other employees of Seramco. Mrs. Hudson-Phillips urged that had the Commissioner been made aware of this fact he may have refused to approve the scheme under s.25(2) of the Income Tax Law on the ground that a s.37 scheme was the appropriate one. All that need be said in relation to this submission is that there is nothing to suggest that the Commissioner was in fact not aware that the scheme put forward for his consideration related to directors as well as to other employees of Seramco or that if he was not he would have declined to approve the fund under s.25(2) of the Income Tax Law.

I turn now to another submission made on the part of the Commissioner - that the respondents' claim for a refund of tax would also fail by reason of his reliance on the provisions of s.10(1) of the Income Tax Law 1954. That sub-section provides as follows:-

> "(1) Where the Commissioner is of the opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious

or that full effect has not in fact been given to any disposition, the Commissioner may disregard any such transaction or disposition, and the persons concerned shall be assessable accordingly."

The Commissioner's submission is based on the contention that the transaction between the Elders and the respondents purporting to be a sale and purchase of shares in the company is an artificial transaction within the contemplation of s.10(1) of the Income Tax Law, 1954 and has the effect of reducing the amount of tax payable by the Elders whereby he is entitled to disregard the transaction and to assess the persons concerned - the Elders and the respondents - accordingly. What is an artificial transaction as contemplated by s.10(1) of the Income Tax Law, 1954? The researches of counsel and of the court have not been able to discover any reported case in which that question has been judicially considered. The provisions of s.10(1) first appeared in the Laws of Jamaica in 1939 when they were enacted by the Income Tax (Amendment No.2) Law, 1939 (No.55) as s.52(1) of the Income Tax Law, Cap.201 of the 1938 Edition of the Laws of Jamaica. Similar provisions were enacted in other Caribbean territories at about the same time. Perhaps they formed part of a model Income Tax Law sent to officers administering the governments of Caribbean colonies (as they then were) for consideration as to whether they should be enacted in those territories. In endeavouring to ascertain the meaning of the word "artificial" in sub.s.(1) of s.10 one must also have regard to the meaning of the word "fictitious" as used in the subsection. There is no dispute that a fictitious transaction within the contemplation of the subsection refers to a transaction which is a sham or feigned transaction i.e. a transaction that it is pretended has taken place but has not and is not intended to take place. An artificial transaction on the other hand seems to be a transaction which is intended shall take place (and so distinct from a sham or feigned transaction) but which is fashioned to resemble a transaction of a nature which it does not have in order to achieve an object which a transaction of its nature cannot achieve and would never otherwise be entered into but to achieve such object. In the instant case it is contended by the Commissioner that the transaction between the Elders and the respondents was

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fashioned to resemble an ordinary commercial transaction of a sale and purchase of shares in the company with an option on the part of the Elders to repurchase the shares within a specified time which it was not, whereas it was a device which had as its object that the Elders should receive the amount specified as the purchase price of the shares less the amount fixed to be paid as the purchase price on the exercise of the option as a capital receipt and thus free of income tax rather than an amount from profits exigible to tax and the respondents should receive nearly £8,000 free of tax by reason of the fact that the Commissioner had signified his approval of the superannuation fund for the purposes of the Income Tax Laws, 1954, the shares in the company eventually reverting to the original shareholders (the Elders), and was a transaction which would never have taken place otherwise than to achieve that object.

It is necessary to examine not only the contents of the agreement executed in June, 1964 by and between the Elders as vendors and the respondents as purchasers but also the circumstances leading to the execution of the agreement and the manner in which the agreement was implemented in order to discover whether the transaction which reduced the amount of tax payable by the Elders was of such a nature that it might be regarded as an artificial transaction. But for the provisions of subsection (1) of s.10 of the Income Tax Law, 1954, it would not have been possible for the Commissioner to have regard to anything but the legal effect of the agreement in making an assessment to tax. See I.R.C. v. Duke of Westminster (1936) A.C.I.

There is no dispute that the transaction was conceived with a view to enabling the Elders to receive as a capital receipt, and thereby free of income tax, an amount which, if otherwise received by them would have come from profits exigible to tax. Further, the respondents in view of their fund's exemption from taxation as an approved superannuation fund entered into the transaction for the purpose of making a gain of some £8,000. The Elders were well aware that the respondents were unable financially to enter into such a transaction otherwise than by engaging in a dividend stripping operation. Both the Elders and the respondents well knew that there was no

question of the respondents purchasing the shares, the subject matter of the agreement, as an investment, but that the shares would, at the completion of the dividend stripping operation, have to be "resold" by the respondents to the Elders at a price considerably lower than the purchase price they paid for them in order to ensure the achievement of the objectives of the Elders and the respondents which caused them in the first place to enter into the transaction. It is evident therefore that the agreement which was entered into by and between the parties thereto was really a device adopted to achieve this end and was not an ordinary commercial transaction of sale and purchase with an option for repurchase. This type of operation has been judicially described as "the planning and execution of a raid on the treasury using the technicalities of the revenue law and the Company Law as the necessary weapons" per Lord Donovan in Lupton v. F.A. and A.B. Ltd. (1971) 3 W.L.R. 670 and as an "artificial device" per Lord Morris of Borth-Y-Gest in Finsbury Securities Ltd. v.Bishop (1966) A.C. at p.627. In those and a number of other cases cited by Mrs. Hudson-Phillips the question was whether the transaction in issue was one of trading in stocks and shares whereby the transaction involved a loss in a trade entitling the taxpayer to relief. No such question arises in the instant case but it is of importance to observe that emphasis has been placed in the judgments delivered in those cases on the need to determine the true nature of the transaction as distinct from the trappings of dealing in securities which surround the transaction. Examination of the instant transaction leaves no room for doubt that its true nature was not one of sale and purchase of shares in the company with a view to investment but rather of a device under that guise employed by the Elders and the respondents in order to "execute a raid on the treasury". As such the transaction is artificial and as it had the effect of reducing the amount of tax payable by the Elders the Commissioner was, under s.10(1) of the Income Tax Law, 1954, entitled to disregard it and to assess the persons concerned - the vendors (Elders) and the purchasers (respondents) as if the transaction had never taken place. The respondents could therefore not lawfully claim a refund of tax in relation to a transaction which the law allows the Commissioner to treat as if it has never taken place.

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Before leaving this aspect of the case reference should be made to a submission made by Mr. Mahfood that by reason of the enactment of the provisions of s.10(B) of the Income Tax Law, 1954 as inserted by s.11 of the Income Tax (Amendment) Act, 1970 (No.30) (modelled on English legislation dealing with dividend stripping operations), courts in construing 10(1) of the 1954 Law should conclude that the provisions of s.10(1) of the Income Tax Law, 1954 would not catch dividend stripping operations. The provisions of s.10(1) as already mentioned were first enacted in Jamaica in 1939 and whatever meaning might have judicially been ascribed to them had the question arisen at that date must continue to be ascribed to them even now despite the enactment in 1970 of provisions which might otherwise deal with matters included in the 1939 provisions. I have come to that conclusion because there is not to be gathered from the 1970 provisions that they were enacted by way of legislative or parliamentary exposition of the 1939 provisions when, if it were so enacted, it might be legitimate to conclude that dividend stripping operations were not within the contemplation of "artificial" transactions in s.10(1) of the earlier enactment. It must not be overlooked that the enactment of the 1970 provisions followed upon findings of the Appeal Board and of Grannum J. in this case against the contentions of the Commissioner as to the true meaning to be given to the word "artificial" in s.10(1) of the earlier enactment and may well have been so enacted to ensure that future transactions of that nature should be caught should this Court on appeal from the decision of Grannum, J. uphold the conclusion reached by that judge on this aspect of the matter. In my view, the 1970 provisions may now be said to regulate, with effect from the date those provisions came into force, the exercise by the Commissioner of his discretion under s.10(1) in relation to dividend stripping operations. I would hold that the respondents' claim for a refund of tax has failed by reason of the Commissioner's exercise of his discretion under s.10(1) to disregard the transaction between the Elders and the respondents.

I come now to the submission made on the part of the Commissioner that the provisions of s.63(3) of the Income Tax Law, 1954, do not give a right of appeal to the Income Tax Appeal Board in the circumstances of this case. Section 63 provides as follows:-

"63(1) If it be proved to the satisfaction of the Commissioner that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded and the Commissioner shall make the refund accordingly. Every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates.

(2) .....

(3) Any person who objects to the amount of any repayment made by the Commissioner may appeal to the Appeal Board in the same manner as an appeal may be made against an assessment."

For the Commissioner it was contended that by its very wording, - "who objects to the amount of any repayment made" s.63(3) provides a right of appeal only in cases where the Commissioner is satisfied that the taxpayer has paid tax in excess of the amount with which he is chargeable and makes a repayment in a certain amount and the taxpayer objects to this repayment as being too little but there is no right of appeal where the Commissioner decides that no amount is repayable and consequently makes no repayment. For the respondent it was contended that the right of appeal given is in respect of the decision of the Commissioner upon the taxpayer's claim for repayment and that to hold otherwise would result in an absurdity in that a right of appeal would be provided if the amount of the repayment made were only one cent and there would be no right of appeal if the Commissioner refused to make a repayment.

It may be of some assistance in determining this question to trace the history of the provision relating to claims for repayment of tax alleged to be paid in excess of the amount properly chargeable. When income tax legislation was first introduced in Jamaica, there appeared in the Income Tax Law, 1920 (No.39) the following provision as s.24 -

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"24 - If it be proved to the satisfaction of the Assessment Committee that the amount paid as income tax is in excess of the amount properly chargeable, the person who has paid the same or his personal representative shall be entitled to have the amount so in excess refunded. All claims for repayment under this section shall be made within twelve months from the end of the year of assessment, and any claim not made within such period shall be disallowed. The amount of any repayment shall be made by the Collector-General on the certificate of the Assessment Committee. Provided that this section shall not apply to any person who has been assessed in default of a return, or who has been assessed in excess of his return, and has not appealed against any such assessments."

The Assessment Committee constituted by s.16 of that Law was charged with the duty of assessing the taxpayer to tax and to decide whether tax was paid in excess of the amount properly chargeable. A right of appeal to a judge in chambers was provided in respect of assessments but no right of appeal was given in respect of the decision of the Assessment Committee on claims that tax was paid in excess of the amount properly chargeable. Presuambly in such a case the taxpayer could approach the Supreme Court by way of petition of right or by mandamus to secure repayment of tax he claimed to have overpaid. In this connection see R. v. The Commissioners of Inland Revenue. In re Nathan (1884) 12 Q.B.D. 461 and R. v. Commissioners for Special Purposes of the Income Tax (1888) 21 Q.B.D. 313. The provisions of s.24 of the 1920 Law appeared as s.30 of Cap.201 in the 1938 Edition of the Laws of Jamaica. Then by S.8 of the Income Tax (Amendment) Law, 1941 (No.6), s.30 of Cap.201 was repealed and the following provision substituted therefor -

"30 - (1) If it be proved to the satisfaction of the Assessment Committee that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within three years from the end of

the year of assessment to which the claim relates. The Assessment Committee shall give a certificate of the amount to be repaid, and upon the receipt of the certificate the Collector-General shall cause repayment to be made in conformity therewith.

(2) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any year of assessment as regards which such person has failed or neglected to deliver a return, unless it is proved to the satisfaction of the Assessment Committee that such failure or neglect to deliver a return did not proceed from any fraud or wilful act or omission on the part of such person, nor shall any repayment be made to any person who has been assessed in excess of his return and who has not objected to the assessment."

Again no provision was made for any appeal against the decision of the Assessment Committee on such a claim. In 1954 most of the existing provisions of the Income Tax Law were repealed and were replaced by the Income Tax Law, 1954 (No.59), s.63 of which relates to repayment of tax, claims and appeals. In the new law functions which formerly fell to be performed by the Assessment Committee now were to be performed by the Commissioner. An Appeal Board was set up under the new law with jurisdiction to entertain appeals by the taxpayer against assessments to tax and in certain other specified matters. The taxpayer who has paid tax in excess of the amount with which he is properly chargeable can in the same way as under the former law seek to recover the amount he has overpaid. In addition he is given such a right of appeal to the Appeal Board as is provided by s.63(3). Under s.63 when a claim for repayment of tax alleged to be overpaid is made the claimant must show (i) that the claim is made within 6 years of the end of the year of assessment to which the claim relates; (ii) that he has paid tax in excess of the amount with which he is properly chargeable; (iii) the amount of the excess paid. If he fails to show that the claim is made within 6 years of the end of the year of assessment to which the claim relates no further question arises for the Commissioner's consideration and s.63(3) provides no right of appeal against a finding by the Commissioner adverse to

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the taxpayer in this respect. He may challenge the Commissioner's findings in proceedings of another nature as before (proceedings under s.11 of the Crown Proceedings Law, 1958 replacing those by way of petition of right) as he may do likewise where the Commissioner does not find it proved to his satisfaction that he has paid tax in excess of the amount with which he is properly chargeable. It is only where the Commissioner, having found that the claim is made within the time limited for that purpose and that tax has in fact been overpaid, makes repayment in a sum less than that which the taxpayer claims to have overpaid that the right of appeal given by s.63(3) may be invoked. There is no absurdity in the provisions of s.63(3) being so construed. The taxpayer is not left without remedy if his claim is rejected in its entirety either because the Commissioner finds that it has not been made within the time limited for that purpose or because tax was not overpaid. While it might be considered to be more convenient to have the Appeal Board deal on appeal with such matters as well as with the question of the amount the Commissioner repays it is not within the province of the courts to correct hardships by reading in implications not warranted by the language of the statutory provision.

I would hold that there is no right of appeal given by s.63(3) of the Income Tax Law, 1954 from the Commissioner's refusal of the respondents' claim to a refund of tax.

In the result I would allow the Commissioner's appeal, set aside the orders of Grannum, J. and of the Appeal Board and affirm the decision of the Commissioner.

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The facts and circumstances giving rise to this appeal have been fully set out in the judgment of Luckhoo, P., and I need not repeat them. I shall deal directly with the issues which arise for decision.

The validity of the approval of the superannuation fund (hereafter "the fund") has been challenged on the main ground that on January 8, 1964 when the Commissioner of Income Tax (hereafter "the Commissioner") issued his letter of approval the fund had not been "bona fide established under irrevocable trusts" as required by s.25(2)(a) of the Income Tax Law 1954. There is a subsidiary ground which will be mentioned later.

There are two limbs to the contention that the fund had not been established under irrevocable trusts on January 8, 1964. The first limb is that the fund cannot be said to have been so established until January 16, 1964 when the deed creating the trusts and establishing the fund was executed. So that the purported approval of January 8 was invalid. The second, and alternative, limb is that because of the provisions of rule 12 of the Rules of the fund "the fund was not irrevocably set up." The first limb of the contention was raised and argued before Grannum, J. in Chambers on appeal from the Income Tax Appeal Board (hereafter "the Board"). The second was raised for the first time before us. It was submitted for the Trustees of the fund that it was not open to the Commissioner to contend before the learned judge in Chambers, as he did, that the fund was not an approved fund because it was not established under irrevocable trusts as his case before the Board was presented on the basis that the fund had been validly established and approved. On behalf of the Commissioner it was denied that his case before the Board was presented on this basis. It was pointed out that it was argued for the Commissioner before the Board that the fund was not an approved fund, though not on the ground that it was not established under irrevocable trusts.

In my opinion, Grannum, J. was right in allowing the Commissioner to raise a new point before him on the question of the validity of the approval of the fund. Though exercising appellate functions, he was empowered to find facts on the basis of the evidence which was before the Board or on new evidence adduced before him. The question raised before him as to validity was, it seems to me, one of mixed law and fact and all the evidence on which he was asked to make a finding was before the Board. In the event, he found against the argument of the Commissioner.

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I deal now with the arguments for and against the contention, on the first limb, that the fund was not established under irrevocable trusts on January 8, 1964. As I have indicated, the contention for the Commissioner is that the fund was not so established until January 16, 1964 when the deed was executed. Attention was drawn to the Income Tax (Superannuation Funds) Rules, 1955 made under Section 73(3)(c) of the Law. Rule 3 provides:

> "An application for approval of a superannuation fund shall be made to the Commissioner in writing ..... and shall be accompanied by a copy of the deed under which the fund is established and by two copies of the rules of the fund ....."

Rule 4(1) provides that "the Commissioner may approve ..... any superannuation fund which, in his opinion, complies substantially with the conditions set out in the Schedule to these Rules".

The first condition in the schedule is that "The fund shall be held under an irrevocable trust deed." Conditions 2, 3 & 4 repeat certain of the provisions in section 25(2) of the Law. It was said that rule 3 seems to imply that the fund must be established by deed and rules and that, therefore, the fund cannot be established under irrevocable trusts if the deed is not executed.

On behalf of the Trustees it was submitted that an irrevocable trust can be established otherwise than by deed e.g. by resolution; that a trust created by deed is presumed to be irevocable but if created otherwise than by deed appropriate words must be used to make it irrevocable. Reference was made in support of these submissions to Pension Scheme Precedents by W.Phillips containing precedents and comments in relation to schemes under section 379 of the (U.K.) Income Tax Act, 1952 (equivalent to our section 25). It was submitted, further, that the documents established quite clearly that an irrevocable trust was created by resolution on December 30, 1963 when, it was said, there was a completely constituted trust in terms of the trust deed and rules as executed on January 16, 1964.

The documents to which reference was made are as follows:

(a) the draft trust deed with draft rules of the fund as a schedule,

(b) affidavit of Harold S.Carter, who settled the draft deed and rules,

(c) affidavit of Darryl W.Myers dated November 10, 1967 and

(d) minutes of the first meeting of the Trustees on December 30, 1963.

Mr. Myers' affidavit shows that a meeting of the Board of Directors of Seramco Ltd. (hereafter "the Company"), of which he was one, was held on October 31, 1963 when the directors resolved to establish the fund and to retain the services of Carp Corporation Ltd. to prepare the necessary trust deed and rules; that at a meeting of the directors of the Company on December 21, 1963 the first trustees of the fund were appointed; that on December 29, 1963 he was informed by Mr. Carter of Carp. Corpn. that the Commissioner had verbally approved the trust deed and rules (really the draft) and that the fund could be operated as of January 1, 1964; and that as a result of this information he caused a meeting of the Trustees to be called. The affidavit of Mr. Carter of Carp. Corpn. shows that the draft deed and rules were forwarded to the Commissioner on December 18, 1963; that late in December, 1963 the Commissioner gave his verbal approval of the fund; and that he communicated this information to Mr. Myers. The minutes of the first meeting of the Trustees show that all the trustees were present; that Mr. Darryl Myers was elected chairman of the Board of Trustees; that the meeting was told of the Commissioner's acceptance of the trust deed and rules; that a copy of the trust deed and rules (the draft) were produced and examined by the meeting; that a resolution was passed that the fund be established on the terms of the trust deed and rules and that contributions to the fund be made with effect from January 1, 1964; that the chairman undertook to obtain an engrossment of the trust deed and rules for formal execution by the Trustees; and that resolutions were passed appointing bankers, auditors and solicitors to the fund and stating how the contributions were to be invested.

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I agree with the submission that after the meeting on December 30, 1963 there was a completely constituted trust deed in terms of the draft trust deed. The minutes show that the Trustees regarded themselves as bound by a trust and had commenced to act in the capacity of trustees of the fund which was to be established within two days of the meeting. The trust, in terms of clause 6 of the draft trust deed, was to continue during the perpetuity period and there was no provision whereby it could be revoked, as distinct from being terminated, during that period. It was therefore, in my opinion, an irrevocable trust. The question now arises whether this trust, which was in existence up to January 16, 1964 when it was confirmed by the executed deed, was one under which a fund could have been established within the terms of s.25(2) of the Law so as to enable valid approval of the fund to be given by the Commissioner under that section.

Section 73(3)(c) of the Law provides that the Minister may make rules providing for: "the approval and other matters in connection with approved superannuation funds." Reference has already been made to rules made in 1955 by virtue of this provision. These rules are, of course, related to the provisions of s.25, which provide for the approval of superannuation funds, and must necessarily be subject to the provisions of that section. The requirement in rule 3 that an application for approval of a fund "shall be accompanied by a copy of the deed under which the fund is established" is, apparently, authorised by condition 1 of the Conditions in the schedule to the rules. As already indicated, the Conditions are authorised by rule 4(1). This rule and the Conditions, when read together, lay down the kinds of funds which the Commissioner may approve, But this is exactly what s.25(2) of the Law does and, as has been pointed out, conditions 2, 3 & 4 repeat, in terms, provisions contained in s.25(2). Section 25(2)(a) provides that the Commissioner shall not approve any fund unless the fund is one "bona fide established under irrevocable trusts". Once it is conceded, as it must, that irrevocable trusts can be created otherwise than by deed, it will be seen that rule 4(1) and condition 1 are inconsistent with s.25(2)(a). If Parliament had intended that the only funds that should be

approved under s.25(2) are those established under trust deeds it could have said so simply. I hold that the Rules of 1955 are ultra vires insofar as they purport to restrict the irrevocable trusts referred to in s.25(2) to trusts created by deeds.

The uncontradicted evidence is that the fund was established as from January 1, 1964. In my opinion, subject to the point taken on the second limb on the question of validity, when the Commissioner issued his letter of approval dated January 8 the fund had already been established under irrevocable trusts and could have been validly approved under s.25(2). The letter of January 8 must be taken to be that approval. In my judgment, there is another, simple, ground on which the fund can be said to have been validly approved. It is not disputed that the executed deed is an engrossment, without alteration, of the draft which was approved by the Commissioner, as evidenced in his letter of January 8. In my opinion, when the deed was executed the unconditional approval of the draft extended to it so as to make the fund established under the deed an approved fund under s.25 of the Law.

Rule 12 of the Rules of the fund provides that:

> "The Employer may at any time on giving three months notice in writing to the secretary cause contributions to cease to the fund and on such notice being given by the Employer the fund shall be wound up ....."

The rule goes on to provide for the payment of expenses, the payment and securing of outstanding benefits and the payment by the trustees of the residue to the members and the employer. It was submitted, on the second limb of the contention that the fund had not been established under irrevocable trusts, that even if it can be said that the minutes of the meeting of the Trustees on December 30, 1963 cured the illegality in the approval yet because of the provisions of rule 12 the fund was not irrevocably set up. It was said that a trust is irrevocable if nothing can terminate it before the expiration of the trust period and that a fund which can be terminated as provided in rule 12 cannot, therefore, be a fund irrevocably set up.

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With great respect, these submissions confuse revocation and termination which, in my opinion, are not synonymous in this context. They also confuse revocability of the fund and revocability of the trusts. It is the trusts which s.25(2) of the Law requires to be irrevocable, not the fund. It seems to me that all that the section requires is that as long as the fund lasts the trusts under which it is established must be irrevocable. If this were not so what would happen if the employer who contributes to the fund goes bankrupt and is unable to make any further contribution or dies? These events wou'd result in the dissolution of the fund and the eventual termination of the trusts but would not render the trusts any less irrevocable up to the time of termination. This is the reason for the saving provision - "Except as hereinafter provided" - in clause 6 of the trust deed which defines the trust period. Rule 12 falls within the exception. I hold that this rule does not affect the irrevocability of the trusts created by the deed.

The subsidiary ground upon which the validity of the approval of the fund was challenged has to do with the fact that it emerged during the evidence given before the Board that the directors of the Company were also its employees and were, therefore, eligible for membership in the fund. It appears from the record of the argument before the Board that it was being said there that the Commissioner was unaware that the directors were also employees when he gave his approval. It was submitted before us that the Commissioner could not have validly approved the fund under s.25 if he had been given this information when his approval was sought; that he would probably have asked for it to be re-submitted for approval as a scheme under s.37 of the Law. For the Trustees it was contended that there is no evidence on the record that the Commissioner did not know that the directors were employees of the Company, but the fact that he did not know would not be a ground for saying his approval is ultra vires. I agree. If there was a non-disclosure then this may be a ground on which the Commissioner may withdraw his approval but it cannot affect the validity of the approval while it remains in force.

The claim of the Trustees for a refund of tax under s.63 of the Law as a result of the dividend

paid to them as shareholders on December 29, 1964 was refused by the Commissioner by letter dated February 9, 1965. The Trustees thereupon appealed to the Board by virtue of the provisions of s.63(3) of the Law. When the appeal came on for hearing before the Board objection was taken on behalf of the Commissioner to the Board's jurisdiction on the ground that s.63(3) gave no right of appeal where the Commissioner refused to make a refund. The objection failed. It was taken as a ground of appeal before Grannum, J. and failed therealso. It is now taken before us because there is no right of appeal to this Court unless the Trustees can show that they had a right of appeal under s.63(3).

It is agreed on both sides that in construing sub-sec.(3) of s.63 the ordinary rules of construction apply. In order that the sub-sec. may be viewed in its proper context it is necessary to set out the entire section. Section 63 provides:

> "(1) If it be proved to the satisfaction of the Commissioner that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded and the Commissioner shall make the refund accordingly. Every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates.
>
> (2) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any year of assessment as regards which such person has failed or neglected to deliver a return, unless it is proved to the satisfaction of the Commissioner that such failure or neglect to deliver a return did not proceed from any fraud or wilful act or omission on the part of such person.
>
> (3) Any person who objects to the amount of any repayment made by the Commissioner may appeal to the Appeal Board in the same manner as an appeal may be made against an assessment."

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In giving their decision on the objection taken before them, the Board expressed the opinion "that the legislature intended to give a right of appeal to a person who disagrees with the decision of the Commissioner in the matter of making a refund." They held that "a decision must be taken before there can be a payment or a refusal to make a refund and it must be from that decision that a right of appeal can arise." They based their opinion and decision on passages from pages 1 and 229 in Maxwell on The Interpretation of Statutes (10th edition) which state the fundamental role of interpretation that "a statute is to be expounded according to the intent of them that made it" and that if the words of the statute are in themselves precise and unambiguous those words in their natural and ordinary sense best declare the intention of the legislature; but that where the language of the statute "in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words or even the structure of the sentence." They also relied on R v Ettridge, (1909) 2 KB 24.

The Board in its judgment said that if the right of appeal is restricted to persons who object to the amount of any payment made by the Commissioner, as it was contended on behalf of the Commissioner that it should be, "it would mean that where the Commissioner refuses to make any repayment there can be no appeal but if he decides to pay all but one penny of the sum the taxpayer claims and in fact pays that sum there can be an appeal. In other words an appeal will be given when the grievance is less and no appeal will be allowed when it is at its utmost." Grannum, J. agreed with the approach and the reasoning of the Board and with the view "that the Legislature intended to give a right of appeal to a person who disagrees with the decision of the Commissioner" in the matter of making a refund.

Before us it was contended for the Commissioner that when one looks at the words actually used in sub-sec.(3) the conclusion must be that it is only in circumstances in which the

Commissioner has in fact made a repayment and the taxpayer objects that a right of appeal lies; that this is so because the word "amount" must not be construed in isolation but in its context - "amount of any repayment made." It was contended that "amount" in this context must mean a plus figure and cannot mean "nil". For the Trustees reliance was placed on the passage at page 229 of Maxwell on The Interpretation of Statutes (10th edition) on which the Board relied. It was submitted that it is clear that the legislature, having established the Board, intended to give the taxpayer a right of appeal to the Board so that the matter could be settled on appeal when a refund has not been made by the Commissioner as requested. It was said that this intention of the legislature will be defeated and an absurdity and injustice created if the right of appeal is applicable when the Commissioner refunds one cent or one million dollars but not when he refunds nothing. A number of authorities were cited as illustrations of the application of the principle that a statute should be construed in order to give effect to the intention of the legislature. Among them R. v. Ettridge (supra) was cited as well as Luke v I.R.C., (1963) 1 All E.R. 655 in which it was seen that in a taxing Act like any other Act if words applied literally with their ordinary meaning will defeat the obvious intention of the legislation and produce a wholly unreasonable result they may be rejected and any possible interpretation adopted to give a reasonable result (per Lord Reid at p.664).

The foundations of the decisions of the Board and of Grannum, J., and of the argument for the Trustees before us, on this point is the conclusion that the legislature intended that there should be a right of appeal against a decision of the Commissioner on the question of a refund and that this justifies the interpretation of sub-sec.(3) for which the Trustees contend. The passages in Maxwell (op.cit.) and in the authorities cited before us show quite clearly that the literal, grammatical and ordinary meaning of words can be rejected on the ground of absurdity, injustice or unreasonableness only if it is clear from the provisions of the statute itself that such a result was not intended by the legislature. Admitting, as I do, that it seems unreasonable that there should be a right of appeal only when an amount is

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refunded, I am unconvinced that the legislature intended otherwise. With the greatest respect, I do not think that the Board, Grannum J. and the learned attorney for the Trustees have shown by reference to anything in the Law that the intention of the legislature was as they either held or contended. They all seem to base their conclusion merely on the view held by them that it would be unreasonable or unjust or absurd for the right of appeal to be so restricted.

In my opinion, there are three reasons for saying that the legislature did not intend the right of appeal given by sub-sec.(3) of s.63 to extend beyond what has been clearly stated in the sub-section. The first derives from the history of the section. When the Income Tax Law was first enacted in 1919 it did not make provision for the refund of tax overpaid. This provision was included in the Law by an amendment in 1920 (see s.24 of the Income Tax Amendment Law, 1920 - Law 39 of 1920) and was to the like effect of s.63 (1) & (2). The claim for repayment had to be made within 12 months from the end of the year of assessment or would be disallowed. A person who had been assessed in default of a return or who had been assessed in excess of his return and did not appeal could not claim under the section. So it was not everyone who had overpaid tax who was entitled to a refund. As in the current provision, the Assessment Committee (now the Commissioner) had to be satisfied that tax had been overpaid before a refund could be claimed. There was no right of appeal given either against the Committee's decision or against the amount of repayment. The provisions enacted in 1920 remained until 1941 when they were repealed and replaced by new provisions by the Income Tax (Amendment) Law, 1941 - Law 6 of 1941. The provisions, then contained in s.30, more nearly corresponded with the terms of s.63 (1) & (2) of the current law. The authority was still the Assessment Committee. The period for making claims for repayment was extended to three years. Sub.-sec.(2) of s.30 as then enacted was in terms identical to sub-sec.(2) of s.63 except that the former still prohibited any repayment to a person who had been assessed in excess of his return and who had not objected to the assessment. It will be seen that the legislature in 1941 relaxed the provisions somewhat

by extending the period for the making of claims and by allowing persons who had failed or neglected to deliver a return to claim refunds if their failure or neglect "did not proceed from any fraud or wilful act or omission". Still, no right of appeal was given. Section 63 appeared in its present form in the Income Tax Law, 1954 - Law 59 of 1954, which repealed and replaced all existing income tax legislation. There was further relaxation here. The period within which claims may be made was extended to six years and persons who had been assessed in excess of their return and had not objected could now claim refunds. Of course, the right of appeal in sub-sec.(3) was given for the first time. Even now, not everyone who has overpaid tax is entitled to a refund. In my view, this brief historical review does not support the liberal attitude on the part of the legislature which it is sought to read into sub-sec.(3) of s.63.

The second reason appears from a comparison of sub-sec.(3) with other appellate provisions in the Law. Section 15(1) provides that "any person who satisfies the Commissioner that he is not domiciled in this Island ..... shall in respect of income derived from sources out of this Island be chargeable with income tax only on such income as is received in this Island." Sub-sec.(2) of that section provides that " any claim which a person is entitled to make by virtue of this section shall be made to the Commissioner ..... and the Commissioner shall on proof of the facts to his satisfaction allow the claim accordingly." Sub-sec.(3) gives a right of appeal to the Appeal Board to "any person who is aggrieved by the decision of the Commissioner on a claim made by him as aforesaid .....". Section 25(5) provides that "an appeal may be made to the Appeal Board in any case where the Commissioner refuses approval of a superannuation fund under this section." The right of appeal was limited to cases of refusal and did not extend to a withdrawal of approval under the section until the sub-section was amended in 1970 to so provide (see s.17 of Act 30 of 1970). Section 53(1) gives a right of appeal to "any person who has disputed his assessment by notice of objection under section 50 of this Law, and who is dissatisfied with the decision of the Commissioner therein". Section 66 deals with credits of tax payable in other territories in

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respect of which arrangements are in force under s.65. Sub-sec.(9) of s.66 provides that "any claim for an allowance by way of credit shall be made not later than two years after the end of the year of assessment, and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment." It will be seen that the legislature discriminates in the words used in conferring rights of appeal in order that the extent to which those rights are given may be precisely identified. It seems to me that if it was intended that the right of appeal under s.63(3) should be in respect of the decision of the Commissioner this word would have been used in the same way that it was used in ss.15(3) & 53(1).

The third and, in my opinion, the most cogent reason is to be found in a construction of s.63 as a whole. The question of a repayment of tax under the section does not arise until it is "proved to the satisfaction of the Commissioner" that a person has paid tax in excess of the amount with which he is properly chargeable. This is a condition precedent to the operation of the entire section and has been so since 1920 when these provisions were first included in the Law. It is only if the Commissioner is so satisfied that the person becomes entitled "to have the amount so paid in excess refunded", and the Commissioner is obliged to refund that amount. It follows that if the Commissioner is not satisfied that tax was paid in excess the rest of the section following upon the introductory conditional words becomes inoperative and, in particular, there would be nothing to which anyone could object under sub-sec.(3). To make sense, therefore, the provisions of s.63 following on the introductory condition, except those for the making of the claim, could only be drafted on the premise that the condition is satisfied. When sub-sec.(3) is related in this way with sub-sec.(1) it is clear that the right of appeal must necessarily be limited to an objection to the amount of a repayment, as the sub-section says. To accommodate the contention of the Trustees it would be necessary to redraft not only sub-sec.(3) of s.63 but sub-sec.(1) as well.

An alternative submission was made on behalf

of the Trustees. It was to this effect. Assuming that sub-sec.(3) means what the Commissioner contends, the word "amount" in the sub-section can in its ordinary meaning mean a "nil" amount. It was said that in "income tax language" the word "amount" can mean zero as it is normal to speak of "nil amount" or "nil assessment". It was pointed out that in sub-sec.(1) of s.63 where the word "amount" appears for the first time its meaning clearly includes a "nil" amount. I agree that the word can be so interpreted in this context but I am in no doubt that in the context in which the word is used a second time in sub-sec.(1) and in sub-sec.(3) it can only mean a "plus figure" as the learned attorney for the Commissioner contended. It was further contended that to avoid absurdity and the defeating of the intention of the legislature the word "amount" should be read as including a "nil" amount despite the fact that the literal grammatical context indicates that an actual sum should be involved. I have endeavoured to show that a case for application of the rule of interpretation to avoid absurd and unreasonable results has not been made out.

I hold that in the circumstances of this case, and for the reasons I have endeavoured to give, there was no right of appeal to the Board. The appeal of the Commissioner should, therefore, be allowed. I will, however, go on to deal with the third point taken on behalf of the Commissioner in this appeal in the event that my decision in relation to the right of appeal is held to be wrong.

The Trustees admitted that the transaction whereby they purchased and resold the shares in Seaforth Sugar and Rum Ltd. was a "dividend stripping" operation. They knew that a tax advantage would accrue to the owners and vendors of the shares (hereafter "the Elders") but it was said on their behalf that their motive was to make a profit out of the transaction. It was submitted for the Commissioner that the transaction was artificial within the meaning of s.10(1) of the Law. It could, therefore, be disregarded as provided in the section with the result that the Trustees were not entitled to a refund of tax.

Section 10(1) provides as follows:

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> "Where the Commissioner is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious .....the Commissioner may disregard any such transaction ..... and the persons concerned shall be assessable accordingly."

The first question for decision is the meaning which the word "artificial" bears in this section. Apart from this case, the section appears to have come before the court once only for interpretation. This was before D.Marsh, J. sitting in the Revenue Court in Liner Diner Ltd. v C.I.T. (unreported) decided on April 12, 1973.

Mrs. Hudson-Phillips for the Commissioner submitted that there is a real distinction in meaning between "artificial" and "fictitious" and that the use of the word "or" shows an intention to refer to two words of different meaning. It was submitted that "artificial" in the section means "not real" in the sense of man made as opposed to natural whereas "fictitious" means "non-existent". Mr. Mahfood for the Trustees contended, in effect, that the two words are synonymous, that they are words which are familiar in income tax law and language and should be interpreted in this technical sense rather than by reference to their dictionary meaning. He sought to show by reference to a number of cases which he cited that by common law principles, formulated in England and applied in Jamaica for many years, transactions can only be disregarded if they are a sham, a cloak, a trick, not genuine and not acted upon. It was submitted that it is in these senses that the words in s.10(1) should be interpreted and it was said that the provision in s.10(1) really added nothing to the common law basis on which transactions can be disregarded for income tax purposes.

In the Liner Diner case (supra) D.Marsh, J. had to decide the meaning of the two words under consideration. He concluded from the use of the disjunctive "or" that they were not intended to be construed synonymously but as having separate meanings. Because of this he expressed himself as inclined to the view, from the dictionery meanings of the words, that "fictitious" means "feigned", assumed or not real" while "artificial"

is used "in the sense of something resulting from artifice i.e. a device or trick". The learned judge went on to justify his approach to the interpretation of the words by a practical illustration and continued (at p.35 of his judgment):

> "While therefore it may be true to say that in a general manner of speaking these words can and are frequently construed as having the same or a similar meaning, it is I think equally true to say that they are also capable of having different meanings, even though that difference may be slight .... If, therefore, I may express the matter in my own words, I would say that within the context of s.10(1), a fictitious transaction is - one that has form but no substance, in the sense that none of the parties involved intend to create any real or legal relationship thereby, in short a feigned transaction. On the other hand, an artificial transaction is - one that has both form and substance, except that the form is used merely to disguise the substance ....."

I confess to finding it a difficult matter to decide the true meaning of "artificial" in the section. I agree with the submission for the Commissioner and the view of D.Marsh, J. that it was intended that it should have a meaning different from that of "fictitious". The common law cases to which Mr. Mahfood referred do not support his contention that the word "artificial" as distinct from "fictitious" was a familiar word in use in connection with transactions to be disregarded for income tax purposes. The provisions in s.10(1) were first enacted in 1939 (see s.11 Law 55 of 1939). By then the common law rule for disregarding fictitious or sham transactions had been established. If, as contended for the Trustees, the two words are synonymous, it would seem idle for the legislature in those circumstances to introduce and enact a provision which was quite unnecessary. While I am prepared to agree that "fictitious" must be taken to have been used by the legislature in the sense established by the cases the same cannot be said of the word "artificial". One must therefore resort to the dictionary meaning and this is where the difficulty lies. I am unable to find a relevant meaning of "artificial" which is not synonymous with a

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dictionary meaning of "fictitious". The meaning of "artificial" which Mrs. Hudson-Phillips suggests also comes within the dictionary meaning of "fictitious". With respect, I do not agree with the meaning which D.Marsh, J. gives to "artificial" in the Liner Diner case (supra). I do not think the word is used in the section "in the sense of something resulting from artifice."

It seems that in the context in which it is used in s.(10(1)) "artificial" can only bear a meaning which is synonymous with "fictitious". But "fictitious" is a word of wider import. It can also mean "non-existent", as Mrs. Hudson-Phillips submitted, or "having no real existence", meanings which "artificial" does not have. It seems to me that it is in these latter senses that the word is used in the cases to which we were referred (see Whitmore v I.R.C. (1925) 10 T.C. 645, Dickenson v Gross (1927) 11 T.C. 614 and per Danckwarts, L.J. in Johnson v Jewitt (1961) 40 T.C. 231 at 255). The view I have formed, therefore, is that the two words used in s.10(1) are not entirely synonymous. I hold that "artificial" there means, inter alia, "not real", "not genuine". If I may respectfully adopt and modify what D.Marsh, J. said of the two words in the Liner Diner case in the passage cited above - a "fictitious" transaction is one that has form but no substance while an "artificial" transaction is one that has both form and substance but the substance is not genuine.

Now to apply the ascertained meaning to the transaction in question, ie. the arrangement whereby the Trustees bought the shares from the Elders, stripped Seaforth Sugar & Rum Ltd. of the accumulated profits by way of declared dividends and subsequently resold the shares to the Elders, and to decide whether or not it was an artificial transaction. This is the second question. It is conceded that the purchase of shares by the Trustees was perfectly legal and real. For the Trustees it is contended that the result of this concession is that the Trustees received the dividends as investment income, that the transaction cannot in those circumstances be held to be artificial and that the income of the fund being exempt from tax the Trustees are entitled to the repayment claimed. The Board upheld this contention.

They said that "the transaction is evidenced by a carefully prepared agreement which has been duly executed by the parties to it. On the face of it it has every appearance of genuineness. It is a document that a court would recognise as being enforceable ..... Shortly put artificial or fictitious means not genuine, the transaction proved before us is certainly genuine, and there is nothing artificial or fictitious about it". Grannum, J. agreed with this finding. He said in his judgment (at p.116 of the record):

> "I think that the principle is well recognised through the authorities, that every man is entitled to enter into transactions which will have the effect of reducing his income tax but this rule is, of course, subject to the qualification that the transaction in question must be real and not a pretended transaction and the words 'artificial' and fictitious are the words which have been used in the cases to describe a transaction which is a sham or pretence. If the agreement, deed or instrument in question is never meant to have effect I can well see that such a transaction may be described as artificial or fictitious but where as in this case you have an instrument drawn up, executed and acted upon by the parties, I fail to see how it can be described as artificial or fictitious."

It was submitted by Mrs. Hudson-Phillips for the Commissioner that the "dividend stripping" operation was not an investment at all, as the Trustees contend it is, but a wholly artificial device remote from the business of investment to secure a tax advantage to the Elders. This submission was based on the line of English cases commencing with Bishop v Finsbury Securities Ltd. (1966) 43 T.C. 591, (1966) 3 All ER.105 in which it was held that the transactions in those cases in which shares were purchased were not trading transactions. It was contended that the principle to be derived from those cases apply to this case to make the transaction not one of genuine investment.

In purchasing the shares, the Trustees purported to act under powers contained in rule 18(1) of the Rules of the fund which provides as follows:

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"The trustees shall invest and/or reinvest any or all of the moneys for the time being standing to the credit of the fund ..... in such securities and investments as they may in their absolute discretion deem safe and advisable ....."

It was submitted that the transaction was not a true investment within this provision as the Trustees only had power to invest moneys standing to the credit of the fund and no such moneys were used by them.

In my opinion, the submission on behalf of the Commissioner is right. This was not a genuine investment by the Trustees under rule 18. At the time when the agreement for the purchase of the shares was made there was just some $800.00 standing to the credit of the fund. None of this was used to purchase the shares nor was it intended that any part of it should be so used. The arrangement clearly was that the proceeds of the dividends declared should be used to pay for the shares so that the accumulated profits could get into the hands of the Elders as capital. In his evidence before the Board, the Chairman of the Board of Trustees said that he bought the shares on the strength of the accounts of Seaforth Sugar & Rum Ltd. and they examined the accounts to see "If there was money in there that we could use to buy the shares." It was never intended that the shares should be held as a true investment. The Chairman said that the fund "was the vehicle" for the "dividend stripping" operation. It is not sufficient, in my view, to look merely at the agreement for the purchase of the shares, as the Board and Grannum, J. did, and to say, as they did, that it is genuine, enforceable and was acted upon, and that, therefore, the transaction cannot be said to be artificial. In my opinion, one has to go further and examine the basis on which it is claimed that the transaction gives rise to a benefit or a claim under the Income Tax Law. In the English cases to which we were referred, the admittedly legal sale and purchase of shares did not prevent the courts from holding that the basis on which relief was claimed under the Income Tax Acts, namely, that the shares were acquired in the course of the trade of dealing in shares, was not genuine trading but an artificial device to obtain a tax advantage. The Trustees in this case claim

the repayment of tax on the basis that the dividend they received was investment income which is exempt from tax under s.7 of the Law. In my opinion, the dividend paid to them was not genuine investment income. The only real income they stood to receive was about $16,000.00 which, in the circumstances, could only be regarded as a fee for accommodating the Elders or, as Lord Morris put it in the Finsbury Securities case (1966) 3 All ER at p.110), as payment for skilful services rendered. In my judgment, insofar as the Trustees are concerned the transaction was artificial.

If my decision on the second question is right, the final question is whether the transaction can be disregarded by the Commissioner under s.10(1). The argument for the Commissioner on this question was put by Mrs. Hudson-Phillips in this way. She said that at no time has the Commissioner ever suggested that the "dividend stripping" operation reduced the tax payable by the Trustees. The contention of the Commissioner, she continued, has always been that the "dividend stripping" operation reduced the tax payable by the Elders. It is said that since the operation was an artificial transaction which ought to be disregarded under s.10(1), the dividend must be deemed to have been received by the Elders, who are the persons to be assessed under s.10(1). This being so, the dividend cannot be regarded as the income of the Trustees and they are not, therefore, entitled to a refund of tax. In my opinion, this is not a valid argument. As I have endeavoured to show, the transaction is artificial only in a limited sense, that is insofar as it is claimed to have been an investment by the Trustees under the Rules of the fund. The legality of the purchase of the shares and the normal consequences flowing from it are not affected. Therefore the purchase price of the shares was received, and remains, as capital in the hands of the Elders. Section 10(1) cannot, therefore, be applied directly as against them as the transaction did not, and could not legally affect their tax liability. Nor can the provisions of the section be applied to them indirectly through the Trustees. There is no tax liability either of the fund or of the Trustees qua Trustees which can, under the section, be said to be affected by the transaction.

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Since, as I have held, the Trustees did not receive the dividend as true investment income it should follow that the "income" should not be exempt from tax under s.7 and that it should not, therefore, be regarded as a valid basis on which to claim a repayment of tax. Section 10(1) is, however, not apt to deal with such a situation. It could, perhaps, be argued that as the transaction was not really an investment under the Rules of the fund the dividend was not income of the fund but income of the Trustees, for which they are liable to pay tax personally. In which event the amount of repayment by the Commissioner, if any, would depend on the overall tax liability of each of the Trustees. However, the Commissioner sought to justify his refusal of repayment only under s.10(1) of the Law. The result is that, in my judgment, he has not on the arguments addressed to us shown any justifiable basis for refusing the Trustees' claim for repayment. In view, however, of the decision at which I have arrived on the question of right of appeal the Commissioner is entitled to succeed on his appeal. I would, therefore, allow the appeal with costs.

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JUDGMENT OF EDUN J.A.

PART I

Seramco Ltd., was incorporated on August 28, 1963. In October of the same year it decided to set up a superannuation fund for its male employees and in furtherance of that decision appointed trustees and submitted a draft trust deed to the Commissioner of Income Tax (referred to as the "appellant") for his approval. By letter dated January 8, 1964, the appellant approved the scheme under section 25(2) of the Income Tax Law No.59 of 1954 (referred to as the "law"). Section 25 of the law provides, thus -

"25 - (1) Subject to the provisions of this Law and to any regulations and rules made thereunder, any sum paid by an employer or employed person by way of contribution towards an approved superannuation fund shall, in computing profits or gains for the

purpose of an assessment to income tax, be allowed to be deducted as an expense incurred in the year in which the sum is paid:

Provided that -

(a) no allowance shall be made under the preceding provision in respect of any contribution by an employed person which is not an ordinary annual contribution, and, where a contribution by an employer is not an ordinary annual contribution, it shall, for the purpose of the preceding provision, be treated, as the Commissioner may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over a period not exceeding ten years; and

(b) ..... (not relevant)."

The trust deed was engrossed and executed on January 16, 1964. The trustees of the superannuation fund (referred to as the "respondents") appointed, were:-

Frank L. Myers,
Douglas V. Fletcher,
William S.K. Gordon,
Patrick H.O. Rousseau,
Eric O. Bell, and
Darryl W.B. Myers: See deed of trust, Ex.B. Frank L. Myers was as well one of two persons signing for Seramco Ltd. (the employer in the scheme). In about March 1964, the shareholders of Seaforth Sugar and Rum Ltd. (referred to in Part III as the "Company") approached the respondents with a view to selling all the shares of the company to them. On June 22, 1964, the respondents entered into an agreement with the shareholders of the company, agreeing to purchase issued shares of the company for £407,934. Among the terms of the agreement, Ex.D, are the following terms, that:-

1, upon the signing of the agreement the vendors would deliver completed and executed transfers to the purchasers or their nominees of all the issued shares

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in the company together with the relevant certificates;

2, the purchasers would complete payment of the purchase price within a period of about 1½ years after the signing of the agreement;

3, the first payment of the purchase price was to be made on or before July 1, 1964 and the last, on or before December 31, 1965; and

4, the vendors had an option to be exercisable at any time before December 31, 1965 to repurchase all the shares in the company for £215,904.

Those persons signing as vendors were:-

D.P. Elder
H.C. Nunes
Ian F. Elder
Audrey Madge Elder
Shirley Ann Pecht
Conrad Victor Elder
Pauline Vivian Elder, and
Michael Samuel Elder.

On execution of the agreement, the share transfers in favour of the respondents were executed and entered in the register of the company. The necessary share certificates were issued to the respondents. At the date of the agreement, the company had a large sum of undistributed profits. The authorised capital of the respondents was £100, the issued capital was £22 and when the matter of the purchase of the shares of the company was discussed, the amount in the superannuation fund was £400. The sum of £192,030, that is £407,934 the purchase price less £215,904, re-sale price of the shares, could only have come from undistributed profits of the company. The respondents have admitted that the purchase money for the shares could only have come from income derived from the shares by way of dividends. They admitted before the Appeal Board that the purchase and sale of the shares amounted to a dividend stripping operation.

On June 23, 1964, at a directors' meeting of the company, the share transfers to the respondents were approved by resolution and the secretary was instructed to make the necessary entries in the register of the company and to issue the necessary certificates. The respondents were then holders of a majority of the company's shares. Mr. F.L. Myers, then handed the secretary a letter addressed to the company and signed by the holders of at least one-half of the issued shares seeking the removal of Mr. D.P. Elder as a permanent director. That letter, Exhibit X, reads thus:-

> "We the undersigned being the holders of at least one-half of the issued shares of the company's capital, do hereby remove from the office of Permanent Director, Mr.D.P.Elder.
>
> Yours faithfully,
>
> Frank L. Myers
> Darryl Myers
> W.S.K. Gordon
> P.H.O. Rousseau
> Eric O. Bell
> Douglas Fletcher."

Mr. D.P. Elder thereupon vacated his position as Chairman of the company's board of directors. Mr. F.L. Myers next produced another letter signed by the holders of at least one-third of the issued shares of the company appointing Mr. F.L. Myers as a permanent director of the company; he then took on the duties as chairman of the meeting. Mr. F.L. Myers then produced a letter to the company signed by him as permanent director of the company removing Mrs. A.M. Elder as a director and appointing (in addition to the continuing directors: Mr. C.V. Elder and Mr. Michael S.Elder) Messrs. D.P. Elder, P.H.O. Rousseau and D.W.B.Myers, who thereupon took their seats as directors. It was then proposed by Mr. Rousseau, seconded by Mr. D.W.B. Myers that a dividend of 48½% gross be paid out of the undistributed profits of the company, up to September 30, 1963. Messrs. D.P., C.V., and M.S. Elder opposed the proposal on the grounds that the company should retain all of its undistributed profits for expansion because as an agricultural business, fluctuations of profits were common and that, therefore, considerable reserves were necessary; the price of sugar on the

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world market having recently dropped substantiated their opposition. Voting on the resolution was divided three for and three against but it was carried by the chairman exercising his casting vote.

On June 23, 1964, the firm of Myers, Fletcher and Gordon wrote the appellant, letter Ex. "BB", informing him that the respondents' superannuation fund purchased shares in the company and requested him to authorise the company in writing "to pay any dividend due in respect of the shares owned by the fund without deduction of tax and to allow the amount which would otherwise have been deducted as a credit to the company in respect of its own tax liability." In the said letter, they relied upon section 21(1) of the law which enabled the appellant to "authorise payment of a dividend without deduction of tax where he is satisfied that the shareholders are not liable to tax." By letter dated June 25, 1964, the appellant authorised the company to make payment of the dividend to the respondents without deduction of tax. By letter dated July 2, 1964, the secretary of the company wrote the appellant stating that consequent upon his letter of June 25, that the sum of £100,686 had been paid to respondents and asked that the amount of £37,757. 5s. Od. be credited to the company for the 1964 assessment. The respondents received that amount and the taxes concerning it is not the subject matter of the dispute before us. However, on July 28, 1964, the appellant wrote the secretary advising him that the authority to make payment of dividend without deduction of tax to the respondents, contained in letter dated June 25, was revoked. He also requested particulars concerning the company's resolution, list of shareholders and copy of dividend certificates. On December 11, 1964, the directors of the company held a meeting and it was recommended to the shareholders that a dividend of £99,648 be paid out of the accumulated profits up to September 30, 1964. Again the three Elders opposed the proposal but it was nevertheless carried on the casting vote of the chairman. On December 28, 1964, a dividend of 48% that is, £99,648 less tax of £37,368, was declared at a general meeting of the company. By letter dated January 5, 1965 to the appellant, the respondents stated that as the income of the fund was exempt from income tax, they claimed £37,368 as being the amount withheld from them on the dividend

The appellant by letters dated February 9, 1965 advised that the approval of the scheme was withdrawn with effect from January 8, 1964 and he refused the claim for a refund of £37,368. He also stated that if the respondents were dissatisfied with his refusal, they had a right of appeal under section 63 of the law. The respondents appealed to the Income Tax Appeal Board (referred to as the "Board"). At the commencement of the hearing the appellant took the preliminary point that the Board had no jurisdiction to hear such an appeal. The Board deferred a ruling and heard the appeal. At the end of the hearing the Board decided that it had jurisdiction to hear and determine the appeal. On the merits, that is whether the Commissioner could disregard the transaction as artificial or fictitious under s.10(1) of the law and rightly withhold the sum of £37,368 as tax, the Board allowed the appeal and in their reasons for judgment dated March 6, 1967, stated:-

> "This brings us to the point where we must decide whether the transaction between the Appellants and the Company is artificial or fictitious. The transaction is evidenced by a carefully prepared agreement which has been duly executed by the parties to it. On the face of it it has every appearance of genuineness. It is a document that a court would recognise as being enforceable. Is the transaction that it evidences artificial or fictitious? We think not. Shortly put artificial or fictitious means not genuine, the transaction proved before us is certainly genuine, and there is nothing artificial or fictitious about it. Artificial we understand to mean 'not natural, assumed, false, affected' and fictitious has the meaning of imaginary, made up, not real, false, assumed in order to deceive. The transaction does not come within the meaning of those words. It is genuine as we have already pointed out to the extent that a court would enforce it. It is also so genuine that both parties to the agreement counted on making money out of it - the appellants share amounted to about £8000.
>
> The respondent (Commissioner) further submitted that the appellants by taking part in a dividend stripping operation destroyed

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the bona fides of the application for approval. And he also submitted that the trustees acted beyond the powers given by the trust deed when they took on the management of the company ..... The trustees as such did not take on the management of the company .... Dividend stripping is not ipso facto fraudulent or even unlawful why then should it destroy the bona fides of the application that was made months before the dividend stripping was given thought of."

The appellant (Commissioner) appealed to a judge in chambers. It was for the first time then contended for the appellant that when the appellant signed the letter dated January 8, 1964 approving the superannuation scheme under section 25(2) of the law, thereby exempting the income of the respondents from tax, there was no fund established under an irrevocable trust. The judge held that the provisions of section 25(4) authorised the appellant to withdraw his approval of the scheme but he must first serve a notice upon the trustees or other persons having the management of the fund; and that the exemption from income tax then ceased as from the date of the notice.

On the question of the transaction being artificial or fictitious under section 10(1) of the law the judge held that every man was entitled to enter into transactions which will have the effect of reducing his income subject to the qualification that the transaction must be real and not a pretended transaction and the words "artificial or fictitious" are the words which have been used in cases to describe a transaction which is a sham or pretence. "If the agreement, deed or instrument in question is never meant to have effect I can well see that such a transaction may be described as artificial or fictitious but where as in this case you have an instrument drawn up, executed and acted upon by the parties, I fail to see how it can be described as artificial or fictitious."

On the question whether or not the respondents had a right of appeal, he held that section 63 of the law conferred a right of appeal on the respondents against the refusal of their claim for the said refund. The appellant has appealed to the Court of Appeal and the record, comprising

the various documents, evidence and even submissions of both parties before the Board and the judge in chambers, is the record before this court.

At the commencement of the hearing before us, the respondents served notice of their intention to contend that as the superannuation fund was found as a question of fact to have been an approved superannuation fund within the meaning of s.25 of the law and as the appellant having previously conducted the case on that basis, he cannot now contend that the superannuation fund was not a duly approved fund. There being no objection by the appellant and the arguments being based upon the same set of facts before the Board and the judge, the court granted leave to the respondents as prayed. Learned attorney for the appellant was not taken by surprise so she began her arguments.

There have been numerous grounds of appeal filed but the submissions on both sides centred upon three main points:-

A, the respondents' superannuation fund,
B, artificial or fictitious transaction, and
C, right of appeal.

I propose to deal with point B.

B. Artificial or fictitious transactions:

Case Law approach.

PART II

In the Duke of Westminster v. Internal Revenue Commissioner (1936) A.C.I., Lord Tomlin at p.19 said:

> "Every man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax. This so-called doctrine of "the substance" seems to me to be nothing more than an attempt to make a man pay notwithstanding that he has so ordered his affairs

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that the amount of tax sought from him is not legally claimable."

Lord Atkin (dissenting) was of the view that the substance of the transaction was that what was being paid to the employees was not a yearly payment but was remuneration for services which was thus chargeable. He said at p.7 :-

> "It was not, I think, denied - at any rate it is incontrovertible - that the deeds were brought into existence as a device by which the respondent might avoid some of the burden of surtax. I do not use the word device in any sinister sense, for it has to be recognized that the subject, whether poor and humble or wealthy and noble, has the legal right so to dispose of his capital and income as to attract upon himself the least amount of tax. The only function of a court of law is to determine the legal result of his dispositions so far as they affect tax ....."

In Com. In. Revenue v. Blott (1921) 2 A.C. 171 the company capitalised a large sum of undistributed profits and issued to its shareholders bonus shares to an equivalent amount. By a majority in the House of Lords, it was held that the bonus shares were not income so as to found a claim for super-tax. Lord Sumner in his dissenting judgment, at p.216 said:

> ".... To call the steps that might be relied on as satisfying that scheme 'mere machinery' is to evade the difficulty. It is just as reasonable to call the shares allotted 'mere machinery' for wrapping up a distribution of profit as to call bonus shares 'mere machinery' for effecting a distribution of capital. 'Looking at the substance and not at the form' is a good guide for judicial conduct, but what is substance? If a form has to be gone through in order to satisfy the law, for my part I should think it was pretty substantial. A final opinion on these questions need not, however, be expressed today. Whatever innate powers a company may have, the present question must depend on the legal effect of what it did, not on

the names given and objects or desires kept in view."

In Com. In. Revenue v Fisher's Exors (1924) 10 T.C. 302, the company had an enormous sum of undivided profits and it issued to its ordinary shareholders debenture stock in respect of those profits. The articles of association of the company were altered by special resolution to enable it at a general meeting to pass a resolution for capitalising £357,500 and distributing that sum as bonus among the holders of ordinary shares and to enable the directors to issue debenture stock of the company in satisfaction of the bonus. Bishop Fisher received £82,500 of debenture stock; he did not receive any payment in cash. He was assessed by the Commissioner to super-tax on that sum, as being income received during the tax year. Fisher died after the assessment and his executors appealed to the Special Commissioners of Income Tax. They held that the bonus paid in debenture stock was not income in the recipient and discharged the assessment because it was not a ground for assessment to super-tax. They stated a case for the High Court and Mr. Justice Rowlatt held that the bonus was income (though not necessarily income to the face value of the debenture stock) and was a ground for assessment for super-tax. On appeal again, the Court of Appeal took the opposite view and restored the decision of the Commissioners. On further appeal to the House of Lords, the appeal was dismissed unanimously. At p.333 Viscount Cave in his judgment said -

> ".....No doubt, the shareholders got debenture stock which, like the shares in Blott's case was a valuable thing; but they had no power to call in the stock, which gave them no present right to receive any part of the Company's assets either in money or in money's worth, but only entitled them to a sum to be carved out of those assets if and when the stock was paid off. It is true that debenture stock unlike shares, creates a debt; but the debt in this case was not presently payable and may never become payable while the Company is in existence. The whole transaction was 'bare machinery' for capitalising profits and involved no release of assets either as income or capital ..."

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In Whitmore v. Com. Inl. Revenue (1925) 10 Tax Cases, p.645, the company having a large sum representing undivided profits issued debentures in respect of it. Rowlatt J., followed Fisher's Case and held that the debentures constituted a capital receipt in the hands of the shareholders, and that he was not assessable to super-tax in respect of the amount thereof. It is interesting to note, however, what he said in his judgment reported at p.664-5:-

> "There is one other point in this case which I ought to mention and that is, that the Commissioners find that these debentures were only a cloak to cover the distribution of profits to the Appellant. Now that is not a finding - it has not been argued before me that it was a finding - that these debentures were fictitious, were mere pieces of paper to show to the Inland Revenue, and that the real transaction was that the profits were to be distributed in cash at an early date. There is no finding to that effect and it has not been argued that there is a finding to that effect. If what is meant is that the Company adopted this transaction, being a real transaction, and one which does not make the shareholder liable to Super-tax, in lieu of another transaction which would have made him liable, that circumstance has no materiality, as many cases show, in a contest of this kind...."

In Dickenson v. Gross (1927) 11 Tax Cases p.614, the appellant, a farmer, had entered into a deed of partnership with his three sons with the admitted intention of reducing the income tax liability in respect of the profits. The deed provided that

1. two farms owned by the appellant should be let by the appellant and his sons, and at stated rentals,

2. accounts should be made up annually,

3. the net profits should be divided equally between the partners, and

4. each of the partners should have the right to sign and endorse cheques on behalf of the firm.

It was shown in fact that -

1 no rent had been paid,

2 no accounts or books had been kept, or

3 any distribution of profits made;

4 cheques had been signed only by the appellant, and

5 business receipts had been paid indiscriminately into the appellant's private bank account and into the firm's account.

The General Commissioners decided that there had been no partnership in fact, and accordingly there was no partnership for income tax purposes. On appeal to the High Court, Mr. Justice Rowlatt held that as a partnership did not exist in fact, there was no partnership for the special purposes of the Income Tax Act. At p.620, he had this to say:-

> "The partnership deed here, of course, was a deed perfectly good according to its tenor; and if it had been what really governed the relations of the parties it would have effected the object of those who entered into it or purported to enter into it, because it would have produced another legal position to which a tax attached differently from the legal position which existed before ..... Now what the Commissioners have done is that they have found that there was no partnership in fact.. A partnership, of course, is a legal position and a legal result, but like every other legal position it depends on facts, ... They have not used the word 'fictitious', and they have not used the word 'sham', but I think they have put it even more clearly. They say: 'The facts here were not a partnership although there was a bit of paper in the drawer, which if the facts had been according to it, would have shown there was apartnership'..... What they are saying is this: 'There is not any partnership in fact, and there cannot be any partnership for the special purposes of Income Tax when there is no real partnership.' That is what they are saying. Many people think there can be. They think by putting a

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bit of paper in the drawer they can make an Income Tax partnership, and they go on treating the undertaking as though it were still the sole uncontrolled property of the one person, the father, instead of a partnership. I do not think there is any doubt. I do not think the Commissioners could have found otherwise, if I may say so, but I think they clearly have found in a way which makes the position quite right ....."

Dividend-stripping

The device of dividend-stripping came under review in J.P.Harrison Ltd. v. Griffiths (1962) 1 A.E.R. 909, 40 T.C. 281 by five members of the House of Lords. In that case, the appellant co., carried on business of merchants but on October 8, 1953, its memorandum of association was amended to enable it to carry on, inter alia, the business of share dealing. On December 4, 1953, it purchased for £16,900 all the issued share capital of Claiborne Ltd. On January 26, 1954, Claiborne Ltd., declared a dividend of £28,912.13. 3., and the appellant co;, later sold the shares for £1000. The appellant co., did not buy or sell any other shares in 1953-54, but it admittedly carried on trade of dealing in shares in 1954-55.

The appellant co. showed that for 1952-53 it incurred a business loss of £13,585. That loss was admittedly available for carrying forward to 1953-54. By the trade of dealing in shares, it sustained a loss of £15,900, that is, it bought the shares of Claiborne Ltd for £16,900 and resold them on June 4, 1954, for £1000 to a company named Lewiston Ltd. On the other hand, the appellant co. had received dividends of £28,912.13.3 but out of which, tax of £13,010.14.0. was deducted, receiving a net dividend of £15,901.19. 3. The appellant co. claimed from the revenue authorities a repayment of the tax which was deducted from the dividend. The Special Commissioners held that the company was not carrying on a trade of dealing in shares and disallowed the application in so far as it related to the transaction. The matter came before Dankwerts J. in theChancery Division. He came to the conclusion that the result reached by the Commissioners could not be justified upon their own findings and was quite unreasonable.

The Crown appealed, the majority of Pearce and Upjohn L.JJ. held that the only reasonable conclusion to be reached was that the transaction was an adventure in the nature of trade and "the learned judge reached a perfectly correct conclusion." Donovan L.J., dissented. He said at p.291 of the Tax Cases report: "The Commissioners were bound to take a comprehensive view of the facts: and when they found that this was an isolated transaction; that, whereas a dealer in shares hopes to make a profit by buying and selling, these shares were bought deliberately to sell at a loss; that the objective was the dividend; and that the prime purpose of the whole transaction was purely a fiscal one; they were, in my opinion, entitled to say that it was not a trading operation."

The Crown appealed to the House of Lords. The majority of three, Viscount Simmonds, Lord Morris of Borth-y-Gest and Guest were of the opinion that the transaction was undertaken with a fiscal motive was immaterial, and viewed apart from the fiscal motive it was merely a transaction in which a company bought shares, received a dividend and sold them. As Viscount Simmonds stated at p.294 ".... It appears to me to be wholly immaterial, so long as the transaction is not a sham (as was the case in Johnson v Jowitt (40 A.T.C. 314)) what may be the fiscal result, or the ulterior fiscal object, of the transaction; and since this can be the only ground upon which the Commissioners could have reached their determination, I must conclude that it cannot be upheld."

Lord Reid in dissenting said at p.295-6 "..... Innominate contracts and transactions are of frequent occurrence, and I would not expect to find appropriate names to denote new kinds of operations devised for the sole purpose of gaining tax advantages. In the present case the question is not what the transaction of buying and selling shares lacks to be trading, but whether the later stages of the whole operation show that the first step - the purchase of the shares - was not taken as, or in the course of, a trading transaction." Lord Denning in dissenting said at p.300: "... My Lords, I do not believe there is any rule of law which requires the Commissioners to disregard the object of the transaction or its result. There are occasions when a reasonable man may turn a blind eye to the facts, but this is not one of them.

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To my mind, the Commissioners were entitled to see these people as they really are, prospectors digging for wealth in the subterranean passages of the Revenue, searching for tax repayments. They are not simply traders in stocks and shares. I am not prepared to say that the Commissioners were unreasonable, so unreasonable that they could not reasonably come to their conclusion."

In Johnson v Jewitt (H.M. Inspector of Taxes) (supra)) the appellant Johnson, a solicitor, claimed relief under s.341 of the Income Tax Act, 1952 from the revenue in respect of a loss of £1,301,629.14. 1 which he said he suffered during the year 1956-57. The General Commissioners rejected his claim because they found that the partnership company formed by the appellant had not carried on a trade during that year. Buckley J., and later the Court of Appeal (Lord Evershed, M.R.Donovan and Dankwerts L.JJ.) were all unanimous in upholding the findings of the Commissioners. Dankwerts L.J., succintly dealt with the nature and characteristics of the transactions, thus - at p.255:-

> "I agree. The 79 companies were artificially created and, except for one sum of £50,000 which revolved through these transactions, the supposed reserves were fictitious. The loss which was alleged to have been suffered was also fictitious. This was not trading: it was juggling with figures. In my view the transactions were an abuse of the Companies Act and an attempt to abuse the provisions of the Income Tax Acts and the Finance Acts, which were designed to assist genuine and honest traders. I think that the claim was an impudent claim and the transactions, in the result, were dishonest ....."

Recent House of Lords cases

The following are among the leading cases where the House of Lords have considered and distinguished: J.P.Harrison (Watford) Ltd. v Griffiths.

1. Finsbury Securities Ltd. v Bishop (1963-1967) 43 Tax Cases 591. The taxpayer co., was incorporated in 1956 to carry on the trade of

dealing in shares and securities, and it always carried on that trade. The loss in respect of which the claim was made under s.341 of the Income Tax Act 1952 was one which arose as the result of various transactions described as "forward-stripping." That is, the dealer bought shares in a company which hoped to make in the future large profits out of which it would be asked to declare a dividend after deduction of tax. A "backward-stripping" transaction as in Harrison v Griffiths was one where a dealer in shares bought shares in a company which had accumulated large profits, paid tax on those profits and was in a position to declare a dividend after deduction of tax.

Between the years 1958 to 1960 the taxpayer co., entered into some fifteen sets of transactions which were "forward-stripping" operations, with other companies. An example was with W. Ltd., whose capital was increased by 100 £1 6% preference shares and these were issued to two shareholders. These shares entitled the holders to dividends for the next five years (less tax deducted), subject to a limit of £60,000. These shares were then bought by the taxpayer co. for £60,100, the price being, however, subject to adjustment if the total dividends for five years (less tax) should be less than £60,000. Accordingly, the available profits of W. Ltd. would be distributed in dividends on the preference shares, their value thereby would diminish year by year, becoming finally the value of 100 shares carrying a preferential dividend of six per cent. The material terms of the scheme were -

(a) that the price was to be finally ascertained only at the end of the five years,

(b) that the taxpayer co., was not to part with the shares until the five years had elapsed,

and (c) that the vendors of the shares were to receive part of any tax which was to be recovered in respect of the dividends to be paid on the shares.

The appellant co., claimed adjustment of its tax liability for the year 1959-60 on the basis that it had sustained losses in its trade in respect of the various transactions. The question

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arose whether the transaction involving the purchase of the preference shares was or was not within the trade of dealing in shares; if it was not, the loss claimed under s.341 would fail.

The Special Commissioners found that the shares were acquired for the object of making a profit out of them by the recovery of income tax, and that they were acquired in the course of trade. It was subsequently held unanimously by five judges in the House of Lords, that

(i) whether the transaction should be regarded as trading transactions of a kind undertaken by a dealer in shares and securities was a question of law, and

(ii) it being the essence of the transactions that the future interests of the vendors of the shares were safeguarded and that the shares should be retained by the taxpayer company during the period of the transactions, the shares were not acquired for the purpose of dealing in shares and the transactions though real and not sham, were wholly artificial devices to secure tax advantages and were not adventures or concerns in the nature of trade; and accordingly the Commissioners were wrong in holding that the shares were acquired in the course of trade.

In distinguishing J.P. Harrison (Watford) Ltd. v. Griffiths, Lord Morris of Borth-y-Gest said at pp.626-27:-

> ".... They (the Commissioners) decided that they could not distinguish that case from the present one.
>
> My Lords, I take a different view. In my opinion, the arrangements now under review are essentially different from those which gave rise to the Harrison case. In that case there was a purchase of the shares in a company called Bendit Ltd. (afterwards called Claiborne Ltd.). The vendors of the shares had no interest in the shares thereafter. They had no prospect of receiving any benefit from any tax recovery. After the Harrison company owned the shares in Claiborne Ltd. there was a

declaration of dividend on the shares. After that the shares were sold. It was my view in that case that the transaction was demonstrably a share-dealing transaction. Shares were bought; a dividend on them was received; later the shares were sold. There may be occasions when it is helpful to consider the object of a transaction when deciding as to its nature. In the Harrison case my view was that there could be no room for doubt as to the real and genuine nature of the transaction ..... It was not capable of being made better or worse or being altered or made different by the circumstance that the motive that inspired it was plain for all to see. In that case the vendors of the shares had no further concern once they had sold. The essence of the arrangements now being reviewed was that the future interests of the vendors were being safeguarded. Under the devised scheme they were to have all the benefits that would have resulted from their shareholdings had there been no scheme. In addition, they were to be saved from the full extent of the exactions which taxation imposes. Here also the scheme involved a factor which was entirely absent in the Harrison case. In that case the purchasers could have done what they wished with the shares. Here, on the other hand, it seems to me that it was of the essence of the scheme that the company should continue to hold the shares during the periods covered by the particular sets of transactions. It is clear and not seriously disputed that the company could not have sold the preferred shares during the currency of the agreement without committing a basic breach of it. The company had to retain the shares so that year by year there would be diminutions in the value of the shares and so that year by year there could be the receipts of dividends from profits to be earned in the future, so that year by year the planned tax recovery could proceed for the mutual benefit of the company and the vendors."

2. F.A. and A.B. Ltd v Lupton (1971) 3 AER, 948

After stripping the dividends, the market value of the shares in the company was approximately £700,000, representing a loss of £1,000,000 on the purchase

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price. Thereupon, the taxpayer company made a claim for repayment of £400,000 income tax under s.341 of the Income Tax Act, 1952 in respect of the loss on the ground that it had acquired the shares in the company in the course of its trade as a dealer in stocks and shares. It was held, unanimously by five judges in the House of Lords, that the taxpayer was not entitled to recover the £400,000 claimed; it was an essential feature of the sale agreement that it should be followed by dividend stripping and a claim against the Revenue; since the manifest object of the taxpayer company in entering into the transaction was to secure a tax advantage, the transaction did not constitute dealing in stocks and shares and did not therefore form part of the trading activities of a dealer in stocks and shares.

Finsbury ... v Bishop (supra) was followed.

Again, Lord Morris of Borth-y-Gest distinguished Harrison v Griffiths (supra) from the above case and said:

1. (in Harrison v Griffiths) "... a purchase of shares was made by a dealer in shares ... The dealer in the result made a small profit. The seller of the shares had no interest in them once he had been paid. He was thereafter in no way concerned. It did not matter to him what the purchasers did with the shares. In fact the purchasers had knowledge of the revenue laws as they stood and had had it in mind to invoke the operation of those laws. They proposed to make a claim under s.341 by asserting that, as the shares which they had bought became diminished in value as a result of the declaration of dividend, they had suffered a loss to the extent of that diminution. In computing that loss they could ignore the payment they had actually received by way of dividend. Whether they chose to make a claim under s.341 and assert that they had sustained a loss was entirely their affair. The vendors of the shares would neither gain nor lose according to whether or not a claim was made." pp.953-54.

2. "But, my Lords, once it is accepted, as it must be, that motive does not and cannot

alter or transform the essential and factual nature of a transaction it must follow that it is the transaction itself and its form and content which is to be examined and considered. If the motive or hope of later obtaining a tax benefit is left out of account, the purchase of shares by a dealer in shares and their later sale must unambiguously be classed as a trading transaction.

The transactions in the Harrison case were solely and unambiguously trading transactions ... The transactions in the Harrison case not only had all the characteristics of trading, there was no characteristic which was not trading. There was nothing equivocal. There was no problem to be solved as to what acts were done..." p.954.

3. "There was therefore, no dividend-stripping 'transaction' in the Harrison case in the sense that any other person had any control or concern or interest as to what Harrisons would do once they had bought the shares." p.955.

Viscount Dilhorne, on the other hand, said, at p.963:-

"My Lords, it was not suggested in this case that the arrangements were a sham. They were real and effective. I must confess I do not understand why the device was described as artificial. It appears to be no more and no less artificial than the device in Harrison .....

My Lords, if there is no valid ground for distinguishing between the two cases, the choice must lie between following Harrison or Finsbury, in which case I would unhesitatingly follow Finsbury, for that decision is I think, clear authority for the proposition that dividend-stripping activities, involving the purchase of shares and the receipt of dividends may be outside the scope of the trade of a dealer in stocks and shares. My Lords, if a transaction viewed as a whole is one entered into and carried out for the purpose of establishing a claim against the

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Revenue under s.341 I for my part would have no hesitation in holding that it does not form part of the trading activities of a dealer in stocks and shares. When I say 'viewed as a whole', I mean that regard must be had not only to the inception of the transaction, to the arrangements made initially, but also to the manner of its implementation. If it be the case that my conclusions in this case conflict with the decision in Harrison, then I must respectfully decline to follow that decision."

Lord Donovan said at p.963-64:-

"I say that this is not a trading in stocks and shares. If I am asked what it is, I would reply that it is the planning and execution of a raid on the Treasury using technicalities of revenue law and company law as the necessary weapons. .... In the Finsbury case the component parts of the transactions if considered alone would logically have produced the same decision as in Harrison. There were shares acquired, dividends received, and shares disposed of. But this time the House did take a comprehensive view of the transaction as a whole; and taking that view reached the conclusion that 'It was a wholly artificial device remote from trade to secure a tax advantage.' It is immaterial in principle that the wider view was induced by certain unusual features in Finsbury. The altered approach, with which I respectfully agree, must now clearly be taken to be right."

Lord Simon of Glaisdale said at p.966:-

"..... I have had the advantage of reading the speech prepared by my noble and learned friend, Viscount Dilhorne, and I agree with his analysis and description of the transactions with which your Lordships are concerned. Such trappings of the trade of dealing in shares as we have here are quite inadequate to prevent the real nature of this transaction showing through .....

My Lords, this is not share-dealing within the trade of dealing in shares. It

is plainly a joint venture of the taxpayer company and the vendors of the shares by taking advantage of quirks of revenue and company law, to obtain money out of the public purse and share it between them. Even if the transaction were equivocal, its true nature would, in my view, be resolved by investigation of its paramount object. Since, on the findings of the Special Commissioners, the transaction would produce a loss to the taxpayer company unless repayment of income tax were obtained, I conclude that the paramount object of the transaction was to procure such repayment of income tax; it was in other words, a tax recovery device."

3. In Thompson v Gurneville Securities (1972) A.C. 661, the Special Commissioners held on the authority of Harrison v Griffiths that although the transaction in relation to B I Ltd. shares involved dividend-stripping nevertheless it formed part of G.S.Ltd's trade of dealing in shares. Accordingly, they allowed loss relief for 1956-57.

The Crown appealed by case stated and the taxpayer company cross-appealed. Goff J. held that the Commissioners' finding was one of fact but that, because they had not the benefit of the decision of the House of Lords in Finsbury Securities Ltd. v Inland Revenue Commissioners (1966) 43 Tax Cases 591, the issue was at large; he found that the losses were not incurred in the trade. On appeal by the taxpayer company on the 1956-57 claim only, the Court of Appeal allowed the appeal. The House of Lords unanimously allowed the appeal.

Per Lord Morris of Borth-y-Gest (Lord Guest agreeing) at pp.672-673 -

"..... The question is whether the transaction bears the stamp and mark of the trade of a dealer in shares or whether its very structure and content reveals it as something different in kind. Approaching the enquiry on the lines that I explained in my speech in Lupton v F.A. and A.B. Ltd. ante, p.634, I have no doubt that the transactions now under review were not those that can be regarded as trading transactions in the course of their trade of dealers in shares."

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Per Viscount Dilhorne -

"My Lords, in this appeal, as in Lupton v F.A. and A.B. Ltd., ante p.634, the question to be decided is whether certain transactions in which the respondent company engaged were activities in its trade as a dealer in stocks and shares. If they were, then the respondent is under s.341 entitled to obtain a large sum from the revenue on the basis that it suffered a loss for income tax purposes, although it suffered no loss in reality ...." p.673.

"Looking at the transaction as a whole, the conclusion is, I think, inescapable that it was one designed, intended and carried out so far as the respondent company was concerned mainly to provide a basis for claims against the revenue." p.675.

Per Lord Donovan -

"It is plain that the transaction was part of a scheme whereby inter alia the vendors of the shares to the respondent would be able to receive into their hands, as capital, profits which, if declared as dividends, would attract as surtax; and whereby the respondent would be able to enrich itself by the device of dividend-stripping; in other words, by obtaining money from the Exchequer ex facie as an income tax repayment notwithstanding that the respondent had never itself paid such tax.

In my opinion, when shares are bought for the sole or main purpose of dividend-stripping, the transaction is not a trading transaction; and a loss shown by the writing down of the value of the shares consequent upon dividend-stripping is not a loss sustained in a trade for the purposes of section 341. I repeat what I have said in this connection in Lupton v F.A. and A.B. Ltd. ante p. 634, and in particular that I am still not able to perceive any line differentiating in essentials the case of Harrison (1963) A.C.1 from the case of Finsbury (1966) 1 W.L.R. 1402" - pp.675-676.

Lord Simon of Glaisdale:-

"My Lords, in Lupton v F.A. and A.B. Ltd. ... I stated the question which, on the view I formed of the authorities, fell for answer in this type of case - namely, whether, in the light of all the circumstances, the transaction is, on the one hand, a share-dealing which is part of the trade of dealing in shares (albeit intended to secure a fiscal advantage, or even conditioned in its form by such intention) or, on the other hand, a mere device to secure a fiscal advantage (albeit given the trappings normally associated with a share-dealing within the trade of dealing in shares). In the instant case, the question can be narrowed: looking at the transaction as a whole, was it, on the one hand, one whereby a true commercial profit was taken in a fiscally advantageous way or, on the other hand, one in which "a commercial profit" was merely a by-product of, or a disguise for, what was really a tax-recovery device? Whichever way the question is put, I have no doubt that, judged both qualitatively and quantitatively, the transaction falls into the latter category in each case." p.679.

PART III

The case on appeal

The following enactment first appears in Jamaica in section 11 of the Income Tax Law No.55 of 1939. It was later included in the 1953 edition of the laws of Jamaica in section 68(1) of the Income Tax Law, Chapter 156. The entire Chapter was repealed and replaced by the Income Tax Law No.59 of 1954 (being referred to as the "law"). Section 10(1) of the law provides, thus:-

"Where the Commissioner is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious, or that full effect has not in fact been given to any disposition, the Commissioner may disregard any such transaction or disposition, and the persons concerned shall be assessed accordingly."

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The word "Commissioner" has been sub tituted for the words "Assessment Committee" and "Committee" in the previous enactments.

Submissions before the Board, the judge and this court centred mainly upon the meaning of the words "artificial or fictitious" and from the approach of the cases I have discussed and relevant legislation, certain points seem clear. For example -

1. A transaction which reduces or would reduce the amount of tax payable by any person, cannot be disregarded by the Commissioner simply because there was an arrangement of affairs which resulted in the reduction of tax. In other words, a person is entitled to so order his affairs as to make the tax not legally claimable: see Duke of Westminster v. Inland Revenue Commissioners (1936) A.C.1.

2. A company is entitled to carry on its trade of dealing in shares or securities and to claim from the revenue the amount of any loss sustained, the loss which, if it had been profit, would have been assessable under the law: s.8(h)(i) of the law.

3. Dividend-stripping is a term applied to a device by which a financial concern obtained control of a company having accumulated profits by purchase of the company's shares, arranged for these profits to be distributed to the concern by way of dividend, showed a loss on the subsequent sale of the shares of the company, and obtained repayment of the tax deemed to have been deducted in arriving at the figure of profits distributed as dividend: see Halsbury, 3rd edition, Vol.20, para.356.

4. In England, before the device of dividend-stripping was countered by the Finance (No.2) Act 1955, dividend-stripping was a well-known commercial operation. In Jamaica dividend-stripping was countered by s.10 B of the Income Tax (Amendment) Act No.30 of 1970.

5. Before the Commissioner can disregard a transaction which reduces or would reduce the amount of tax payable, the transaction

must in his opinion be artificial or fictitious. There must be some evidence of the characteristic features of the transaction which would reasonably warrant him to hold that the transaction was artificial or fictitious. His decision cannot be arbitrary.

Here, the transaction to be enquired into, is the agreement of June 22, 1964 for the sale of the company's shares to the respondents for the sum of £407,934. The company had at its disposal an accumulation of undistributed profits. Had the company declared a dividend directly to its shareholders, there would have been no doubt as to its liability for taxes to the revenue. So far as the sum of £37,368 as taxes was concerned, the respondents claimed that they traded in shares and as the income of the fund was exempt from income tax, they were entitled to it as tax withheld from the dividend; they had, in fact, made a profit of £8,636 rather than suffer a loss in the dealing with shares.

Prima facie, there was an executed agreement, a price for the shares fixed, method of payment of the price stipulated and a transfer made of the shares from the vendor-company to the purchasers-respondents. Thus, there may well be elements of a trading in shares. However, the revenue (appellant) cannot be precluded from establishing on the facts, viewing them as a whole and/or by their characteristic features, that

1 under the agreement the parties were collaborating

2 for the sole or main purpose of effecting a tax advantage, and

3 the agreement was not, in fact, a trading in shares at all, but a pretext or sham.

In those circumstances, of course, the onus is on the appellant on a balance of probabilities, to establish that the transaction was artificial or fictitious within the meaning of section 10(1) of the law. If the Board or a judge or this court does not or cannot consider as well the facts as a whole, then any transaction which reduces or would reduce the tax liability of an individual would be accorded validity, if the "form" had recognisable

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features in law but the "substance" was a pretended exercise to "secure a tax advantage". I proceed now to consider the facts and the law applicable to the instant case.

Income. Did the respondents really purchase the shares from the Company? If the agreement had been carried out, the position would be, thus:-

Purchase price of shares by respondents £407,934

Payment by instalments by respondents

1 on or before	1/7/64	£54,500
2 " " "	31/1/65	62,500
3 " " "	30/6/65	62,500
4 " " "	31/7/65	12,500
5 " " "	30/9/65	62,500
6 " " "	31/10/65	62,500
7 " " "	30/11/65	62,500
8 " " "	31/12/65	28,434
		£407,934

The Company would re-purdhase the shares for £215,904

Balance representing dividends £192,030

From the arrangement, the respondents were making a profit of £8,636. At the end of December 1965, the Company would have received back -

1 their shares, and

2 £192,030 less £8,636 i.e. £183,394,

3 free from taxes on the dividends.

If it had not been for the transaction, the Company would have been liable tc pay the revenue -

1, on 1st dividend tax of £37,757

2, on 2nd " " " £37,368

£75,125

As it happened, the respondents did not complete full payment of the purchase-price. The facts and figures show:-

respondents received 1st dividend gross of	£100,636	
2nd dividend net	62,280	(tax £37,368)
	£162,916	
respondents paid first two instalments and a part of the third	£154,280	
retained as profit	8,636	
	£162,916	

Whether or not the purchase price was paid in full, the respondents were paid a "profit" of £8,636. There was only £400 of contributions in the superannuation fund. It has not been denied that the respondents were borrowing the dividends to pay for the shares. There has neither been nor is there any evidence that the purchase price was really derived from investments or deposits of the superannuation fund. The dividends were really channelled back to the Company free of tax under the pretext of trading in shares. The dividends were, in fact, the property of the Company and not income of the respondents. By letter dated June 23, 1964 (Ex.BB) the respondents stated to the appellant:-

> "....Since the income of the fund is not liable to income tax we would be most grateful if you would give the Seaforth Sugar and Rum Ltd. your authority in writing to pay any dividend due in respect of the shares owned by the fund without deduction of tax ..." (underlining mine).

The respondents have therein inaccurately described the dividends as income exempt from taxation.

The respondents could have returned the dividends to the Company in one or two lump sums. Why the laborious method of repayment by eight instalments extending over one and a half years? Was it not to lull the notional shrewd revenue-commissioner into believing the transaction was genuine trading? At least, there is no evidence which lends the inference that this was not so.

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It is to be noted that in Harrison v Griffiths (supra)

1 that after the shares were sold, the vendors had no control, concern or interest in the dividends, and

2 when the shares were stripped of dividends, they were in fact sold to Lewiston Ltd. which had no control, concern or interest with the vendors.

Profit and fiscal motives

The Board came to the conclusion that the transaction was genuine to the extent that a court would enforce it. It was also so genuine that both parties to the agreement counted on making money out of it - the appellants' (now respondents) share amounted to about £8000. There is no doubt that the agreement was a carefully prepared document, duly executed by the parties to it and the shares were duly transferred to the respondents. But if the motive was for both parties to make a profit, that by itself does not mean that the transaction was genuine. The respondents may well be taking part in the terms of the agreement for the consideration of £8,636 to enable the Company profiting by £183,394 at the expense of the revenue under the pretence of a sale.

Mr. Darryl W.B. Myers, one of the trustees of the Seramco superannuation fund and a director of Seramco Ltd., gave evidence before the Board. Among the many things said, he stated that Mr. Jack Ashenheim asked him if he wanted to buy shares in the company and that the Elders (shareholders of the company) wanted to effect a dividend-stripping exercise. Mr. Myers then consulted with other personnel and the respondents agreed to purchase the shares. He returned to Mr. Ashenheim and told him that the respondents were interested. Mr. Ashenheim then spoke with the Elders and later he explained to Mr. Myers what the Elders wanted to do. Shortly after that the first draft agreement was prepared. After discussions with the firm of Milholland, Ashenheim and Stone, the agreement of June 22, 1964 was done. In the light of that evidence, the things which happened at the meetings of the Board of directors of the company, such as:-

1 removal of D.P. Elder as permanent director of the company,

2 the appointment of F.L. Myers as permanent director of the company,

3 the opposition by the Elders to the proposal of 48½%, and of 48% as dividends to be paid out of the undistributed profits of the company,

4 the giving of reasons by Mr. D.P. Elder that in agricultural business there are fluctuations of profit and the then recent drop of price of sugar on the world market, and

5 the exercise of the option by the company to re-purchase the shares,

were not only mere pretences but were pieces of machinery gone through "in form" in order to satisfy the law to deprive the revenue of taxes; whereas, "in substance" the transaction was not in fact a trading in shares but an artificial or fictitious "set up". In this connection, I wish to refer to the judgment of Megarry J. in the F.A. & A.B. Ltd. v. Lupton (1968) 1 W.L.R. at p.1419 -

> ".... The question is whether, viewed as a whole, the transaction is one which can fairly be regarded as a trading transaction. If it is, then it will not be denatured merely because it was entered into with motives of reaping a fiscal advantage. Neither fiscal elements nor fiscal motives will prevent what in substance is a trading transaction from ranking as such. On the other hand, if the greater part of the transaction is explicable only on fiscal grounds, the mere presence of elements of trading will not suffice to translate the transaction into the realms of trading. In particular, if what is erected is predominantly an artificial structure, remote from trading and fashioned so as to secure a tax advantage, the mere presence in that structure of certain elements which by themselves could fairly be described as trading will not cast the cloak of trade over the whole structure."

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Approval was given to that dictum by the House of Lords in the same case.

Option to re-purchase and ownership of the company's shares

There is no doubt that clause 7 of agreement which constituted a basis of the transaction gave the company (vendors) an option to repurchase the shares at £208 per share allegedly sold to the respondents (purchasers) at £393 per share. The question is what effect, in law, has the option to re-purchase upon the validity of the transaction as a sale. "In such cases, a bona fide sale with an option to re-purchase is good, but the substance and not the form of the transaction must be regarded whether it is carried out by one document or two, and whether it be in form of sale or not." Cave J. in Beckett v. Tower Assets Co. (1891) 1 Q.B.8-22. In Alderson v White 2 De G & J 105, Lord Cranworth said: "The rule of law on this subject is one dictated by common sense; that prima facie an absolute conveyance, containing nothing to show that the relation of debtor and creditor is to exist between the parties, does not cease to be an actual conveyance and become a mortgage merely because the vendor stipulates that he shall have a right to re-purchase". This dictum was quoted with approval in Manchester, Sheffield ... v. North Central Co. 13 A.C. 568, where Lord MacNaghten said: "In all these cases the question is what was the real intention of the parties."

Although the agreement was "an instrument drawn up, executed and acted upon by the parties" (said by the judge hearing the appeal from the Board), the full purchase-price was not to be paid until December, 1965. It was contended by the respondents, that the transaction was genuine but the payment of the purchase price by instalments was a mere fulfilment of the agreement. Until the purchase price was fully paid the respondents could not deal with the shares because they were holding them in trust for the Company on account of the unpaid purchase price. And three months before the final payment was due in December 1968 the vendors had the right to exercise the option to repurchase the shares. What Lord Morris of Borth-y-Gest said in Greenberg v Inland Revenue Commissioners (1971) 3 AER 136 at p.153 is directly in point:-

"..... If an agreement is made pursuant to which vendors are to sell shares and purchasers are to pay for them and if the agreement provides that the shares are to be transferred forthwith and that payment for them is to be by future instalments it would be contrary to fact and reality to assert that the agreement is carried out when it is made or when the vendors transfer the shares. An essential part of the agreement from the vendor's point of view would be the payment by the purchaser of the sums that he had promised to pay. The vendors would be surprised if they were told that the contract had been carried out before they received their money. The inherent features of performance or fulfilment are involved in the carrying out of the transaction. To suggest that where there is an agreement to sell, the payment of the price is only a consequence of the agreement or transaction is to mask or obscure the fact that payment is an important and vital part of the transaction. It is of equal importance to a vendor to get his payment as it is for a purchaser to get what he is buying and paying for."

In Vandervell v Inland Revenue Commissioners (1966) 43 T.C. 519, Vandervell formed the wish to give £150,000 to found a chair at the Royal College of Surgeons and having consulted his experts decided to make over 100,000 "A" shares in his manufacturing company. As controlling shareholder Vandervell could then vote the necessary £150,000 by way of dividends of those shares and at the same time avoid a surtax assessment in respect of the non-distributed profits of the company. However, his advisers were concerned that if there were a public flotation of the manufacturing company it would not be desirable to give the shares outright to the College. Eventually, it was put to the College and they accepted the proposal to grant an option to re-sell the shares to Vandervell Trustees Ltd. for £5000. As a result the College later received £145,000 gross by way of dividend on the shares and £5000 when the option was exercised and the transaction was completed by the transfer of the shares to the trustee company. In the House of Lords it was held by a majority of three that the appellant was the beneficial owner of the shares as the trustee company was holding the shares on a

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(continued)

resulting trust for Vandervell and so he was liable to the surtax. Lord Donovan was one of the two who dissented. He held that looking at the situation objectively there was an outright grant to the trustee company. He saw no reason why the option should be held in trust for Vandervell either expressly or impliedly. The differences in opinion related to whether the trustee held the shares absolutely or for Vandervell. In his opinion at p.563, Lord Donovan said concerning the essential features of the transaction and about which there was no dispute:-

> "... It is obvious that the College was to get its £150,000, not by a straightforward cash payment of that sum by Mr. Vandervell, but by substantial contributions from the public purse. (I say this, not in criticism, but because it is relevant to the case). Thus the dividends which were to amount to £145,000 were to be gross dividends from which tax would be deducted at source. The tax would be recovered from the revenue by the College as a Charity. Then the declaration of such dividends was to be a protection for Mr. Vandervell against a heavy liability for surtax which might otherwise fall upon him under the provisions of ss 245 et seq of the Income Tax Act 1952. <u>These advantages would never accrue if Mr. Vandervell retained the right to recover the shares back for himself by means of the option right. The College would not be entitled to repayment of tax, and the dividends of £145,000 gross would be liable to surtax as Mr. Vandervell's own income</u> ...." (underlining mine)

Even assuming that the findings of the Board and the judge meant that the agreement was executed and the shares transferred, both the Board and the judge have failed to analyse the characteristic features of the transaction which undoubtedly established the only rational conclusions -

1 that the agreement of sale was artificial or fictitious; was never a sale at all;

2 though the shares were by documents transferred by the Company to the respondents, the Company (vendors) retained control and beneficial ownership of them;

3 at no time the dividends were the property of the respondents but were to be paid over to the vendors under the pretence of payment of purchase price by instalments.

4 The exercise resulted in what was really a consideration of £8,636 for the respondents' facilitating the dividend-stripping.

5 Before the shares were fully paid for, the relationship of debtor and creditor existed between the parties.

6 Even when the respondents defaulted in the payments, they nevertheless received their consideration of £8,636. The Company was obviously not interested in the default of the respondents in payment of the purchase price when only £154,280 out of a purchase price of £407,934 was paid.

7 In the outcome of the exercise, one thing was certain, the dividends in the form of a sale-price was depriving the revenue of £75,125 worth of tax, £37,368 of which is the subject-matter of this appeal.

In concluding this aspect of the appeal, I wish to cite the following passage of Lord Sterndale M.R. in The Commissioner of Inland Revenue v F.B.Sanderson (1918-24) 8 T.C. p.38 at p.48:-

> "This court cannot interfere with that finding of fact if the Commissioners have acted upon proper legal principles and there is evidence to support their conclusion. But, if they have not acted upon proper legal principles and if on the facts, with the proper legal principles applied to them, they cannot come to that conclusion, then there is not evidence upon which they can arrive at the conclusion, because they cannot say that the facts will support the conclusion if the facts are applied not according to the proper rules of law. I think the Commissioners have taken a not unnatural business view, but one which is not a legal one."

For the reasons stated, I am of the view, that both the Board and the Judge have failed to analyse the characteristic features of the transaction or

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to act upon the proper legal principles applied to them. In those circumstances, the appellant was entitled to disregard the transaction. I would, therefore, allow the appeal.

I do not find it necessary to consider any other points, except to add that I am also of the view that in the circumstances of this case, the respondents had no right of appeal.

No. 16

No.16

Order granting Final Leave to Appeal to Her Majesty in Council

29th July 1974

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL

CIVIL APPEAL NO.9 of 1969

BETWEEN THE COMMISSIONER OF INCOME TAX APPELLANT

AND THE TRUSTEES OF SERAMCO LIMITED SUPERANNUATION FUND RESPONDENTS

BEFORE: The Hon. Mr.Justice Edun, President
" " " " Hercules, J.A.
" " " " Robinson, J.A.

THE 29TH DAY OF JULY, 1974.

Upon the Notice of Motion for Final Leave to Appeal to Her Majesty in Council coming on for hearing this day and Upon hearing MR. DEREK JONES of the firm of MYERS, FLETCHER & GORDON, Attorneys at-law for the Respondent/Appellants and Upon hearing Mrs. Angela Hudson-Phillips, Attorney-at-law for the Appellant/Respondent IT IS HEREBY ORDERED:-

(i) That the Trustees of the Seramco Limited Superannuation Fund be and are hereby granted Final Leave to Appeal to Her Majesty in Council.
(ii) The costs of and incident to this Application be costs in the cause.

BY THE COURT

(Sgd.)
REGISTRAR (Ag.)

FILED by MYERS, FLETCHER & GORDON of No.36 Duke Street, Kingston Attorneys-at-law for and on behalf of the Respondents/Appellants whose address for service is that of its said Attorneys-at-law.

"A"

This is the Certificate of Incorporation of Seramco Ltd. marked "A" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers (sgd.) W.R.Lawrence

Justice of the Peace for
the Parish of Kingston

I, JAMES MCDOUGAL SUDU, Deputy Keeper of the Records of this Her Majesty's Island of Jamaica DO HEREBY CERTIFY that all the requisitions of the Companies Law, Chapter 69 of the Revised Edition of the Laws of Jamaica (1953) in respect to registration were complied with by SERAMCO LIMITED on the TWENTY-EIGHTH day of AUGUST One Thousand Nine Hundred and Sixty-Three

GIVEN under my hand and the Seal of the Island Office at Spanish Town in the parish of Saint Catherine and Island of Jamaica this TWENTY-EIGHTH day of AUGUST One Thousand Nine Hundred and Sixty-Three.

Deputy Keeper of the Records.

EXHIBITS

EXHIBIT "A" - Certificate of Incorporation of Seramco Ltd.

Exhibits

"A"

Certificate of Incorporation of Seramco Limited

28th August 1963

Exhibits

"B"

Deed of Trust of Seramco Limited Superannuation Fund

16th January 1964

EXHIBIT "B" - Deed of Trust of Seramco Limited Superannuation Fund

THIS DEED OF TRUST is made the 16th day of January 1964 BETWEEN SERAMCO LIMITED, a company duly incorporated under the Laws of Jamaica and having its offices situate at No.36 Duke Street in the City of Kingston (who and whose successors are hereinafter called "the Employer") of the ONE PART and

Frank L. Myers
Douglas V. Fletcher
William S.K. Gordon
Patrick H.O. Rousseau
Eric O. Bell
Darryl W.B. Myers

(hereinafter called "the trustees" which expression shall include the survivors of them and any new or substituted trustee appointed under the terms hereof) of the OTHER PART.

WHEREAS the Employer has determined to establish a superannuation fund (hereinafter called "the fund" to provide superannuation benefits for such of its present and future employees as under the rules appearing in the schedule attached hereto are eligible and do participate in the same (hereinafter referred to as "the members").

AND WHEREAS in consideration of the contributions to be made to the fund by the members by means of deductions from earnings to be made in the manner hereinafter provided, the Employer has agreed to undertake such liability in respect of contributions to the fund and otherwise as is hereinafter imposed upon it.

AND WHEREAS the trustees have been nominated by the Employer and they have respectively agreed to act as trustees for the fund.

NOW THIS DEED WITNESSETH that for the purpose of carrying such determination into effect and in pursuance of the said agreement the Employer hereby covenants with the trustees and the trustees with the Employer so far as the agreement and stipulations are or ought to be performed or observed by the Employer and the trustees

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"B"

Deed of Trust of Seramco Limited Superannuation Fund

16th January 1964

(continued)

respectively (but so that no personal liability shall be incurred by the trustees or any of them except in respect of their individual trusteeship of the fund) in manner following, that is to say:-
This is the Deed of Trust of Seramco Ltd. Superannuation Fund marked "B" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before Me:

sgd. Darryl Myers

sgd. W.R. Lawrence

Justice of the Peace for the Parish of Kingston.

1. The trustees shall stand possessed of all contributions and moneys forming part of or arising out of the said fund or otherwise coming into their hands as trustees hereunder upon trust to apply the same in accordance with the rules contained in the Schedule hereto and all the terms hereinafter provided.

2. The Employer shall be entitled to deduct and shall deduct at the appropriate times from every payment of earnings paid to each member such sum or sums as shall be provided for by the said rules.

3. The Employer shall cause the full amount thereof to be carried to the credit of the trustees in an account to be kept to the order of the trustees in accordance with the provisions of the said rules.

4. The Employer shall cause to be carried to the credit of the trustees in the said account and cause to be held to the order of the trustees such further sum or sums as is stated to be contributions payable by the Employer as provided for in the said rules.

5. No trustee shall be liable for any loss, damage, costs or expenses that may happen to be incurred in consequence of any act of commission or default of such trustee while purporting to act as such unless he be guilty of actual fraud or dishonesty whereby loss or damage is sustained by the fund.

6. Except as hereinafter provided the said trust shall continue during the life of the last survivor of the issue now living of Her Majesty Queen Elizabeth II and twenty-one years after the death

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(continued)

of such survivor and such further period, if any, as may be lawful. Upon the termination of the said trust the affairs thereof shall be wound-up and subject to the payment of all costs, charges and expenses which may then be owing, and to provision as the fund will admit being made for the payment of any benefits which are then payable the balance of the fund, if any, shall be dispersed in accordance with the said rules.

SCHEDULE

RULES OF SUPERANNUATION FUND FOR SERAMCO LIMITED

1. In these rules unless the subject or context otherwise requires:-

"EFFECTIVE DATE" means 1st January 1964:

"EMPLOYER" means SERAMCO LIMITED;

"THE DEED" shall mean the Deed of Trust to which this schedule is attached;

"EMPLOYEE" means all persons employed by the Employer on a permanent basis;

"MEMBER" means every employee who in accordance with these rules shall for the time being participate in the fund; a person upon ceasing to be employed by the Employer or upon ceasing to qualify under rule 6(1) hereof shall cease to be a member;

"THE FUND" means the superannuation fund to be constituted as hereinafter set out;

"EARNINGS" means all ordinary earnings paid by the Employer to an employee for services rendered as such to the Employer but shall not include any bonus, house allowance, or cost of living allowance, or any extra payment for overtime;

"EMPLOYER CONTRIBUTIONS" shall mean the amount contributed to the fund from time to time by the Employer in accordance with rule 8 hereof;

"MEMBER'S CONTRIBUTIONS" shall mean the amount deducted from the earnings of the member as provided in rule 7 hereof;

"THE TRUSTEES" means the trustees for the time being appointed by the Employer or otherwise appointed as hereinafter set out;

"THE SECRETARY" shall mean one of the trustees or any other person appointed by the trustees to be secretary of the trustees in accordance with the rules.

"CONSULTANTS" shall mean Carp Corporation Limited, or such other competent persons as may be appointed by the Employer from time to time;

"NORMAL FORM OF ANNUITY" shall mean an annual annuity payable in equal monthly instalments for five years and the member's remaining lifetime thereafter;

"NORMAL RETIREMENT AGE" shall mean the age of 70 years.

In this instrument the singular number shall include the plural number and the plural shall include the singular number and the masculine pronoun shall include the feminine pronoun except where repugnant to the context.

2. These rules shall be deemed to come into force on the effective date.

3.(1)Any trustee may retire by giving one month's notice in writing to the secretary.

(2) If a trustee shall be removed by the Employer (which may be done by a resolution of the Board of Directors of the Employer), have a provisional or absolute order of bankruptcy made against him, suffer execution to be levied on his goods, compound with his creditors, or be certified of unsound mind by a registered medical practitioner approved by the other trustees, he shall ipso facto cease to be a trustee.

(3) If any trustee should die, retire or otherwise cease to be a trustee then the Employer

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shall appoint another in his stead, provided that if such appointment be not made within three months of the vacancy occurring the remaining trustees may appoint another trustee in his stead who shall be liable to be removed by the Employer as if he had been appointed by the Employer.

4.(1) The trustees shall elect one of their number to be chairman of the trustees and he shall continue to hold the office of chairman until his retirement or removal unless the trustees otherwise decide. In addition to his original vote the chairman shall have a casting vote in the event of an equality of votes on any occasion when there shall be disagreement among the trustees. In the event of a tie in the election of a chairman the Employer shall nominate the chairman.

(2) The trustees shall elect one of their number or appoint any other person to be secretary of the trustees and he shall continue to hold the office of secretary until his retirement or removal unless the trustees decide otherwise.

(3) A quorum of a meeting of the trustees shall be two. In the event of a meeting terminating because it is not properly constituted in accordance with the foregoing a decision reached while it was properly constituted prior to such termination shall be valid.

(4) In the event of a disagreement among the trustees in respect of any decision to be made hereunder, the matter will be decided by a majority vote of the trustees present.

(5) A resolution in writing signed by any two trustees one of whom is the chairman for the time being shall be as effective for all purposes as a resolution passed at a meeting of the trustees duly convened held and constituted.

5. (1) An ordinary meeting of the trustees for the purpose of filling any vacancy and for the appointment of auditors and for the

purpose of passing the annual accounts presented to the trustees shall be held not later than the 30th day of April or such other date as the trustees may decide in each year commencing in 1965 at such time and place as the trustees shall from time to time appoint.

(2) Until or unless otherwise decided by the trustees the accounts of the fund shall be prepared to coincide with the last day of December of each year.

6. (1) All permanent male employees of the Employer shall be eligible for membership of the fund on the effective date and shall become members upon signing the form of application provided.

(2) All permanent male employees employed after the effective date hereof shall sign the form of application provided and shall become a member on the first of the month first following their completion of three full months of employment with the Employer.

7. The Employer shall and is hereby authorised to deduct or cause to be deducted from the earnings of every member an amount not less than five percent or more than ten per cent of the earnings of such member (the actual percentage to be determined by the member) which shall be deemed to be the member's contribution, and the Employer shall from time to time pay to the trustees the aggregate of such sums but not less frequently than once in each month.

8. Subject to rule 12 of these rules the Employer shall from time to time pay or cause to be paid to the trustees an amount equal to the member's contributions which shall be deemed to be the Employer's Contributions in respect of each member.

9. The Employer may retire or cause to be retired any member for reason of inability to continue satisfactorily to perform his duties or who has reached normal retirement age and shall retire or cause to be retired any members; (a) who shall be certified by a registered medical practitioner approved by

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the trustees as permanently unfit to continue in employment or (b) who shall have reached normal retirement age and who shall apply to be retired.

10. (1) Upon the termination of employment of a member there shall be paid by the trustees the following benefits:-

(a) Where the termination of employment is by reason of the death of the member a single payment shall be made to the deceased member's designated beneficiary or in the absence of any designated beneficiary to the deceased member's estate of a sum equal to the aggregate amount contributed to the fund by the member with such interest as may have been credited to his account.

(b) Where the termination of employment is by reason of retirement from active employment at the member's normal retirement age the trustees shall cause to be withdrawn from the fund each month and paid over to the member or his beneficiary a normal form of annuity of an amount equal to the annuity value of the sum of the member's and Employer's contributions to the fund with such interest as may have been credited to his account. The first payment of such annuities shall fall due on the first of the month coincident with or next following the date thirty days after the member's retirement.

(c) Where the termination of employment is by reason of retirement from active employment prior to the member's normal retirement age the trustees shall cause to be withdrawn from the fund each month and paid over to the member or his beneficiary a normal form of annuity of an amount equal to the actuarial equivalent of the member's normal form of annuity as described in paragraph (b) of this section, adjusted to the member's actual retirement age.

(d) Where the termination of employment is by reason of any contingency other than death or retirement the terminating member shall receive from the fund a sum equal to the aggregate amount contributed by him to

the fund with such interest as may have been credited to his account. The Employer may, at its sole discretion, leave the value of its contribution made on behalf of any member who terminates under this section in the fund to provide an annuity to the terminated member payable in the normal form upon the terminated member's attainment of his normal retirement age.

(e) The trustees may at their sole discretion cause the single amount to be withdrawn from the fund required to purchase from a duly constituted insurance company the normal form of annuity under (b), (c) or (d) above or any optional form of annuity elected under those rules by the member.

(2) A member may, with the consent of the Employer, remain in active employment with the Employer beyond his normal retirement age in which event contriutions by the member and the Employer shall continue to be made to the fund, and upon actual retirement his annuity will be calculated in accordance with paragraph 1(b) of this section.

(3) A member may, at any time prior to his actual retirement date, elect to vary the normal form of annuity to one providing a greater or lesser number of years certain, or a joint and survivor annuity payable to himself and some second party so long as either or both of them might live. Election of any of those options is subject to its availability from a duly constituted insurance underwriter and will adjust the amount of annuity to the actuarial equivalent of the normal form of annuity.

(4) A member shall submit proof of age satisfactory to the trustees before any benefit arising from these rules becomes payable.

(5) The maximum annual annuity which aretiring member may receive under these rules is £2,000 or $\frac{2}{3}$ of his final earnings whichever be the lesser.

(6) Subject to the consent of the trustees a retiring member may commute a portion of his

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annuity to its cash value thus providing a single cash payment at retirement and a reduced monthly annuity after retirement. The maximum commutation of annuity will be ¼ of 12½ times the annual annuity.

11. In the event of the employment of a member being suspended (whether for punitive or non-punitive reasons) the share in the fund to which such a member would be entitled may, in the discretion of the trustees, be permitted to remain in the fund pending the resumption of employment of the member.

12. The Employer may at any time on giving three months notice in writing to the secretary cause contributions to cease to the fund and on such notice being given by the Employer the fund shall be wound-up and after all expenses incurred in connection with the fund have been paid, and any sums which have become payable under rule 10(a) have been paid and benefits in the process of payment or pending payment under rule 10(b), (c) or (d) have been purchased from a duly constituted insurance company, or otherwise secured, the residue, if any, shall be paid over by the trustees to the members as if they had terminated employment on the date of wind-up of the fund in accordance with rule 10(d). If any residue remains undistributed it shall be paid over to the Employer by the trustees.

13. All payments in accordance with these rules shall be paid out of the fund and no person entitled to any benefit shall have any claim to any benefit except out of the fund and shall not in any case have any claim to any payment against the trustees or any of them personally or against the Employer.

14. All rights conferred on members, pensioners, or other persons entitled to payment under these rules shall be upon the express opinion that no benefit payable under the provisions of these rules, shall be subject in any manner to anticipation, assignment, attachment, diminuation, pledge or charge, and that any attempt to anticipate, assign, attach diminish, pledge or charge the same shall be void, and that no such benefit shall

in any manner be liable for or subject to debts, contracts or liabilities, nor shall any interest therein under these rules be subject to garnishment, attachment, execution or levy of any kind. If any member, pensioner or beneficiary should become bankrupt or attempt to anticipate, assign, attach, diminish, pledge or charge any benefits, or if any application to attach, garnishee, execute or levy any such benefit shall be made then such benefit shall forthwith cease and terminate, and in that event the trustees may hold or apply the same or any part thereof or cause to be paid over to another trustee or trustees to or for the benefit of such subscriber, pensioner or beneficiary, his spouse, children or other dependents or any of them in such manner and in such proportion as the trustees may think proper.

15. (1) No person entitled to a benefit under these rules shall have any claim against the fund other than those prescribed by these rules and in the event of the fund at any time being in the opinion of the trustees (whose decisions on this fact shall be final) insufficient to meet existing accruing and contingent claims under these rules any payment due or thereafter to become due to members, shall abate rateably to such an extent, and for such period, as the trustees may determine.

(2) The trustees shall from time to time pay to all members whose payments have been abated under the provisions of this rule, the whole or part (as the trustees may determine) of the amount of which such payment were abated if at any time or times the trustees shall be of the opinion that the amount of the fund is sufficient for this purpose having regard to the relative rights of all members.

(3) Wherever under this instrument any moneys are payable to or any benefits are established for any member or his beneficiary or personal representative the trustees hereby declare that they hold and will hold all such moneys and/or benefits in trust for such member or beneficiary or personal representative as the case may be.

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(continued)

(4) Any member may at any time by written notice in such form as the trustees shall approve signed by him and delivered to the trustees appoint a beneficiary or revoke an appointment of beneficiary and in the event of the death of the member any benefits payable under the rules of this scheme shall be paid by the trustees to such beneficiary, if any, otherwise to the deceased member's personal representative.

16. The trustees shall cause the accounts of the fund to be prepared at intervals of not less than twelve months.

17. The trustees shall cause to be kept at all times a record of individual accounts in respect of each member showing the amount and date of each contribution to the fund by such member and the termination of employment, death or retirement benefits payable to the member under the rules in respect of such contributions.

18. (1) The trustees shall invest and/or reinvest any or all the moneys for the time being standing to the credit of the fund, not immediately required for making any payment pursuant to these rules, in such securities and investments as they may in their absolute discretion deem safe and advisable without being confined or limited to those investments to which trustees are limited by Law and with liberty from time to time to call in, convert, vary or transpose any such investment.

(2) The trustees may also apply such part, if any, of the fund as they may deem fit in the payment of premiums to one or more insurance company or companies for the purpose of insuring that the liabilities of the fund under these rules will at all times be promptly met and secured or for such other or additional purposes as the trustees may determine.

(3) The trustees may from time to time and are hereby empowered to borrow or raise money with or without security if it is deemed by them in their sole discretion to be in the best interests of the fund to do so and the

trustees shall be entitled to full indemnity from the fund for any debts so incurred.

19. All costs, charges and expenses incurred in carrying out the provisions of these rules or for the benefit of or connected with the management of the fund shall be paid out of the fund unless paid by the Employer.

20. No trustee shall be entitled to any remuneration for acting as such trustee provided that any trustee performing the duties of secretary of the fund shall be paid such remuneration as the trustees shall from time to time determine and shall not thereby be disqualified from holding the office of trustee.

21. The trustees shall decide any question arising under these rules or upon the construction thereof or in any claim thereon and their decision shall be final and conclusive.

22. The trustees shall cause proper minutes to be made in books to be provided for the purpose, of all appointments of officers made by the trustees, of all notices received by the secretary and of the proceedings of all meetings of trustees.

23. The trustees may from time to time, appoint and dismiss persons to secretary, accountant or treasurer, or to perform such duties as shall in the opinion of the trustees be necessary for the management of the fund, and may pay such persons such remuneration as they deem fit.

24. A person shall not be precluded from accepting the appointment of trustee by reason of his being a Solicitor, Barrister, Auditor or Accountant for the fund or the trustees.

25. The trustees may delegate all or any of their powers herein either implicitly or explicitly and upon such terms and conditions as they may think fit to any other persons personal or corporate who may be legally able to act for the time being as trustee of such funds and the trustees or their delegate may grant power or attorney if and when they in

Exhibits

"B"

Deed of Trust of Seramco Limited Superannuation Fund

16th January 1964

(continued)

their sole discretion believe such action to be necessary to best effect the purposes of the fund and the delegate shall be paid such reasonable compensation for his services as shall from time to time be agreed upon by the trustees and the delegate. Such compensation and all expenses of administration and management of the trust including legal fees shall be withdrawn by the trustees or their delegate out of the fund unless paid by the Employer.

26. A trustee may participate in the discussion to enter into any contract and may vote as a trustee in respect of such contract and may retain for his own use profits made by him under any such contract PROVIDED ALWAYS that he shall disclose his interest to the other trustees and if all the trustees be interested in the contract their interest shall be disclosed to the Employer whose consent to enter into the contract must be forthcoming before the contract may be entered into.

27. If any person entitled to receive any payment under these rules is by reason of insanity or infancy or any other cause unable to give valid discharge to the trustees for the same, the trustees shall be entitled to pay the same to any person whom they may consider suitable in trust for such person, and the receipt of that person shall be an absolute discharge to the trustees for such payment.

28. Subject always to the final approval of the Commissioner of Income Tax all or any part of the provisions of these rules may from time to time be altered, amended, cancelled, suspended or added to by resolutions of the Board of Directors of the Employer.

IN WITNESS whereof this Deed of Trust has been duly executed by and on behalf of the parties hereto the day and year first above written.

Sgd. Noel ? Levy
WITNESS

sgd. Frank L. Myers
FOR THE COMPANY

Exhibits

"B"

Deed of Trust of Seramco Limited Superannuation Fund

16th January 1964

(continued)

Sgd. Noel ? Levy WITNESS	sgd. Madge Godfrey FOR THE COMPANY
Sgd. Noel ? Levy WITNESS	sgd. Frank L. Myers TRUSTEE
Sgd. Noel ? Levy WITNESS	sgd. D. Fletcher TRUSTEE
Sgd. Ian Phillipson WITNESS	sgd. W. S. K. Gordon TRUSTEE
Sgd. Ian Phillipson WITNESS	sgd. P. H. O. Rousseau TRUSTEE
Sgd. Ian Phillipson WITNESS	sgd. Eric O. Bell TRUSTEE
Sgd. Ian Phillipson WITNESS	sgd. Darryl Myers TRUSTEE

EXHIBIT "C" - Letter, Commissioner of Income Tax to Carp Corporation Limited

"C"

Letter, Commissioner of Income Tax to Carp Corporation Limited

INCOME TAX DEPARTMENT,
JAMAICA, W.I.

8th January, 1964

Dear Sir,

Seramco Limited Superannuation Scheme

Your letter of the 18th December last with enclosures is hereby acknowledged.

I have examined the trust deed and rules submitted and I now approve the scheme under Section 25 of the Income Tax Law 1954, with effect from 1st January, 1964.

The following is to be supplied annually in connection with the scheme:-

Exhibits

"C"

Letter, Commissioner of Income Tax to Carp Corporation Limited

8th January 1961

(continued)

(a) a list showing names of members and amount contributed in each case;

(b) a list showing amount contributed by the employer on behalf of each member and the remuneration on which the contribution was based;

(c) particulars of any repayments made out of the fund, whether to employer or member;

(d) such other information as may be requested.

Yours faithfully,

(sgd.) C.C. Jones
Commissioner of Income Tax.

The Managing Director,
Carp Corporation Ltd.,
30 Johns Lane,
KINGSTON.

This is the letter of 8th January, 1964 from the Commissioner of Income Tax to Carp Corporation Ltd. marked "C" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

sgd. Darryl Myers

sgd. W. R. Lawrence

Justice of the Peace for the Parish of Kingston.

"D"

Agreement for sale of shares in Seaforth Sugar and Rum Limited

EXHIBIT "D" - Agreement for sale of shares in Seaforth Sugar and Rum Limited

AN AGREEMENT made the day of One Thousand Nine Hundred and Sixty-Four BETWEEN DERRICK PERCIVAL ELDER of Serge Island in the Parish of Saint Thomas, Planter, HORACE CLINTON NUNES of Nos.22-24 Duke Street in the Parish of Kingston, Chartered Accountant, IAN FREDERICK ELDER of Serge Island in the Parish of Saint Thomas, Planter, AUDREY MADGE ELDER of Serge Island in the Parish of Saint Thomas, the wife of Derrick Percival Elder aforesaid, SHIRLEY ANN PECHT of Victoria Drive, Victoria Gardens, Diego

Exhibits

"D"

Agreement for sale of shares in Seaforth Sugar and Rum Limited

(continued)

Martin, Trinidad, West Indies, CONRAD VICTOR ELDER of 19-21 Harbour Street in the Parish of Kingston, Managing Director of R.Ehrenstein & Company Limited, PAULINE VIVIAN ELDER of Ebony Glades in the Parish of Saint Andrew the wife of Conrad Victor Elder aforesaid and MICHAEL SAMUEL ELDER of Serge Island in the Parish of Saint Thomas, (hereinafter called "the Vendors") of the ONE PART and FRANK LESLIE MYERS: DOUGLAS VAIMORE FLETCHER, WILLIAM SYDNEY KELLY GORDON, PATRICK HOPPNER ORL ROUSSEAU, ERIC ORLANDO BELL and DARRYL WAYNE BRANDON MYERS all of No.36 Duke Street in the Parish of Kingston, Solicitors as Trustees of the Superannuation Fund of Seramco Ltd., (hereinafter called "the Purchasers") of the OTHER PART WHEREBY IT IS AGREED as follows:-

1. The Vendors will sell to the Purchasers and the Purchasers will buy all the issued shares of SEAFORTH SUGAR & RUM LIMITED (hereinafter referred to as "the Company") for the price of FOUR HUNDRED AND SEVEN THOUSAND NINE HUNDRED AND THIRTY FOUR POUNDS that is to say, at the rate of THREE HUNDRED AND NINETY THREE POUNDS a share.

2. Forthwith upon the signing of this Agreement the Vendors will deliver to the Purchasers completed and executed transfers to the Purchasers or their nominees of all the issued shares in the Company together with the relevant share certificates in the respective names of such of the Vendors who own such shares.

3. The Purchasers will pay to the Vendors for the shares delivered as aforesaid by instalments of Fifty Four Thousand Five Hundred Pounds on or before the 1st day of July 1964, Sixty two Thousand Five Hundred Pounds on or before the 31st day of January, 1965, Sixty Two Thousand Five Hundred Pounds on or before the 30th day of June, 1965, Twelve Thousand Five Hundred Pounds on or before the 31st day of July 1965, Sixty Two Thousand Five Hundred Pounds on or before the 30th day of September, 1965, Sixty Two Thousand Five Hundred

---

This is the Agreement for Sale of Shares in Seaforth Sugar & Rum Ltd. marked "D" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers - Sworn to on the 3rd day of May 1967 before me:

sgd. Darryl Myers

Sgd. W.R. Lawrence
Justice of the Peace for the Parish of Kingston.

Exhibits

"D"

Agreement for sale of shares in Seaforth Sugar and Rum Limited

(continued)

sic Pounds on or before the 30th day of September, 1965, Sixty Two Thousand Five Hundred Pounds on or before the 31st day of October, 1965, Sixty Two Thousand Five Hundred pounds on or before the 30th day of November 1965 and Twenty Eight Thousand Four Hundred and Thirty Four Pounds on or before the 31st day of December 1965.

4. The Vendors represent and warrant that the paid up Capital of the Company is Two Hundred and Seven Thousand Six Hundred Pounds represented by One Thousand and Thirty Eight fully paid up and issued shares each of the nominal value of Two Hundred Pounds and that each of the registered owners of the said shares have the power of transferring such shares and that the said shares are not subject to any lien charge encumbrance or commitment and that no person or Company has any right or valid claim to any unissued shares.

5. The Vendors COVENANT with the Purchasers:-

(a) To satisfy the Purchasers with despatch that the Company has possession as beneficial owner of all such assets and property of the Company as the Purchasers may from time to time require and to satisfy the Purchasers as to the existence or otherwise of all encumbrances, tenancies and easements.

(b) That the said Derick Percival Elder, the said Conrad Victor Elder and the said Michael Samuel Elder will continue to act as Directors of the Company so long as the Purchasers shall require them so to do and that one share will remain in the name of each of the said Derrick Percival Elder, Conrad Victor Elder and Michael Samuel Elder as nominees of the Purchasers in order to enable the said Derrick Percival Elder, Conrad Victor Elder and Michael Samuel Elder to possess the necessary share qualification. That as soon as any of the said Derrick Percival Elder, Conrad Victor Elder and Michael Samuel Elder shall cease to act as a Director of the Company the person ceasing to act as aforesaid will transfer to the Purchasers or their nominee the share standing in his name as aforesaid.

(c) That the said Audrey Madge Elder will as soon as practicable under the Articles of

Association of the Company tender her resignation as aDirector of the Company.

(d) That the Board of Directors of the Company will co-opt as additional Directors Frank Leslie Myers, Patrick Hoppner Orla Rousseau and Darryl Wayne Brandon Myers.

(e) To forthwith deliver upon request to the Purchasers the Seal of the Company and all Company registers, books of account, documents of title, files and papers relating to the affairs, rights, obligations, assets and property of the Company and that the Vendors will at all times provide the Purchasers with all additional evidence and information relating to the above that may reasonably be required by the Purchasers.

6. The Vendors represent and warrant to the Purchasers

(a) That the audited Balance Sheet and Financial Statement of the affairs of the Company up to the Thirtieth day of September One Thousand Nine Hundred and Sixty Three were at the said date in all respects correct and true.

(b) That the Company has complied with all the requirements of law and is in good standing regarding all permits and authorities of competent jurisdiction enabling it to carry on its business as at present carried on without contravening any laws rules or regulations, and that the Company has free and good marketable title to all its property, rights and assets.

(c) That no expenditure other than on reasonably necessary operational work and on machinery and supplies on order has been incurred since the thirtieth day of September One Thousand Nine Hundred and Sixty-Three aforesaid.

(d) That no distribution of profits or capital has been made to any shareholder of the Company since the thirtieth day of September One Thousand Nine Hundred and Sixty-Three nor will be made to the existing shareholders nor has the Company parted with any of its assets since that date otherwise than in the ordinary

Exhibits

"D"

Agreement for sale of shares in Seaforth Sugar and Rum Limited

(continued)

course of business nor has the Company any commitments outside the ordinary course of business.

7. The Purchasers HEREBY AGREE with the Vendors that if the Vendors shall at any time before the 31st day of December One Thousand Nine Hundred and Sixty-Five give the Purchasers notice in writing that the Vendors desire to purchase from the Purchasers the shares hereby agreed to be sold to the Purchasers or any of them the Purchasers will on payment to them of the sum of Two Hundred and Fifteen Thousand Nine Hundred and Four Pounds that is at the rate of Two Hundred and Eight Pounds for each share transfer to the Vendors the said shares free from incumb rances.

8. The Purchasers covenant and agree with the Vendors that until the purchase money hereby provided shall have been paid in full to the Vendors the Purchasers will forthwith upon the issue of Share Certificates in the names of the Purchasers and/or their nominees deliver to the Vendors the said Share Certificates and that the Vendors shall be at liberty to hold and retain the said share Certificates as security for the payment of the said purchase money in full. In the event that the Purchasers shall make default in the payment of any instalment of the purchase money on or before the date hereinbefore provided for the payment of such instalment the Vendors shall forthwith be entitled to cancel this Agreement and demand re-transfer of the said shares to them or as they shall direct in which event all payments previously made by the Purchasers hereunder shall be forfeited and retained by the Vendors and this remedy shall be the only remedy available to the Vendors for default hereunder and shall be in substitution for and not in addition to all other remedies at Law or in Equity which may otherwise have been available to them.

9. It is hereby agreed between the parties hereto that the said Derrick Percival Elder, the said Michael Samuel Elder and the said Ian Frederick Elder will continue to be employed to sic the Company on the same terms and conditions as the said Derrick Percival Elder the said Michael Samuel Elder and the said Ian Frederick Elder respectively now are.

10. Each party will bear and pay his own Solicitors' fees but Stamp Duty on transfers of shares will be borne by the Vendors and in the event that the Vendors shall exercise the option contained in clause 7 hereof the Stamp Duty on the transfers of the shares will be borne by the Vendors.

11. The Vendors who between them are the beneficial owners and holders of all the authorised and issued shares in the Company HEREBY WAIVE the pre-emption rights reserved to shareholders under the Articles of Association of the Company and Confirm the sale of all the shares as set out in this Agreement.

12. Communications and notices to the Vendors shall be sent by registered post addressed to the said Derrick Percival Elder on behalf of the Vendors at Serge Island Estate, Saint Thomas, and communications and notices to the Purchasers shall be sent by registered post addressed to the said Frank Leslie Myers on behalf of the Purchasers at No.36 Duke Street, Kingston P.O.

SIGNED by DERRICK PERCIVAL ELDER in the presence of:-) D.P. Elder

D.K. DaCosta

SIGNED by HORACE CLINTON NUNES in the presence of:-) H.C. Nunes

D.K. DaCosta

SIGNED by IAN FREDERICK ELDER in the presence of:-) Ian F. Elder

D.K. DaCosta

SIGNED by AUDREY MADGE ELDER in the presence of:-) A. M. Elder

Olive Dennis

Exhibits

"D"

Agreement for sale of shares in Seaforth Sugar and Rum Limited

(continued)

SIGNED by SHIRLEY ANN PECHT in the presence of:-) (sgd.) S. A. Pecht

(Sgd.) Olive Dennis

SIGNED by CONRAD VICTOR ELDER in the presence of:-) (sgd.) C. V. Elder

(sgd.) D. K. DaCosta

SIGNED by PAULINE VIVIAN ELDER in the presence of:-) (sgd.) P. V. Elder

(sgd.) D. K. DaCosta

SIGNED by MICHAEL SAMUEL ELDER in the presence of:-) (sgd.) M. S. Elder

(sgd.) Sydney B. Spence

SIGNED by FRANK LESLIE MYERS in the presence of:-) (sgd.) Frank L. Myers

(sgd.) Norma Helwig

SIGNED by DOUGLAS VALMORE FLETCHER in the presence of:) (sgd.) D. V. Fletcher

(sgd.) Norma Helwig

SIGNED by WILLIAM SYDNEY KELLY GORDON in the presence of:-) (sgd.) W. S. K. Gordon

(sgd.) Elaine Waite

SIGNED by PATRICK HOPPNER ORLA ROUSSEAU in the presence of:-) (sgd.) P. H. O. Rousseau

(sgd.) Noel ? Levy

SIGNED by ERIC ORLANDO BELL)
in the presence of:-) (sgd.) Eric O. Bell

(sgd.) Ian Phillipson

SIGNED by DARRYL WAYNE)
BRANDON MYERS in the)
presence of:-) (sgd.) Darryl Myers

(sgd.) Ian Phillipson

Exhibits

"D"

Agreement for sale of shares in Seaforth Sugar and Rum Limited

(continued)

EXHIBIT "E" - Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

"E"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

S E A F O R T H S U G A R & R U M L I M I T E D

Transfer of Shares

I DEREK PERCIVAL ELDER in consideration of the sum of TWO HUNDRED THOUSAND FOUR HUNDRED AND THIRTY POUNDS (£200,430) paid to me by Frank Leslie Myers, Douglas Valmore Fletcher, William Sydney Kelly Gordon, Patrick Hoppner Orla Rousseau, Eric Orlando Bell, and Darryl Wayne Brandon Myers all of 36 Duke Street, Kingston, as Trustees of The Seramco Limited Superannuation Fund (hereinafter called "the Transferees") do hereby transfer to the Transferees the shares numbered as set forth in the Schedule hereunder standing in my name in the books of Seaforth Sugar & Rum Limited, to hold unto the Transferees, subject to the several conditions which I held the same immediately before the execution hereof:

And, we the Transferees, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

THE SCHEDULE

Shares Numbered:-

1	-	4
11	-	13
21	-	40
41	-	43
44	-	60

Exhibits

"E"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

(continued)

125 - 224
251
277 - 278
368 - 372
401 - 488
575 - 576
577 - 650
651
653 - 757
868 - 952

In Witness whereof the parties hereto have set their hands this 22nd day of June,

Signed by the said)
) (sgd.) D. P. Elder
in the presence of:-)

(sgd.) Jack Ashenheim

Signed by the said)
) (sgd.) Frank L. Myers
in the presence of:-)

(sgd.) Jack Ashenheim

Signed by the said)
) (sgd.) D. V. Fletcher
in the presence of:-)

(sgd.) Noel D. Levy

Signed by the said)
) (sgd.) W.S.K. Gordon
in the presence of:-)

(sgd.) Noel D. Levy

Signed by the said)
) (sgd.) P. H. O. Rousseau
in the presence of:-)

(sgd.) Jack Ashenheim

Signed by the said)
) (sgd.) Eric O. Bell
in the presence of:-)

(sgd.) Noel D. Levy

Signed by the said)
) (sgd.) Darryl Myers
in the presence of:-)

(sgd.) Jack Ashenheim

This is Transfer of shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "E" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

sgd. Darryl Myers

sgd. W. R. Lawrence
Justice of the Peace
for the Parish of
Kingston.

Exhibits

"E"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

(continued)

EXHIBIT "F" - Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

I Conrad Victor Elder in consideration of the sum of Three Hundred and Ninety Three Pounds paid to me by Frank Leslie Myers (hereinafter called "the Transferee") do hereby transfer to the Transferee the share numbered 652 standing in my name in the books of Seaforth Sugar & Rum Limited, to hold unto the Transferee subject to the several conditions which I held the same immediately before the execution hereof:

"F"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

Exhibits

"F"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

And I, the Transferee, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

In witness whereof the parties hereto have set their hands this 22nd day of June 1964.

Signed by the said

sic in the presence of

(sgd.) Jack Ashenheim

Signed by the said

sic in the presence of

(sgd.) Jack Ashenheim

This is the Transfer of Shares in Seaforth Sugar & Rum Ltd to Trustees of Seramco Ltd. Superannuation Fund marked "F" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

sic Sgd. Darryl

sgd. W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"G"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

EXHIBIT "G" - Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

I Conrad Victor Elder in consideration of the sum of Three Hundred and Ninety Three Pounds paid to me by Darryl Wayne Brandon Myers (hereinafter called "the Transferee") do hereby transfer to the Transferee the share numbered 5 standing in my name in the books of Seaforth Sugar & Rum Limited, to hold unto the Transferee, subject to the several conditions which I held the same immediately before the execution hereof:

Exhibits

"G"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

And I, the Transferee, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

In witness whereof the parties hereto have set their hands this 22nd day of June 1964.

Signed by the said)
)
in the presence of) C. V. Elder
)
(sgd.) Jack Ashenheim)

Signed by the said)
)
in the presence of) Darryl Myers
)
(sgd.) Jack Ashenheim)

This is the Transfer of Shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "G" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

sgd. Darryl Myers

sgd. W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"H"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

EXHIBIT "H" - Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

I Conrad Victor Elder in consideration of the sum of Three Hundred and Ninety Three Pounds paid to me by Patrick Hoppner Orla Rousseau (hereinafter called "the Transferee") do hereby transfer to the Transferee the share numbered 9 standing in my name in the books of Seaforth Sugar & Rum Limited, to hold unto the Transferee, subject to the several conditions which I held the same immediately before the execution hereof:

Exhibits

"H"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

And I, the Transferee, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

In witness whereof the parties hereto have set their hands this 22nd day of June 1964.

Signed by the said)
)
in the presence of) (sgd.) C. V. Elder
)
(sgd.) Jack Ashenheim)

Signed by the said)
)
in the presence of:) (sgd.) P.H.O. Rousseau
)
(sgd.) Jack Ashenheim)

This is the Transfer of shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "H" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

sgd. Darryl Myers

sgd. W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"I"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Sermaco Limited Superannuation Fund

22nd June 1964

EXHIBIT "I" - Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

I CONRAD VICTOR ELDER in consideration of the sum of TWO HUNDRED AND ONE THOUSAND TWO HUNDRED AND SIXTEEN POUNDS (£201,216) paid to me by Frank Leslie Myers, Douglas Valmore Fletcher, William Sydney Kelly Gordon, Patrick Hoppner Orla Rousseau, Eric Orlando Bell and Darryl Wayne Brandon Myers all of 36 Duke Street, Kingston, Trustees of the Seramco Limited Superannuation Fund (hereinafter called "the Transferees") do hereby transfer to the Transferees the shares numbered as Seaforth in the Schedule hereunder standing in my name in

the books of Seaforth Sugar and Rum Limited, to hold unto the Transferees, subject to the several conditions which I held the same immediately before the execution hereof:

And we, the Transferees, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

THE SCHEDULE

Shares Numbered:	14	-	20
	61	-	63
	64	-	92
	93	-	124
	225	-	250
	252	-	276
	280	-	292
	293	-	300
	301	-	349
	352	-	367
	373	-	399
	489	-	500
	501	-	574
	759	-	864
	953	-	1037

In Witness whereof the parties hereto have set their hands this 22nd day of June, 1964.

Signed by the said)
)
in the presence of:) (sgd.) C. V. Elder
)
(sgd.) Richard G.Ashenheim)

Signed by the said)
)
in the presence of:) (sgd.) Frank L. Myers
)
(sgd.) Jack Ashenheim)

Exhibits

"I"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

Signed by the said)
)
in the presence of:) (sgd.) D. V. Fletcher
)
(sgd.) Noel D. Levy)

Signed by the said)
)
in the presence of:) (sgd.) W.S.K. Gordon
)
(sgd.) Noel D. Levy)

Signed by the said)
)
in the presence of) (sgd.) P.H.O. Rousseau
)
(sgd.) Jack Ashenheim)

Signed by the said) 10
)
in the presence of) (sgd.) Eric O. Bell
)
(sgd.) Noel D. Levy)

Signed by the said)
)
in the presence of) (sgd.) Darryl Myers
)
(sgd.) Jack Ashenheim)

This is the Transfer of Shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "I" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me: 20

sgd. Darryl Myers

sgd. W. R. Lawrence
Justice of the Peace for
the Parish of Kingston

EXHIBIT "J" - Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

Exhibits

"J"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

I Audrey Madge Elder in consideration of the sum of One Thousand Nine Hundred and Sixty Five Pounds (£1,965) paid to me by Frank Leslie Myers, Douglas Valmore Fletcher, William Sydney Kelly Gordon, Patrick Hoppner Orla Rousseau, Eric Orlando Bell, and Darryl Wayne Brandon Myers all of 36 Duke Street, Kingston, as Trustees of the Seramco Limited Superannuation Fund (hereinafter called "the Transferees") do hereby transfer to the Transferees the shares numbered 8, 279, 400, 865, 1038, hereto standing in my name in the books of Seaforth Sugar & Rum Limited, to hold unto the Transferees, subject to the several conditions which I held the same immediately before the execution hereof:

And we, the Transferees, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

In Witness whereof the parties hereto have set their hands this 22nd day of June, 1964.

Signed by the said)
)
in the presence of) (sgd.) A. M. Elder
)
(sgd.) Olive Dennis)

Signed by the said)
)
in the presence of) (sgd.) Frank L. Myers
)
(sgd.) Jack Ashenheim)

Signed by the said)
)
in the presence of) (sgd.) D. V. Fletcher
)
(sgd.) Noel D. Levy)

Exhibits

"J"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

Signed by the said)
in the presence of) (sgd.) W. S. K. Gordon
(sgd.) Noel D. Levy)

Signed by the said)
in the presence of) (sgd.) P. H. Rousseau
(sgd.) Jack Ashenheim)

Signed by the said)
in the presence of) (sgd.) Eric O. Bell
(sgd.) Noel D. Levy)

Signed by the said)
in the presence of) (sgd.) Darryl Myers
(sgd.) Jack Ashenheim)

This is the Transfer of Shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "J" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"K"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund 22nd June 1964

EXHIBIT "K" - Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

I Pauline Vivian Elder in consideration of the sum of Three Hundred and Ninety Three Pounds (£393) paid to me by Frank Leslie Myers, Douglas

Exhibits

"K"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

Valmore Fletcher, William Sydney Kelly Gordon, Patrick Hoppner Orla Rousseau, Eric Orlando Bell, and Darryl Wayne Brandon Myers all of 36 Duke Street, Kingston, as Trustees of the Seramco Limited Superannuation Fund (hereinafter called "the Transferees") do hereby transfer to the Transferees the share numbered 10 hereto standing in my name in the books of Seaforth Sugar & Rum Limited, to hold unto the Transferees, subject to the several conditions which I held the same immediately before the execution hereof:

And we, the Transferees, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

In Witness whereof the parties hereto have set their hands this 22nd day of June, 1964.

Signed by the said)
)
in the presence of) (sgd.) P. V. Elder
Witness)
(sgd.) Jack Ashenheim)

Signed by the said)
)
in the presence of) (sgd.) Frank L. Myers
)
(sgd.) Jack Ashenheim)

Signed by the said)
)
in the presence of) (sgd.) D. V. Fletcher
)
(sgd.) Noel D. Levy)

Signed by the said)
)
in the presence of) (sgd.) W.S.K. Gordon
)
(sgd.) Noel D. Levy)

Exhibits

"K"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

Signed by the said)
in the presence of) (sgd.) P.H.O. Rousseau
(sgd.) Jack Ashenheim)

Signed by the said)
in the presence of) (sgd.) Eric O. Bell
(sgd.) Noel D. Levy)

Signed by the said)
in the presence of) (sgd.) Darryl Myers
(sgd.) Jack Ashenheim)

This is the Transfer of Shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "K" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"L"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

EXHIBIT "L" - Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

I Horace Clinton Nunes in consideration of the sum of Three Hundred and Ninety Three Pounds (£393) paid to me by Frank Leslie Myers, Douglas Valmore Fletcher, William Sydney Kelly Gordon, Patrick Hoppner Orla Rousseau, Eric Orlando Bell, and DarrylWayne Brandon Myers all of 36 Duke Street, Kingston, as Trustees of Seramco Limited Superannuation Fund (hereinafter called "the Transferees") do hereby transfer to the Transferees the share numbered 7 hereto standing in my name in

the books of Seaforth Sugar & Rum Limited, to hold unto the Transferees, subject to the several conditions which I held the same immediately before the execution hereof:

And we, the Transferees, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

In Witness whereof the parties hereto have set their hands this 22nd day of June, 1964.

Signed by the said)
)
in the presence of) (sgd.) H. C. Nunes
)
(sgd.) Caswell Harry)

Signed by the said)
)
in the presence of) (sgd.) Frank L. Myers
)
(sgd.) Jack Ashenheim)

Signed by the said)
)
in the presence of) (sgd.) D. V. Fletcher
)
(sgd.) Noel D. Levy)

Signed by the said)
)
in the presence of) (sgd.) W.S.K. Gordon
)
(sgd.) Noel D. Levy)

Signed by the said)
)
in the presence of) (sgd.) P.H.O. Rousseau
)
(sgd.) Jack Ashenheim)

Signed by the said)
)
in the presence of) (sgd.) Eric O. Bell
)
(sgd.) Noel D. Levy)

Exhibits

"L"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

Signed by the said)
)
in the presence of) (sgd.) Darryl Myers
)
(sgd.) Jack Ashenheim)

This is the Transfer of Shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "L" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers (sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"M"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

EXHIBIT "M" - Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

I Ian Frederick Elder in consideration of the sum of Three Hundred and Ninety Three Pounds (£393) paid to me by Frank Leslie Myers, Douglas Valmore Fletcher, William Sydney Kelly Gordon, Patrick Hoppner Orla Rousseau, Eric Orlando Bell, and Darryl Wayne Brandon Myers all of 36 Duke Street, Kingston, as Trustees of the Seramco Limited Superannuation Fund (hereinafter called "the Transferees") do hereby transfer to the Transferees the share numbered 351 hereto standing in my name in the books of Seaforth Sugar & Rum Limited, to hold unto the Transferees, subject to the several conditions which I held the same immediately before the execution hereof:-

And we, the Transferees, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

In Witness whereof the parties hereto have set their hands this 22nd day of June, 1964.

Signed by the said)
)
in the presence of) (sgd.) Ian F. Elder
)
(sgd.) D. K. DaCosta)

Exhibits

"M"

Transfer of Shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

Signed by the said)
in the presence of) (sgd.) Frank L. Myers
(sgd.) Jack Ashenheim)

Signed by the said)
in the presence of) (sgd.) D. V. Fletcher
(sgd.) Noel D. Levy)

Signed by the said)
in the presence of) (sgd.) W.S.K. Gordon
(sgd.) Noel D. Levy)

Signed by the said)
in the presence of) (sgd.) P.H.O. Rousseau
(sgd.) Jack Ashenheim)

Signed by the said)
in the presence of) (sgd.) Eric O. Bell
(sgd.) Noel D. Levy)

Signed by the said)
in the presence of) (sgd.) Darryl Myers
(sgd.) Jack Ashenheim)

This is the Transfer of Shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "M" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

Exhibits

"N"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

EXHIBIT "N" - Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

I Shirley Ann Pecht in consideration of the sum of Three Hundred and Ninety Three Pounds paid to me by Frank Leslie Myers, Douglas Valmore Fletcher, William Sydney Kelly Gordon, Patrick Hoppner Orla Rousseau, Eric Orlando Bell, and Darryl Wayne Brandon Myers all of 36 Duke Street, Kingston, as Trustees of the Seramco Limited Superannuation Fund (hereinafter called "the Trustees") do hereby transfer to the Transferees the share numbered 350 hereto standing in my name in the books of Seaforth Sugar & Rum Limited, to hold unto the Transferees, subject to the several conditions which I held the same immediately before the execution hereof:

sic

And we, the Transferees, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

In Witness whereof the parties hereto have set their hands this 22nd day of June, 1964.

Signed by the said)
)
in the presence of) (sgd.) S. A. Pecht
Witness: Olive Dennis)

Signed by the said)
)
in the presence of) (sgd.) Frank L. Myers
)
(sgd.) Jack Ashenheim)

Signed by the said)
)
in the presence of) (sgd.) D. V. Fletcher
)
(sgd.) Noel D. Levy)

Signed by the said)
)
in the presence of) (sgd.) W.S.K. Gordon
)
(sgd.) Noel D. Levy)

Signed by the said)
)
in the presence of) (sgd.) P.H.O. Rousseau
)
(sgd.) Jack Ashenheim)

Signed by the said)
)
in the presence of) (sgd.) Eric O. Bell
)
(sgd.) Noel D. Levy)

Signed by the said)
)
in the presence of) (sgd.) Darryl Myers
)
(sgd.) Jack Ashenheim)

This is the Transfer of Shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "N" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers (sgd.) W. R. Lawrence
Justice of the Peace for
the Parish of Kingston.

Exhibits

"N"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

EXHIBIT "O" - Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

"O"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964

SEAFORTH SUGAR & RUM LIMITED

Transfer of Shares

We Conrad Victor Elder and Derek Percival Elder in consideration of the sum of Three Hundred and Ninety Three Pounds (£393) paid to me by Frank Leslie Myers, Douglas Valmore Fletcher, William

Exhibits

"O"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

Sydney Kelly Gordon, Patrick Hoppner Orla Rousseau, Eric Orlando Bell, and Darryl Wayne Brandon Myers, all of 36 Duke Street, Kingston, as Trustees of the Seramco Limited Superannuation Fund (hereinafter called "the Transferees") do hereby transfer to the Transferees the share numbered as set forth in the Schedule attached hereto standing in our names in the books of Seaforth Sugar & Rum Limited, to hold unto the Transferees, subject to the several conditions which we held the same immediately before the execution hereof:

And we, the Transferees, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

In Witness whereof the parties hereto have set their hands this 22nd day of June 1964.

Signed by the said)
) (Sgd.) D.P. Elder
in the presence of) C.V. Elder
Witness: L. Wong)

Signed by the said)
) (sgd.) Frank L. Myers
in the presence of)
(sgd.) Jack Ashenheim)

Signed by the said)
) (sgd.) D.V. Fletcher
in the presence of)
(sgd.) Noel D. Levy)

Signed by the said)
) (sgd.) W.S.K. Gordon
in the presence of)
(sgd.) Noel D. Levy)

Signed by the said)
))sgd.) P.H.O. Rousseau
in the presence of)
(sgd.) Jack Ashenheim)

Signed by the said)
) (sgd.) Eric O. Bell
in the presence of)
(sgd.) Noel D. Levy)

Signed by the said)
) (sgd.) Darryl Myers
in the presence of)
(sgd.) Jack Ashenheim)

This is the Transfer of Shares in Seaforth Sugar & Rum Ltd. to Trustees of Seramco Ltd. Superannuation Fund marked "O" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston

Exhibits

"O"

Transfer of shares in Seaforth Sugar and Rum Limited to Trustees of Seramco Limited Superannuation Fund

22nd June 1964 (continued)

EXHIBIT "P" - Minutes of Directors Meeting of Seaforth Sugar and Rum Limited

"P"

Minutes of Directors Meeting of Seaforth Sugar and Rum Limited held 23rd June 1964

24th July 1964

Minutes of a Directors Meeting of Seaforth Sugar & Rum Ltd. held at the Offices of Price Waterhouse & Co., 22/24 Duke Street, Kingston on the 23rd day of June, 1964.

At a Director's Meeting of Seaforth Sugar & Rum Ltd. held at 22/24 Duke Street, Kingston, on the 23rd day of June 1964 at 10.00 a.m. there were present:-

D.P. Elder	Chairman
C.V. Elder	
M.S. Elder	

In attendance

D.K. DaCosta	Secretary
R.G. Ashenheim	
J.?. Ashenheim	
F.L. Myers	
D.W.B. Myers	
P.H.O. Rousseau	
H.C. Nunes	

The Notice covering the Meeting was taken as read.

Exhibits

"P"

Minutes of Directors Meeting of Seaforth Sugar and Rum Limited held 23rd June 1964

24th July 1964 (continued)

The Secretary read the Minutes of the previous Meeting and they were confirmed.

The Chairman presented apologies from Mrs. A.M. Elder of not being able to attend the Meeting.

The Secretary presented to the Meeting Share Transfer pursuant to an Agreement dated the 22nd day of June 1964 as follows:-

D.P. Elder to D.V. Fletcher, F.L. Myers, W.S.K. Gordon, P.H.O. Rousseau, E.O. Bell and D.W.B. Myers of 510 shares numbered 1-4, 11-13, 21-40, 41-43, 44-60, 125-224, 251, 277-278, 368-372, 401-488, 575-576, 577-650, 651, 653-757, 868-952.

C.V. Elder to F.L. Myers One share numbered 652.

C.V. Elder to D.W.B. Myers One share numbered 5.

C.V. Elder to P.H.O. Rousseau One Share numbered 9.

C.V. Elder to D.V. Fletcher, F.L. Myers, W.S.K. Gordon, P.H.O. Rousseau, E.O. Bell and Dr. W.B. Myers of 512 Shares numbered 14-20, 61-63, 64-92, 93-124, 225-250, 252-276, 280-292, 293-300, 301-349, 352-367, 373-399, 489-500, 501-574, 759-864, 953-1037.

sic

Mrs. A.M. Elder to D.V. Fletcher, F.L. Myers, W.S.K. Gordon, P.H.O. Rousseau, E.O. Bell and D.W.B. Myers of 5 Shares numbered 8, 279, 865, 1038.

Mrs. P.V. Elder to D.V. Fletcher, F.L. Myers, W.S.K. Gordon, P.H.O. Rousseau, E.O. Bell and D.W.B. Myers of One Share numbered 10.

H.C. Nunes to D.V. Fletcher, F.L. Myers, W.S.K. Gordon, P.H.O. Rousseau, E.O. Bell and D.W.B. Myers of One Share numbered 7.

I.F. Elder to D.V. Fletcher, F.L. Myers, W.S.K. Gordon, P.H.O. Rousseau, E.O. Bell and D.W.B. Myers of One Share numbered 351.

Exhibits
"P"
Minutes of Directors Meeting of Seaforth Sugar and Rum Limited held 23rd June 1964
24th July 1964 (continued)

Mrs. S. Pecht to D.V. Fletcher, F.L. Myers, W.S.K. Gordon, P.H.O. Rousseau, E.O. Bell and D.W.B. Myers of One Share numbered 350.

D.P. and C.V. Elder to D.V. Fletcher, F.L. Myers, W.S.K. Gordon, P.H.O. Rousseau, E.O. Bell and D.W.B. Myers of One Share numbered 867.

It was resolved that the Transfers be approved and the Secretary was instructed to make the necessary entries in the Share Register of the Company and to issue the necessary Share Certificates.

Mr. F.L. Myers handed to the Secretary a letter addressed to the Company signed by the holders of at least one half of the issued shares of the Company's Capital removing Mr. D.P. Elder as Permanent Director of the Company. Mr. D.P. Elder than vacated the chair. Mr. F.D. Myers then produced another letter addressed to the Secretary signed by the holders of at least one-third of the issued Shares in the Capital of the Company appointing Mr. F.L. Myers as Permanent Director of the Company. Attached to this letter was a letter signed by Mr. F.L. Myers consenting so to act. The Secretary was instructed to record these letters in the Minute Book of the Company and Mr. F.L. Myers took the Chairman's seat. Mr.F.L. Myers thanked Mr. D.P. Elder for his services to the Company. Mr. F.L. Myers then produced another letter to the Company signed by him in his capacity as Permanent Director of the Company removing Mrs. A.M. Elder as a Director of the Company and appointing as Directors in addition to the continuing Directors Mr. C.V. Elder and Mr.Michael S. Elder, the following:-

Dr. D.P. Elder, Mr. P.H.O.Rousseau and Mr. D.W.B. Myers.

The above gentlemen then took their seats as Directors.

The Chairman then explained to the Board that it was necessary to fix a date for the Annual General Meeting of the Company and that any recommendation to that meeting of a dividend to be paid to the Shareholders should now be decided. The Secretary produced the audited accounts of the Company for the year ended 30th September 1963 and

Exhibits

"P"

Minutes of Directors Meeting of Seaforth Sugar and Rum Limited held 23rd June 1964

24th July 1964 (continued)

these were approved for presentation at the Annual General Meeting with the following exception.

It was proposed by Mr. P.H.O. Rousseau and seconded by Mr. D.W.B. Myers that a dividend of 48½% Gross be paid out of the undistributed profits of the Company up to the 30th September, 1963,

Messrs. D.P. Elder, C.V. Elder and M.S. Elder all opposed this proposal on the grounds that the Company should retain all of its undistributed profits for expansion and, because as an agricultural business fluctuations of profits were common and that, therefore, considerable reserves were necessary. The price of sugar on the World Market having recently dropped substantiates their opposition.

The voting on this resolution being 3 for and 3 against, the Chairman was called upon to exercise his casting vote and did so in favour of the resolution which was therefore carried. Messrs. D.P. Elder, C.V. Elder and M.S. Elder required the Secretary to note their dissenting votes.

The Secretary was instructed to personally deliver notices for the Annual General Meeting to be held on the 1st day of July 1964 at 36 Duke Street, Kingston.

There being no further business the Meeting was then adjourned.

sgd. Frank L. Myers

Chairman.
24/7/1964.

This is the Minutes of Directors' Meeting of Seaforth Sugar & Rum Ltd. dated 23rd June 1964 marked "P" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers sworn to on the 3rd day of May 1967, before me:

(sgd.) Darryl Myers (sgd.) W.R. Lawrence
Justice of the Peace
for the Parish of
Kingston.

EXHIBIT "Q" - Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

Exhibits

"Q"

Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

23rd June 1964

Share Certificate

No. 18

SEAFORTH SUGAR & RUM LTD.

SHARES OF TWO HUNDRED POUNDS EACH

THIS IS TO CERTIFY that Frank Leslie Myers, Douglas Valmore Fletcher, William Sydney Kelly Gordon, Patrick Hoppner Orla Rousseau, Eric OrlandoBell and Darryl Wayne Brandon Myers as Trustees of the Seramco Ltd. Superannuation Fund of 36 Duke Street, Kingston is holder of One Thousand & Thirty Two Shares Numbered as detailed overleaf hereof inclusive in SEAFORTH SUGAR & RUM LTD. subject to the Provisions of the Memorandum and Articles of Association of the said Company, and that the sum of TWO HUNDRED POUNDS has been fully paid in respect of each of the above-mentioned Shares.

Given under the common Seal of SEAFORTH SUGAR & RUM LTD. at Morant Bay, Ja., this 23rd day of June 1964.

COUNTERSIGNED

(sgd.) D.K. DaCosta
SECRETARY

sgd. Frank L. Myers)
sgd. Darryl Myers)Directors

This is the Share Certificate relating to shares in Seaforth Sugar & Rum Ltd. issued to the Trustees of the Seramco Ltd. Superannuation Fund marked "Q" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

Sgd. Darryl Myers sgd. W.R. Lawrence, J.P.

Exhibits

"R"

Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

23rd June 1964

EXHIBIT "R" - Share Certificate relating to Shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

Share Certificate

No. 17

SEAFORTH SUGAR & RUM LTD.

SHARES OF TWO HUNDRED POUNDS EACH

THIS IS TO CERTIFY that Patrick Hoppner Orla Rousseau of 36 Duke Street, Kingston is holder of One Share Numbered 9 to - inclusive in SEAFORTH SUGAR & RUM LTD. subject to the Provisions of the Memorandum and Articles of Association of the said Company, and that the sum of TWO HUNDRED POUNDS has been fully paid in respect of each of the above-mentioned Shares.

Given under the common Seal of SEAFORTH SUGAR & RUM LTD. at Morant Bay, Ja., this 23rd day of June 1964.

COUNTERSIGNED sgd. Frank L. Myers) Directors
sgd. Darryl Myers)

D.K. DaCosta
SECRETARY

This is the Share Certificate relating to shares in Seaforth Sugar & Rum Ltd. to the Trustees of the Seramco Ltd. Superannuation Fund marked "R" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

EXHIBIT "S" - Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

Exhibits

"S"

Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

23rd June 1964

Share Certificate

No. 16

SEAFORTH SUGAR & RUM LTD.

SHARES OF TWO HUNDRED POUNDS EACH

THIS IS TO CERTIFY that Darryl Wayne Brandon Myers of 36 Duke Street, Kingston is holder of One Share Numbered 5 to - inclusive in SEAFORTH SUGAR & RUM LTD. subject to the Provisions of the Memorandum and Articles of Association of the said Company, and that the sum of TWO HUNDRED POUNDS has been fully paid in respect of each of the above-mentioned Shares.

Given under the common Seal of SEAFORTH SUGAR & RUM LTD. at Morant Bay, Ja., this 23rd day of June 1964.

sgd. Frank L. Myers)
)DIRECTORS
sgd. Darryl Myers)

COUNTERSIGNED

sgd. D.K. DaCosta
SECRETARY

This is the Share Certificate relating to shares in Seaforth Sugar & Rum Ltd. issued to the Trustees of the Seramco Ltd. Superannuation Fund marked "S" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

Exhibits

"T"

Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

23rd June 1964

EXHIBIT "T" - Share Certificate in Seaforth Sugar and Rum Limited issued to Trustees of Seramco Limited Superannuation Fund

Share Certificate

No. 15

SEAFORTH SUGAR & RUM LTD.

SHARES OF TWO HUNDRED POUNDS EACH

THIS IS TO CERTIFY that Frank Leslie Myers of 36 Duke Street, Kingston is holder of One Share Numbered 652 to - inclusive in SEAFORTH SUGAR & RUM LTD. subject to the Provisions of the Memorandum and Articles of Association of the said Company, and that the sum of TWO HUNDRED POUNDS has been fully paid in respect of each of the above-mentioned Shares.

Given under the common Seal of SEAFORTH SUGAR & RUM LTD. at Morant Bay, Ja., this 23rd day of June 1964.

sgd. Frank L. Myers)
) DIRECTORS
Darryl Myers)

COUNTERSIGNED

(sgd.) D.K. DaCosta
SECRETARY

This is the Share Certificate relating to shares in Seaforth Sugar & Rum Ltd. issued to the Trustees of the Seramco Ltd. Superannuation Fund marked "T" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(Sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

EXHIBIT "U" - Share Certificate relating to shares in Seaforth Sugar & Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

Exhibits

"U"

Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

8th December 1964

Share Certificate

No. 2

SEAFORTH SUGAR & RUM LTD.

SHARES OF TWO HUNDRED POUNDS EACH

THIS IS TO CERTIFY that Michael S. Elder of Serge Island, Seaforth, Jamaica is holder of One Share Numbered 758 to - inclusive in SEAFORTH SUGAR & RUM LTD. subject to the Provisions of the Memorandum and Articles of Association of the said Company, and that the sum of TWO HUNDRED POUNDS has been fully paid in respect of each of the above-mentioned Shares.

Given under the common Seal of SEAFORTH SUGAR & RUM LTD. at Morant Bay, Ja., this 8th day of December 1954 sic

sgd. D.P. Elder)
COUNTERSIGNED)DIRECTORS
sgd. ?.?. Elder)

(sgd.) G. G. Liddle
SECRETARY

This is the Share Certificate relating to shares in Seaforth Sugar & Rum Ltd. issued to the Trustees of the Seramco Ltd. Superannuation Fund marked "U" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

Exhibits

"V"

Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

23rd June 1964

EXHIBIT "V" - Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

Share Certificate

No. 13

SEAFORTH SUGAR & RUM LTD.

SHARES OF TWO HUNDRED POUNDS EACH

THIS IS TO CERTIFY that Conrad Victor Elder of Ebony Glades, Kingston is holder of One Share Numbered 866 to - inclusive in SEAFORTH SUGAR & RUM LTD. subject to the Provisions of the Memorandum and Articles of Association of the said Company, and that the sum of TWO HUNDRED POUNDS has been fully paid in respect of each of the above-mentioned Shares.

Given under the common Seal of SEAFORTH SUGAR & RUM LTD. at Morant Bay, Ja., this 23rd day of June, 1964.

(sgd.) Frank L. Myers)
COUNTERSIGNED)DIRECTORS
(sgd.) Darryl Myers)

(sgd.) D.K. DaCosta
SECRETARY

This is the Share Certificate relating to Shares in Seaforth Sugar & Rum Ltd. issued to the Trustees of the Seramco Ltd. Superannuation Fund marked "V" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

EXHIBIT "W" - Share Certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

Exhibits

"W"

Share certificate relating to shares in Seaforth Sugar and Rum Limited issued to the Trustees of Seramco Limited Superannuation Fund

23rd June 1964

Share Certificate

No. 14

SEAFORTH SUGAR & RUM LTD.

SHARES OF TWO HUNDRED POUNDS EACH

THIS IS TO CERTIFY that Derrick Percival Elder of Serge Island, Seaforth is holder of One Share Numbered 6 to - inclusive in SEAFORTH SUGAR & RUM LTD. subject to the Provisions of the Memorandum and Articles of Association of the said Company, and that the sum of TWO HUNDRED POUNDS has been fully paid in respect of each of the above-mentioned Shares.

Given under the common Seal of SEAFORTH SUGAR & RUM LTD. of Morant Bay, Ja., this 23rd day of June 1964.

C A N C E L L E D

(sgd.) Frank L.Myers)
) DIRECTORS
Darryl Myers)

COUNTERSIGNED

(sgd.) D. K. DaCosta

SECRETARY

This is the Share Certificate relating to shares in Seaforth Sugar & Rum Ltd. issued to the Trustees of the Seramco Ltd. Superannuation Fund marked "W" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(Sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

Exhibits

"X"

Letter to Secretary, Seaforth Sugar and Rum Limited re removal of D.P. Elder as Permanent Director

23rd June 1964

EXHIBIT "X" - Letter to Secretary, Seaforth Sugar and Rum Limited re removal of D.P. Elder as Permanent Director

MYERS, FLETCHER & GORDON
Solicitors & Notaries Public

P.O. Box 162
36 Duke Street,
Kingston, Jamaica

23rd June, 1964

Secretary,
Seaforth Sugar & Rum Ltd.,
Seaforth P.O.

Dear Sir,

We the undersigned being the holders of at least one-half of the issued Shares of the Company's Capital, do hereby remove from the office of Permanent Director, Mr. D.P. Elder.

Yours faithfully,

FLM:FG

sgd. Frank L. Myers
sgd. Darryl Myers
sgd. W.S.K. Gordon
sgd. P.H.O. Rousseau
sgd. Eric O. Bell
sgd. Douglas Fletcher

This is the letter dated 23rd June 1964 to Secretary, Seaforth Sugar & Rum Ltd. re removal of D.P. Elder as Permanent Director marked "X" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Sworn to on the 3rd day of May 1967 before me:

Sic

(sgd.) Darryl Myers (sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

EXHIBIT "Y" - Letter appointing F.L. Myers Permanent Director of Seaforth Sugar and Rum Limited

Exhibits

"Y"

Letter appointing F.L. Myers Permanent Director of Seaforth Sugar and Rum Limited

SOLICITORS & NOTARIES PUBLIC

P.O. Box 162,
36 Duke Street,
Kingston,
Jamaica.

23rd June, 1964.

23rd June 1964

Secretary,
Seaforth Sugar & Rum Ltd.,
Seaforth P.O.

Dear Sir,

We the holders of a minimum of one-third of the issued Shares of the Company's Capital, hereby appoint Mr. F.L. Myers to be the Permanent Director of the Company.

Attached hereto is the consent in writing of Mr. F.L. Myers to act.

Yours faithfully,

sgd. Darryl Myers
sgd. Frank L. Myers
sgd. W.S.K. Gordon
sgd. P.H.O. Rousseau
sgd. Eric O. Bell
sgd. Douglas Fletcher

DM:FG

This is the Letter dated 23rd June 1964 appointing F.L. Myers Permanent Director of Seaforth Sugar & Rum Ltd. marked "Y" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

sgd. Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for
the Parish of Kingston.

Exhibits

"Z"

Consent of F.L. Myers to act as Permanent Director of Seaforth Sugar and Rum Limited

23rd June 1964

EXHIBIT "Z" - Consent of F. L. Myers to act as Permanent Director of Seaforth Sugar and Rum Limited

SOLICITORS & NOTARIES PUBLIC

P.O. Box 162
36 Duke Street,
Kingston, Jamaica.

23rd June 1964.

Secretary,
Seaforth Sugar & Rum Ltd.,
Seaforth P.O.

Dear Sir,

Having been requested by the holders of at least one-third of the issued Share Capital of the Company to act as Permanent Director, I hereby consent so to act.

Yours faithfully,

FLM:FG

sgd. Frank L. Myers

This is the Consent dated 23rd June 1964 of F. L. Myers to act as Permanent Director of Seaforth Sugar & Rum Ltd. marked "Z" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

sgd. Darryl Myers

sgd. W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"AA"

Letter removing Mrs.A.M.Elder as Director and appointing new Directors of Seaforth Sugar and Rum Limited

23rd June 1964

EXHIBIT "AA" - Letter removing Mrs. A.M.Elder as Director and appointing new Directors of Seaforth Sugar and Rum Limited

23rd June, 1964.

Secretary,
Seaforth Sugar & Rum Ltd.,
Seaforth P.O.

Dear Sir,

As Permanent Director of Seaforth Sugar & Rum Ltd., I hereby remove from the office of Director, Mrs. A. M. Elder.

I also appoint as Directors of the Company to act along with the continuing Directors, Messrs. C.V. Elder and M.S. Elder, the following:-

Messrs. D.P. Elder
P.H.O. Rousseau and
D.W.B. Myers.

Yours faithfully,

sgd. Frank L. Myers

FLM: FG

Exhibits

"AA"

Letter removing Mrs.A.M.Elder as Director and appointing new Directors of Seaforth Sugar and Rum Limited

23rd June 1964

This is the letter removing Mrs. A.M. Elder as Director and appointing new Directors of Seaforth Sugar & Rum Ltd. marked "AA" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(Sgd.) Darryl Myers (Sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

EXHIBIT "BB" - Letter, Myers, Fletcher & Gordon to Commissioner of Income Tax

"BB"

Letter, Myers, Fletcher & Gordon to Commissioners of Income Tax

23rd June 1964

23rd June, 1964.

The Commissioner of Income Tax,
Kingston.

Dear Sir,

Re: Seramco Limited Superannuation Fund-Dividend from Seaforth Sugar and Rum Limited

The Seramco Limited Superannuation Fund is an approved fund under the Income Tax Law 1954 and approval was granted by letter dated 8th January, 1964 from you with effect from 1st January, 1964.

The Trustees of the fund have purchased shares in Seaforth Sugar & Rum Limited. The first proviso to section 21(1) enables the Commissioner to "authorise payment of a dividend without deduction of tax where he is satisfied that the shareholders are not liable to tax". Since the income of the fund is not liable to income tax we would be most grateful if you would give the Seaforth Sugar & Rum Limited your authority in writing to pay any dividend due in respect of shares owned by the fund without deduction of tax and to allow the amount

Exhibits

"BB"

Letter, Myers, Fletcher & Gordon to Commissioner of Income Tax

23rd June 1964

(continued)

which would otherwise have been deducted as a credit to the Company in respect of its own income tax liability.

We would greatly appreciate your giving this matter your immediate attention.

Yours faithfully,

sgd. MYERS FLETCHER & GORDON

PER:

DM:GW

This is the Letter dated 23rd June 1964 from Myers, Fletcher & Gordon to the Commissioner of Income Tax marked "BB" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers (sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"CC"

Letter, Commissioner of Income Tax to Seaforth Sugar and Rum Limited

25th June 1964

EXHIBIT "CC" - Letter, Commissioner of Income Tax to Seaforth Sugar and Rum Limited

INCOME TAX DEPARTMENT,
JAMAICA
25th June, 1964.

Dear Sir,

Re: Seramco Limited Superannuation Fund

You are hereby authorised to make payment of dividends to the Trustees of The Seramco Limited Superannuation Fund without deduction of Income Tax.

Yours faithfully,

(sgd.) C. C. Jones

Commissioner of Income Tax.

The Secretary,
Seaforth Sugar & Rum Ltd.,
MORANT BAY.

Exhibits

"CC"

Letter, Commissioner of Income Tax to Seaforth Sugar and Rum Limited

25th June 1964 (continued)

This is the Letter dated 25th June 1964 from the Commissioner of Income Tax to Seaforth Sugar & Rum Ltd. marked "CC" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers (sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"DD"

Minutes of Annual General Meeting of Seaforth Sugar and Rum Limited held 1st July 1964

28th December 1964

EXHIBIT "DD" - Minutes of Annual General Meeting of Seaforth Sugar and Rum Limited

Minutes of the 29th Annual General Meeting of Seaforth Sugar & Rum Ltd.

At the 29th Annual General Meeting of Seaforth Sugar & Rum Ltd. held at 36 Duke Street, Kingston on the 1st day of July, 1964 at 10.30 a.m. there were present:-

F.L. Myers	Permanent Director in the Chair
D.W.B. Myers	Director
P.H.O. Rousseau	do
C.V. Elder	do
D.P. Elder	do
M.S. Elder	do
D.K. DaCosta	Secretary
H.C. Nunes	Auditor

The Notice convening the Meeting was read.

The Minutes of the last Annual General Meeting were read by the Secretary and approved and signed as confirmed by the Chairman.

The following Resolutions were passed:-

(a) That the Balance Sheet and Profit & Loss Account for the year ended 30th September 1963 and the Report of the Auditors be adopted.

(b) That Messrs. Price Waterhouse & Co. be re-appointed Auditors for the year ending 30th September 1964 at a remuneratim to be agreed

Exhibits

"DD"

Minutes of Annual General Meeting of Seaforth Sugar and Rum Limited held 1st July 1964

28th December 1964

(continued)

with the Directors.

(c) That the Directors having recommended a Dividend of 48½% Gross that this recommendation be adopted and that the Company declare a final dividend of 48½% out of the undistributed profits out of which tax has been paid or is presently to be paid after deduction of Income Tax except where otherwise directed by the Commissioner of Income Tax to all Shareholders appearing on the list as at the 1st July, 1964.

There being no other business the meeting then adjourned.

Confirmed.

(sgd.) Frank L. Myers
Chairman.

28/12/1964.

This is the Minutes of Annual General Meeting of Seaforth Sugar & Rum Ltd. held on 1st July 1964 marked "DD" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers (sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"EE"

Letter, Seaforth Sugar and Rum Limited to Commissioner of Income Tax

2nd July 1964

EXHIBIT "EE" - Letter, Seaforth Sugar and Rum Limited to Commissioner of Income Tax

2nd July 1964

Commissioner of Income Tax,
KINGSTON.

Dear Sir,

Consequent on the authority given in your letter of the 25th June, 1964, to make payment of dividends to the Trustees of the Seamco Limited Superannuation Fund without the deduction of Income Tax, dividends in the sum of £100,686 has

Exhibits

"EE"

Letter, Seaforth Sugar and Rum Limited to Commissioner of Income Tax

2nd July 1964 (continued)

been paid to them.

Would you therefore credit our 1964 Assessment with the amount of £37757. 5. -. being the amount that would have been deductible from these dividends and we shall appreciate it if you will advise the Collector of Taxes, Morant Bay, accordingly.

Yours faithfully,

(Sgd.) D. K. DaCosta

DKDaC:ss Secretary.

This is Letter dated 2nd July 1964 from Seaforth Sugar & Rum Ltd. to the Commissioner of Income Tax marked "EE" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers (sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"FF"

Minutes of Directors' Meeting of Seaforth Sugar and Rum Limited

24th July 1964

EXHIBIT "FF" - Minutes of Directors' Meeting of Seaforth Sugar and Rum Limited

Minutes of Directors' Meeting held at the office of R. Ehrenstein & Co. Ltd., 19/21 Harbour Street, Kingston on Friday the 24th July 1964 at 10.30 a.m.

Present:	F. L. Myers	Chairman
	C. V. Elder	
	P.H.O.Rousseau	

In the absence of the Secretary the Chairman undertook to give him instructions to enable him to write the minutes of this meeting.

1965 Crop Lien - £984270. 0. 0.

RESOLVED: That this Company be and is hereby authorised to borrow from Barclays Bank D.C.O. the sum of Nine Hundred & Eighty Four Thousand Two Hundred and Seventy Pounds (£984270) being in addition to moneys owing or payable under charges under the Agricultural Loans bearing the

Exhibits

"FF"

Minutes of Directors' Meeting of Seaforth Sugar and Rum Limited

24th July 1964

(continued)

date of 29th May, 1963 for Seven hundred and Eighty Four Thousand Six Hundred and twenty Eight pounds (£784628. 0. 0.) under and subject to the Agricultural Loans Law Chapter 4 of the Revised Laws of Jamaica, and that the Secretary be directed to enter the charges forthwith in the Company's Register of Mortgages.

Confirmed.

Sgd. Frank L. Myers
Chairman

11/12/64.

This is the Minutes of Directors' Meeting of Seaforth Sugar & Rum Ltd. of 24th July 1964 marked "FF" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers (sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"GG"

Letter from Commissioner of Income Tax to Seaforth Sugar and Rum Limited

28th July 1964

EXHIBIT "GG" - Letter from Commissioner of Income Tax to Seaforth Sugar and Rum Limited

INCOME TAX DEPARTMENT,
JAMAICA. 28th July, 1964.

Dear Sir,

Please be advised that the authority to make payment of dividends to the Trustees of the Seramco Limited Superannuation Fund without deduction of Income Tax contained in this Department's letter to you dated the 25th June, 1964 is hereby revoked.

Yours faithfully,
(sgd.) C. C. Jones
Commissioner of Income Tax.

The Secretary,
Seaforth Sugar & Rum Ltd.,
Serge Island,
SEAFORTH P.O.

Exhibits

"GG"

Letter from Commissioner of Income Tax to Seaforth Sugar and Rum Limited

28th July 1964 (continued)

c.c. Messrs. Myers, Fletcher & Gordon,
P.O. Box 162,
Kingston.

This is the letter dated 28th July 1964 from the Commissioner of Income Tax to Seaforth Sugar & Rum Ltd. marked "GG" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers (sgd.) W. R. Lawrence
Justice of the Peace for the
Parish of Kingston.

"HH"

Minutes of Directors' Meeting of Seaforth Sugar and Rum Limited of 11th December 1964

EXHIBIT "HH" - Minutes of Directors' Meeting of Seaforth Sugar and Rum Limited

MINUTES OF DIRECTORS MEETING OF SEAFORTH SUGAR & RUM LTD. Held at the offices of Price Waterhouse & Co., 22/24 Duke St., Kingston, on the 11th December, 1964, at 10 a.m.

Present - Mr. F.L. Myers - Chairman
sic Mr. D.W.S. Myers
Mr. P.H. Rousseau
Mr. D.P. Elder
Mr. C.V. Elder
Mr. M.S. Elder

In attendance - Mr. D.K. DaCosta - Secretary
Mr. H.C. Nunes - Auditor

The notice convening the Meeting was taken as read.

The Secretary read the Minutes of the previous Meeting and they were confirmed.

The Chairman proposed that it be recommended to the Shareholders that a dividend of £62,280 nett which represents a gross dividend of 48% less tax be paid out of the accumulated profits of the Company up to the 30th September, 1964. This resolution was seconded by Mr. D.W.B. Myers.

Messrs. D.P. Elder, C.V. Elder, and M.S. Elder all opposed this proposal on the grounds that the Company should retain all of its undistributed profits for expansion and because as an agricultural

Exhibits

"HH"

Minutes of Directors' Meeting of Seaforth Sugar & Rum Limited of 11th December 1964

(continued)

business, fluctuations of profits were common and that, therefore considerable reserves were necessary.

The voting on this resolution being 3 for and 3 against, the Chairman was called upon to exercise his casting vote and did so in favour of the resolution which was therefore carried.

The Meeting approved that the above proposed dividend be reflected in the accounts for the year ended 30th September, 1964, and with the amendment the draft accounts were approved for presentation to the Shareholders at the Annual General Meeting.

The Annual General Meeting was fixed for the 28th December 1964 at 10 a.m.

There being no further business the Meeting was then adjourned.

Confirmed.

sgd. Frank L. Myers
Chairman.

This is the Minutes of Directors' Meeting of Seaforth Sugar & Rum Ltd. of 11th December 1964 marked "HH" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd) Darryl Myers (sgd) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

"II"

Minutes of Annual General Meeting of Seaforth Sugar and Rum Limited

28th December 1964

EXHIBIT "II" - Minutes of Annual General Meeting of Seaforth Sugar and Rum Limited

Minutes of the 30th Annual General Meeting of Seaforth Sugar & Rum Ltd. held at 22/24 Duke Street on the 28th December 1964 at 10.30 a.m.

Present - F.L. Myers - Permanent Director in the chair
D.W.B. Myers
P.H.O. Rousseau
C.V. Elder
D.P. Elder

Exhibits

"II"

Minutes of Annual General Meeting of Seaforth Sugar and Rum Limited

28th December 1964 (continued)

M.S. Elder
D.K. DaCosta - Secretary
H.C. Nunes - Auditor

The Notice convening the Meeting was read.

The Minutes of the last Annual General Meeting were read by the Secretary and approved and signed as confirmed by the Chairman.

The following Resolutions were passed:

(a) That the Balance Sheet and Profit & Loss a/c for the year ended 30th September 1964 and the Report of the Auditors be adopted.

(b) That Messrs. Price Waterhouse & Co. be re-appointed Auditors for the year ending 30th September 1965 at a remuneration to be agreed with the Directors.

(c) That the Directors having recommended a dividend of 48% less tax that this recommendation be adopted and that the Company declare a final dividend of 48% less Tax out of the accumulated profits out of which tax has been paid or is presently payable to be paid to all shareholders appearing on the list as at the 28th December, 1964. The Dividends to be paid not later than the 29th December 1964 to all shareholders.

There being no other business the meeting then adjourned.

Confirmed.

This is the Minutes of Annual General Meeting of Seaforth Sugar and Rum Ltd. dated 28th December 1964 marked "II" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd) Darryl Myers

(sgd) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

Exhibits

"JJ"

Letter - Myers, Fletcher & Gordon to Commissioner of Income Tax

5th January 1965

EXHIBIT "JJ" - Letter, Myers, Fletcher & Gordon to Commissioner of Income Tax

A. A. Rattray Ll.B.

5th January, 1965.

The Commissioner of Income Tax,
Income Tax Department,
Kingston.

Dear Sir,

Re: Seramco Limited Superannuation Fund

We act on behalf of the Trustees of the Seramco Limited Superannuation Fund who own all the share-holders in Seaforth Sugar and Rum Limited. The Fund is an approved Fund under the Income Tax Law Chapter 59.

sic

On the 28th of December, 1964 a Dividend of 48% being £99,648. 0. 0. less £37,368. 0. 0. of tax was declared at the Annual General Meeting of the Company and the dividend was paid to the Trustees - shareholders on the 29th December, 1964 less deduction of tax. The Income of the Fund is exempt from income tax and on behalf of our clients we therefore wish to make a re-claim under Section 63 of the Income Tax Law for the amount of £37,368.0.0. being the amount of tax withheld on the dividend. We have not yet received the dividend warrant from the Company but we will forward same to you in support of this claim as soon as we receive the warrant.

Yours faithfully,

(sgd.) MYERS FLETCHER & GORDON

PER:

This is the Letter dated 5th January 1965 from Myers, Fletcher & Gordon to the Commissioner of Income Tax marked "JJ" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for
the Parish of Kingston.

EXHIBIT "KK" - Letter, Myers, Fletcher & Gordon to Commissioner of Income Tax

Exhibits

"KK"

Letter - Myers, Fletcher & Gordon to Commissioner of Income Tax

25th January 1965

A. A. Rattray LL.B. DM:GW

25th January, 1965.

The Commissioner of Income Tax,
Income Tax Department,
Tower Street,
Kingston.

Dear Sir,

Re:Seramco Limited Superannuation Fund - Dividend from Seaforth Sugar & Rum Limited

We refer to our letter of 5th January, 1965 and now enclose Dividend Warrant from the Company in support of the claim of our clients the Trustees of the Seramco Limited Superannuation Fund for £37,368. 0. 0.

Please let us have your cheque for this amount in due course.

Yours faithfully,

MYERS FLETCHER & GORDON

PER:

Encl.

This is the Letter dated 25th January 1965 from Myers, Fletcher & Gordon to the Commissioner of Income Tax marked "KK" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

Exhibits

"LL"

Letter - Commissioner of Income Tax to Seramco Limited

9th February 1965

EXHIBIT "LL" - Letter, Commissioner of Income Tax to Seramco Limited

INCOME TAX DEPARTMENT

P.O. Box 476,
KINGSTON.

9th February, 1965.

Dear Sir,

Seramco Limited Superannuation Fund

Please be advised that my approval to the above scheme which was addressed to the Managing Director, Carp Corporation Limited, on the 8th January, 1964, is hereby withdrawn with effect from the last mentioned date under the powers given in Section 25(4)(b) of the Income Tqx Law, 1954, and the Income Tax (Superannuation Funds) Rules 1955.

Yours faithfully,

(sgd) C. C. Jones

Commissioner of Income Tax.

The Secretary,
Seramco Limited,
c/o Myers, Fletcher & Gordon,
P.O. Box 162,
Kingston.

This is the Letter from the Commissioner of Income Tax to Seramco Ltd. dated 9th February 1965 marked "LL" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for the Parish of Kingston.

Exhibits

"MM"

Letter, Commissioner of Income Tax to Myers, Fletcher & Gordon

9th February 1965

EXHIBIT "MM" - Letter, Commissioner of Income Tax to Myers, Fletcher & Gordon

This is the Letter from the Commissioner of Income Tax to Myers, Fletcher & Gordon dated 9th February 1965 marked "MM" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for
the Parish of Kingston.

INCOME TAX DEPARTMENT
P.O.Box 476,
Kingston.
9th February, 1965

Dear Sirs,

Seramco Limited Superannuation Fund

With reference to your letters dated the 5th and 25th January, 1965, I am to advise that your claim for a refund of £37,368.0.0. under Section 63 of the Income Tax Law is hereby refused.

As you are aware, if you are dissatisfied with my refusal you have a right of appeal to the Income Tax Appeal Board in the matter.

Yours faithfully,

(sgd.) C.C. Jones

Commissioner of Income Tax.

Messrs. Myers, Fletcher & Gordon,
P.O. Box 162,
Kingston.

"NN"

Judgment of Income Tax Appeal Board

EXHIBIT "NN" - Judgment of Income Tax Appeal Board

INCOME TAX APPEAL BOARD

JUDGMENT

See Judgment Page

Exhibits

"NN"

Judgment of
Income Tax
Appeal Board
(continued)

This is the Judgment of the Income Tax Appeal Board marked "NN" mentioned and referred to in the Affidavit of Darryl Wayne Brandon Myers Sworn to on the 3rd day of May 1967 before me:

(Sgd.) Darryl Myers

(sgd.) W. R. Lawrence
Justice of the Peace for
the Parish of Kingston.

Exhibits

"A"

Draft Trust Deed Seramco Limited and Trustees of the Superannuation Fund

EXHIBIT "A" - Draft Trust Deed Seramco Limited and Trustees of the Superannuation Fund

THIS DEED OF TRUST is made the day of 19 BETWEEN SERAMCO LIMITED, a company duly incorporated under the Laws of Jamaica and having its offices situate at No.36 Duke Street in the City of Kingston, (who and whose successors are hereinafter called "the Employer") of the ONE PART and

Frank L. Myers
Douglas V. Fletcher
William S. K. Gordon
Patrick H. O. Rousseau
Eric O. Bell
Darryl W. B. Myers

(hereinafter called "the trustees" which expression shall include the survivors of them and any new or substituted trustee appointed under the terms hereof) of the OTHER PART.

WHEREAS the Employer has determined to establish a superannuation fund (hereinafter called "the fund") to provide superannuation benefits for such of its present and future employees as under the rules appearing in the schedule attached hereto are eligible and do participate in the same (hereinafter referred to as "the members").

AND WHEREAS in consideration of the contributions to be made to the fund by the members by means of deductions from earnings to be made in the manner hereinafter provided, the Employer has agreed to undertake such liability in respect of contributions to the fund and otherwise as is hereinafter imposed upon it.

AND WHEREAS the trustees have been nominated by the Employer and they have respectively agreed to act as trustees for the fund.

This is the copy of the draft Trust Deed marked "A" mentioned and referred to in the Affidavit of Kenrick Louis Robertson Sworn to on the 10th day of May 1967 before me:

(sgd.) K. L. Robertson (sgd.) J.P.

Exhibits

"A"

Draft Trust Deed Seramco Limited and Trustees of the Superannuation Fund (continued)

NOW THIS DEED WITNESSETH that for the purpose of carrying such determination into effect and in pursuance of the,said agreement the Employer hereby covenants with the trustees and the trustees with the Employer so far as the agreement and stipulations are or ought to be performed or observed by the Employer and the trustees respectively (but so that no personal liability shall be incurred by the trustees or any of them except in respect of their individual trusteeship of the fund) in manner following, that is to say:-

1. The trustees shall stand possessed of all contributions and moneys forming part of or arising out of the said fund or otherwise coming into their hands as trustees hereunder upon trust to apply the same in accordance with the rules contained in the Schedule hereto and all the terms hereinafter provided.

2. The Employer shall be entitled to deduct and shall deduct at the appropriate times frm every payment of earnings paid to each member such sum or sums as shall be provided for by the said rules.

3. The Employer shall cause the full amount thereof to be carried to the credit of the trustees in an account to be kept to the order of the trustees in accordance with the provisions of the said rules.

4. The Employer shall cause to be carried to the credit of the trustees in the said account and cause to be held to the order of the trustees such further sum or sums as is stated to be contributions payable by the Employer as provided for in the said rules.

5. No trustee shall be liable for any loss, damage, costs or expenses that may happen to be incurred in consequence of any act of commission or default of such trustee while purporting to act as such unless he be guilty of actual fraud or dishonesty whereby loss or damage is sustained by the fund.

6. Except as hereinafter provided the said trust shall continue during the life of the last survivor of the issue now living of Her Majesty Queen Elizabeth II and twenty-one years after the death of such survivor and such further period,

if any, as may be lawful. Upon the termination of the said trust the affairs thereof shall be wound-up and subject to the payment of all costs, charges and expenses which may then be owing, and to provisions as the fund will remit being made for the payment of any benefits which are then payable the balance of the fund, if any, shall be dispersed in accordance with the said rules.

SCHEDULE

RULES OF SUPERANNUATION FUND FOR SERAMCO LIMITED

1. In these rules unless the subject or context otherwise requires:-

"EFFECTIVE DATE" means the 1st January 1963;

"EMPLOYER" means SERAMCO LIMITED;

"THE DEED" shall mean the Deed of Trust to which this schedule is attached;

"EMPLOYEE" means all persons employed by the Employer on a permanent basis;

"MEMBER" means every employee who in accordance with these rules shall for the time being participate in the fund; a person upon ceasing to be employed by the Employer or upon ceasing to qualify under rule 6(1) hereof shall cease to be a member;

"THE FUND" means the superannuation fund to be constituted as hereinafter set out;

"EARNINGS" means all ordinary earnings paid by the Employer to an employee for service rendered as such to the Employer but shall not include any bonus, house allowance, or cost of living allowance, or any extra payment for overtime;

"EMPLOYER CONTRIBUTIONS" shall mean the amount contributed to the fund from time to time by the Employer in accordance with rule 8 hereof:

Exhibits

"A"

Draft Trust Deed Seramco Limited and Trustees of the Super-annuation Fund

(continued)

"MEMBER'S CONTRIBUTIONS" shall mean the amount deducted from the earnings of the member as provided in rule 7 hereof;

"THE TRUSTEES" means the trustees for the time being appointed by the Employer or otherwise appointed as hereinafter set out;

"THE SECRETARY" shall mean one of the trustees or any other person appointed by the trustees to be secretary of the trustees in accordance with the rules;

"CONSULTANTS" shall mean Carp Corporatim Limited, or such other competent persons as may be appointed by the Employer from time to time.

"NORMAL FORM OF ANNUITY" shall mean an annual annuity payable in equal monthly instalments for five years and the member's remaining lifetime thereafter;

"NORMAL RETIREMENT AGE" shall mean the age of 70 years.

In this instrument the singular number shall include the plural number and the plural shall include the singular number and the masculine pronoun shall include the feminine pronoun except where repugnant to the context.

2. These rules shall be deemed to come into force on the effective date.

3. (1) Any trustee may retire by giving one month's notice in writing to the secretary.

(2) If a trustee shall be removed by the Employer (which may be done by a resolution of the Board of Directors of the Employer), have a provisional or absolute order of bankruptcy made against him, suffer execution to be levied on his goods, compound with his creditors, or be certified of unsound mind by a registered medical practitioner approved by the other trustees, he shall ipso facto cease to be a trustee.

(3) If any trustee should die, retire or otherwise cease to be a trustee then the

Employer shall appoint another in his stead, provided that if such appointment be not made within three months of the vacancy occurring the remaining trustees may appoint another trustee in his stead who shall be liable to be removed by the Employer as if he had been appointed by the Employer.

4. (1) The trustees shall elect one of their number to be chairman of the trustees and he shall continue to hold the office of chairman until his retirement or removal unless the trustees otherwise decide. In addition to his original vote the chairman shall have a casting vote in the event of an equality of votes on any occasion when there shall be disagreement among the trustees. In the event of a tie in the election of a chairman the Employer shall nominate the chairman.

(2) The trustees shall elect one of their number or appoint any other person to be secretary of the trustees and he shall continue to hold the office of secretary until his retirement or removal unless the trustees decide otherwise.

(3) A quorum of a meeting of the trustees shall be two. In the event of a meeting terminating because it is not properly constituted in accordance with the foregoing a decision reached while it was properly constituted prior to such termination shall be valid.

(4) In the event of a disagreement among the trustees in respect of any decision to be made hereunder, the matter will be decided by a majority vote of the trustees present.

(5) A resolution in writing, signed by any two trustees one of whom is the chairman for the time being shall be as effective for all purposes as a resolution passed at a meeting of the trustees duly convened held and constituted.

5. (1) An ordinary meeting of the trustees for the purpose of filling any vacancy and for the appointment of auditors and for the purpose of

Exhibits

"A"

Draft Trust Deed Seramco Limited and Trustees of the Super-annuation Fund (continued)

passing the annual accounts presented to the trustees shall be held not later than the 30th day of April or such other date as the trustees may decide in each year commencing in 1965 at such time and place as the trustees shall from time to time appoint.

(2) Until or unless otherwise decided by the trustees the accounts of the fund shall be prepared to coincide with the last day of December of each year.

6. (1) All permanent male employees of the Employer shall be eligible for membership in the fund on the effective date and shall become members upon signing the form of application provided.

(2) All permanent male employees employed after the effective date hereof shall sign the form of application provided and shall become a member on the first of the month first following their completion of three full months of employment with the Employer.

7. The Employer shall and is hereby authorised to deduct or cause to be deducted from the earnings of every member an amount not less than five percent or more than ten percent of the earnings of such member (the actual percentage to be determined by the member) which shall be deemed to be the member's contribution, and the Employer shall from time to time pay to the trustees the aggregate of such sums but not less frequently than once in each month.

8. Subject to rule 12 of these rules the Employer shall from time to time pay or cause to be paid to the trustees an amount equal to the member's contributions which shall be deemed to be the Employer's Contributions in respect of each member.

9. The Employer may retire or cause to be retired any member for reason of inability to continue satisfactorily to perform his duties, or who has reached normal retirement age and shall retire or cause to be retired any members:

(a) who shall be certified by a registered

medical practitioner approved by the trustees as permanently unfit to continue in employment or

(b) who shall have reached normal retirement age and who shall apply to be retired.

10. (1) Upon the termination of employment of a member there shall be paid by the trustees the following benefits:-

(a) Where the termination of employment is by reason of the death of a member a single payment shall be made to the deceased member's designated beneficiary or in the absence of any designated beneficiary to the deceased member's estate of a sum equal to the aggregate amount contributed to the fund by the member with such interest as may have been credited to his account.

(b) Where the termination of employment is by reason of retirement from active employment at the member's normal retirement age the trustees shall cause to be withdrawn from the fund each month and paid over to the member or his beneficiary a normal form of annuity of an amount equal to the annuity value of the sum of the member's and Employer's contributions to the fund with such interest as may have been credited to his account. The first payment of such annuities shall fall due on the first of the month coincident with or next following the date thirty days after the member's retirement.

(c) Where the termination of employment is by reason of retirement from active employment prior to the member's normal retirement age the trustees shall cause to be withdrawn from the fund each month and paid over to the member or his beneficiary a normal form of annuity of an amount equal to the actuarial equivalent of the member's normal form of annuity as described in paragraph(b) of this section, adjusted to the member's actual retirement age.

(d) Where the termination of employment is by reason of any contingency other than death or retirement the terminating member

Exhibits

"A"

Draft Trust Deed Seramco Limited and Trustees of the Super-annuation Fund (continued)

shall receive from the fund a sum equal to the aggregate amount contributed by him to the fund with such interest as may have been credited to his account. The Employer may, at its sole discretion, leave the value of its contributions made on behalf of any member who terminates under this section in the fund to provide an annuity to the terminated member payable in the normal form upon the terminated member's attainment of his normal retirement age.

(e) The trustees may at their sole discretion cause the single amount to be withdrawn from the fund required to purchase from a duly constituted insurance company the normal form of annuity under (b), (c) or (d) above or any optional form of annuity elected under these rules by the member.

(2) A member may, with the consent of the Employer, remain in active employment with the Employer beyond his normal retirement age in which event contributions by the member and the Employer shall continue to be made to the fund, and upon actual retirement his annuity will be calculated in accordance with paragraph 1(b) of this section.

(3) A member may, at any time prior to his actual retirement date, elect to vary the normal form of annuity to one providing a greater or lesser number of years certain, or a joint and survivor annuity payable to himself and some second party so long as either or both of them might live. Election of any of these options is subject to its availability from a duly constituted insurance underwriter and will adjust the amount of annuity to the actuarial equivalent of the normal form of annuity.

(4) A member shall submit proof of age satisfactory to the trustees before any benefit arising from these rules becomes payable.

(5) The maximum annual annuity which a retiring member may receive under these rules is £2,000 or ⅔ of his final earnings whichever be the lesser.

(6) Subject to the consent of the trustees a retiring member may commute a portion of his annuity to its cash value thus providing a single cash payment at retirement and a reduced monthly annuity after retirement. The maximum commutation of annuity will be ¼ of 12½ times the annual annuity.

11. In the event of the employment of a member being suspended (whether for punitive or non-punitive reasons) the share in the fund to which such a member would be entitled may, in the discretion of the trustees, be permitted to remain in the fund pending the resumption of employment of the member.

12. The Employer may at any time on giving three months notice in writing to the secretary cause contributions to cease to the fund and on such notice being given by the Employer the fund shall be wound-up, and after all expenses incurred in connection with the fund have been paid, and any sums which have become payable under rule 10(a) have been paid and benefits in the process of payment or pending payment under rule 10(b), (c) or (d) have been purchased from a duly constituted insurance company, or otherwise accrued, the residue, if any, shall be paid over by the trustees to the members as if they had terminated employment on the date of wind-up of the fund in accordance with rule 10(d). If any residue remains undistributed it shall be paid over to the Employer by the trustees.

13. All payments in accordance with these rules shall be paid out of the fund and no person entitled to any benefit shall have any claim to any benefit except out of the fund and shall not in any case have any claim to any payment against the trustees or any of them personally or against the Employer.

14. All rights conferred on members, pensioners, or other persons entitled to payment under these rules shall be upon the express opinion that no benefit payable under the provisions of these rules, shall be subject in any manner to anticipation, assignment, attachment, diminution, pledge or charge, and that any attempt to anticipate, assign, attach,

Exhibits

"A"

Draft Trust Deed Seramco Limited and Trustees of the Super-annuation Fund (continued)

diminish, pledge or charge the same shall be void, and that no such benefit shall in any manner be liable for or subject to debts, contracts or liabilities, nor shall any interest therein under these rules be subject to garnishment, attachment, execution or levy of any kind. If any member, pensioner or beneficiary should become bankrupt or attempt to anticipate, assign, attach, diminish, pledge or charge any benefits, or if any application to attach, garnishes, execute or levy any such benefit shall be made then such benefit shall forthwith cease and terminate, and in that event the trustees may hold or apply the same or any part thereof or cause to be paid over to another trustee or trustees to or for the benefit of such subscriber, pensioner or beneficiary, his spouse, children or other dependents or any of them in such manner and in such proportion as the trustees may think proper

15. (1) No person entitled to a benefit under these rules shall have any claim against the fund other than those prescribed by those rules and in the event of the fund at any time being in the opinion of the trustees (whose decision on this fact shall be final) insufficient to meet existing accruing and contingent claims under these rules any payment due or thereafter to become due to members, shall abate rateably to such an extent, and for such period, as the trustees may determine.

(2) The trustees shall from time to time pay to all members whose payments have been abated under the provisions of this rule, the whole or part (as the trustees may determine) of the amount of which such payment were abated if at any time or times the trustees shall be of the opinion that the amount of the fund is sufficient for this purpose having regard to the relative rights, of all members.

(3) Wherever under this instrument any moneys are payable to or any benefits are established for any member or his beneficiary or personal representative the trustees hereby declare that they hold and will hold all such moneys

and/or benefits in trust for such member or beneficiary or personal representative as the case may be.

(4) Any member may at any time by written notice in such form as the trustees shall approve signed by him and delivered to the trustees appoint a beneficiary or revoke an appointment of beneficiary and in the event of the death of the member any benefits payable under the rules of this scheme shall be paid by the trustees to such beneficiary, if any, otherwise to the deceased member's personal representative.

The trustees shall cause the accounts of the fund to be prepared at intervals of not less than twelve months.

17. The trustees shall cause to be kept at all times a record of individual accounts in respect of each member showing the amount and date of each contribution to the fund by such member and the termination of employment, death or retirement benefits payable to the member under the rules in respect of such contributions.

18. (1) The trustees shall invest and/or re-invest any or all the moneys for the time being standing to the credit of the fund, not immediately required for making any payment pursuant to these rules, in such securities and investments as they may in their absolute discretion deem safe and advisable without being confined or limited to those investments to which trustees are limited by Law and with liberty from time to time to call in, convert, vary or transpose any such investment.

(2) The trustees may also apply such part, if any, of the fund as they may deem fit in the payment of premiums to one or more insurance company or companies for the purpose of insuring that the liabilities of the fund under these rules will at all times be promptly met and secured or for such other or additional purposes as the trustees may determine.

Exhibits

"A"

Draft Trust Deed Seramco Limited to Trustees of the Super-annuation Fund (continued)

(3) The trustees may from time to time and are hereby empowered to borrow or raise money with or without security if it is deemed by them in their sole discretion to be in the best interests of the fund to do so and the trustees shall be entitled to full indemnity from the fund for any debts so incurred.

19. All costs, charges and expenses incurred in carrying out the provisions of these rules or for the benefit of or connected with the management of the fund shall be paid out of the fund unless paid by the Employer.

20. No trustee shall be entitled to any remuneration for acting as such trustee provided that any trustee performing the duties of secretary of the fund shall be paid such remuneration as the trustees shall from time to time determine and shall not thereby be disqualified from holding the office of trustee.

21. The trustees shall decide any question arising under these rules or upon the construction thereof or in any claim thereon and their decision shall be final and conclusive.

22. The trustees shall cause proper minutes to be made in books to be provided for the purpose, of all appointments of officers made by the trustees, of all notices received by the secretary and of the proceedings of all meetings of trustees.

23. The trustees may from time to time, appoint and dismiss persons to be secretary, accountant or treasurer, or to perform such duties as shall in the opinion of the trustees be necessary for the management of the fund, and may pay such persons such remuneration as they deem fit.

24. A person shall not be precluded from accepting the appointment of trustee by reason of his being a Solicitor, Barrister, Auditor or Accountant for the fund or the trustees.

Exhibits

"A"

Draft Trust Deed Seramco Limited to Trustees of the Super-annuation Fund (continued)

25. The trustees may delegate all or any of their powers herein either implicitly or explicitly and upon such terms and conditions as they may think fit to any other persons personal or corporate who may be legally able to act for the time being as trustee of such funds and the trustees or their delegate may grant power of attorney if and when in their sole discretion believe such action to be necessary to best effect the purposes of the fund and the delegate shall be paid such reasonable compensation for his services as shall from time to time be agreed upon by the trustees and the delegate. Such compensation and all expenses of administration and management of the trust including legal fees shall be withdrawn by the trustees or their delegate out of the fund unless paid by the Employer.

26. A trustee may participate in the discussion to enter into any contract and may vote as a trustee in respect of such contract and may retain for his own use profits made by him under any such contract PROVIDED ALWAYS that he shall disclose his interest to the other trustees and if all the trustees be interested in the contract their interest shall be disclosed to the Employer whose consent to enter into the contract must be forthcoming before the contract may be entered into.

27. If any person entitled to receive any payment under these rules is by reason of insanity or infancy or any other cause unable to give valid discharge to the trustees for the same, the trustees shall be entitled to pay the same to any person whom they may consider suitable in trust for such person, and the receipt of the person shall be an absolute discharge to the trustees for such payment.

28. Subject always to the final approval of the Commissioner of Income Tax all or any part of the provisions of these rules may from time to time be altered, amended, cancelled, suspended or added to by resolutions of the Board of Directors of the Employer.

IN WITNESS whereof this Deed of Trust has been duly

Exhibits

"A"

Draft Trust Deed Seramco Limited to Trustees of the Super-annuation Fund (continued)

executed by and on behalf of the parties hereto the day and year first above written

WITNESS	FOR THE COMPANY
WITNESS	FOR THE COMPANY
WITNESS	FOR THE COMPANY
WITNESS	TRUSTEE
WITNESS	TRUSTEE
WITNESS	TRUSTEE
WITNESS	TRUSTEE
WITNESS	TRUSTEE
WITNESS	TRUSTEE

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EXHIBIT "A" - Final accounts of Seramco Superannuation Fund

SERAMCO SUPERANNUATION FUND

BALANCE SHEET as at 31st DECEMBER, 1964

LIABILITIES			ASSETS	
Capital & Surplus			Investments at cost	420,009.13.4.
Members' Contributions	770.0.0.		Sundry Debtor	37,368. 0.0.
Company's Contributions	730.0.0.	1,500. 0.0.	The Royal Bank of Canada (Current A/c)	684.10.10
Surplus of Income over Expenditure		200,200.14.2.		
		201,700.14.2.		
Sundry Creditors		256,361.10.0.		
		£458,062. 4.2.		£458,062. 4.2.

AUDITORS' REPORT

We have audited the accounts of Seramco Superannuation Fund for the year ended 31st December, 1964. We have obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of our Audit. In our opinion proper books have been kept by the Fund so far as appears from our examination of those books, and the above Balance Sheet gives a true and fair view of the state of the Fund's affairs as at that date.

(Sgd.) H.A. Barakat & Co.
Accountants & Auditors.

64 Laws Street,
Kingston.

This is the Final Accounts of Seramco Ltd. Superannuation Fund marked "A" mentioned and referred to in the Affidavit of Arthur Anthony DeBuc Sworn to on the 9th day of May, 1967 before me:

(sgd.) A.A. DeBuc (sgd.) V. G. Mc Registrar of the Supreme Court.

Exhibits
"A"
Final Accounts of Seramco Superannuation Fund
31st December 1964

Exhibits

"B"

Final Accounts of Seramco Superannuation Fund

31st December 1965

EXHIBIT "B" - Final accounts of Seramco Limited Superannuation Fund

BALANCE SHEET as at 31st DECEMBER, 1965

LIABILITIES			ASSETS	
Capital & Surplus			Investments at Cost	£206,780. 0. 0.
Members' Contributions	1,800.0.0.		Sundry Debtors	37,410. 1. 8.
Company's Contributions	1,760.0.0.	3,560. 0. 0.		
			The Royal Bank of Canada (Current A/c)	744.10.10.
Surplus of Income over Expenditure		201,332.15.10.		
		204,892.15.10.		
Sundry Creditors		40,041.16. 8		
		£244,934.12. 6.		£244,934.12. 6.

This is the Final Accounts of Seramco Ltd. Superannuation Fund marked "B" mentioned and referred to in the Affidavit of Arthur Anthony DeBuc Sworn to on the 9th day of May, 1967 before me:

Justice of the Peace for the Parish of

EXHIBIT "C" - Sources and Application of Funds Statement

SOURCES AND APPLICATION OF FUNDS STATEMENT

		1964 £		1965 £
SOURCES OF CASH				
Bank Balance				684.10.10.
Contributions to Fund		1,500. 0. 0.		2,060. 0. 0.
Dividend received		200,334. 0. 0.		
Interest received		24.16. 8.		1,132. 1. 8.
Sale of investment				213,229.13. 4.
		201,858.16. 8.		217,106. 5.10.
APPLICATION OF CASH				
Sundry Expenses paid	158. 2. 6.			
Payment to Creditors	201,016. 3. 4.		216,319.13. 4.	
Increase in Debtors			42. 1. 8.	
		201,174. 5.10.		216,361.15. 0.
Bank Balance		£ 684.10.10		£ 744.10.10.

This is the Sources and Application of Funds of Seramco Ltd. Superannuation Fund marked "C" mentioned and referred to in the Affidavit of Arthur Anthony DeBuc Sworn to on the 9th day of May, 1967 before me:

_____

_____
Justice of the Peace for the Parish of

Exhibits
"C"
Sources and Application of Funds Statement

Exhibits

"A"

Minutes of First Meeting of Trustees of Seramco Limited Superannuation Fund

30th December 1963

EXHIBIT "A" - Minutes of First Meeting of Seramco Limited Superannuation Fund

MINUTES OF FIRST MEETING OF THE BOARD OF TRUSTEES OF THE SERAMCO LIMITED SUPERANNUATION FUND HELD AT NO.36 DUKE STREET, KINGSTON, ON 30TH DECEMBER 1963

Present were: DARRYL MYERS, FRANK L. MYERS, DOUGLAS FLETCHER, PATRICK ROUSSEAU, ERIC BELL, W. S. K. GORDON

1. The Notice convening the meeting was taken as read.

2. Mr. Darryl Myers was elected Chairman of the Board of Trustees.

3. Mrs. Madge Godfrey was appointed Secretary and the Chairman indicated that Mrs. Godfrey had agreed to accept the appointment.

4. The Chairman told the Trustees that he had called the meeting because he was anxious to have the Superannuation Fund established by the end of the year so that it would come into effect on 1st January, 1964. He reported that he had been in touch with Mr. Carter of Carp Corporation Limited, who had been retained to set up the Superannuation Fund, and pressed him to obtain approval of the Fund from the Commissioner of Income Tax. Mr.Carter had now informed him that the Deed of Trust and Rules which he had prepared had been accepted by the Commissioner and that the Commissioner had assured him that a formal letter of approval would be sent shortly after the Christmas Season. The Chairman then produced a copy of the Trust Deed and Rules which had been settled by Carp Corporation Limited and submitted to the Commissioner and these were examined by the Meeting. It was then resolved that the Superannuation Fund be established under Section 25 of the Income Tax Law on the terms of the said Trust Deed and Rules, and that contributions be made with effect from the 1st January, 1964. The Chairman undertook to obtain from Carp Corporation Limited an engrossment of the Trust Deed & Rules for formal execution by the Trustees.

5. The Chairman then told the meeting that it was necessary to open a bank account, and it was resolved that the Royal Bank of Canada, Duke Street,

be appointed Bankers to the fund. The Chairman undertook to make the necessary arrangements to open the bank account.

6. It was resolved that Messrs. H. A. Barakat & Co. be appointed Auditors to the Fund.

7. Messrs. Myers Fletcher & Gordon were appointed Solicitors to the Fund.

8. It was resolved that contributions be invested by way of deposit with Securities Limited at a rate of interest to be agreed but not less than 8% per annum. It was further resolved that pending such deposit contributions could be left in the hands of Myers, Fletcher & Gordon as a loan at interest of 8% per annum.

9. There being no further business, the meeting then adjourned.

.....
Chairman.

Exhibits

"A"

Minutes of First Meeting of Seramco Limited Superannuation Fund

30th December 1963

(continued)

IN THE PRIVY COUNCIL No.12 of 1974

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

THE TRUSTEES OF SERAMCO LIMITED SUPERANNUATION FUND — Appellants

- and -

THE COMMISSIONER OF INCOME TAX — Respondent

RECORD OF PROCEEDINGS

DRUCES & ATTLEE,
115, Moorgate,
London, EC2M 6YA.
Solicitors for the
Appellants.

CHARLES RUSSELL & CO.,
Hale Court, Lincolns Inn,
London, WC2A 3UL.
Solicitors for the
Respondent.