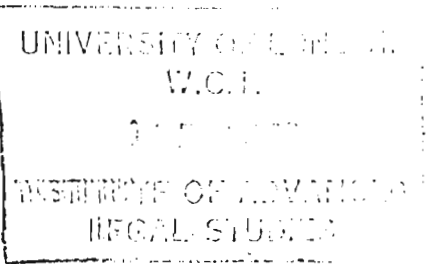


Q. 13. 173

British Journal

25, 1961



IN THE PRIVY COUNCIL

No. 43 of 1958

ON APPEAL FROM THE FEDERAL SUPREME COURT OF

THE WEST INDIES

63511

IN THE MATTER OF THE ESTATE OF SOPHIA MUSTERD
deceased

- and -

IN THE MATTER OF THE SUPREME COURT ORDINANCE
CHAPTER 7, SECTION 45.

B E T W E E N :-

VICTORINE ROBERTS (Femme Sole)
and OSCAR JAMES

Appellants

- and -

LETTER T ESTATES LIMITED
STANLEY HEALD
JESSICA WATT
ELLA JEANNIE MEARNs and
GRETA ENID MEARNs ...

Respondents

RECORD OF PROCEEDINGS

Garber, Vowles & Co.,
16 Soho Square,
London, W.1.
Solicitors for the Appellants

Cartwright Cunningham,
Eldon Street House,
Eldon Street, E.C.2.
Solicitors for the 2nd Respondent.

Wray, Smith & Co.,
1, Kings Bench Walk,
E.C.4.
Solicitors for the 1st, 3rd, 4th
and 5th Respondents.

IN THE PRIVY COUNCIL

No.43 of 1958

ON APPEAL FROM THE FEDERAL SUPREME COURT OF

THE WEST INDIES

IN THE MATTER OF THE ESTATE OF SOPHIA MUSTERD
deceased

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B E T W E E N :-

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and OSCAR JAMES Appellants

- and -

LETTER T ESTATES LIMITED
STANLEY HEALD
JESSICA WATT
ELLA JEANNIE MEARNs and
GRETA ENID MEARNs ... Respondents

RECORD OF PROCEEDINGS

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| Affidavit of service of Notice of Appeal |
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IN THE PRIVY COUNCIL

No.43 of 1958

ON APPEAL FROM THE FEDERAL SUPREME COURT OF

THE WEST INDIES

IN THE MATTER OF THE ESTATE OF SOPHIA MUSTERD
deceased

- and -

IN THE MATTER OF THE SUPREME COURT ORDINANCE
CHAPTER 7, SECTION 45.

B E T W E E N :-

10

VICTORINE ROBERTS (Femme Sole) and
OSCAR JAMES ... Appellants

- and -

LETTER T ESTATES LIMITED
STANLEY HEALD
JESSICA WATT
ELLA JEANNIE MEARNES and
GRETA ENID MEARNES ... Respondents

RECORD OF PROCEEDINGS

No.1

20

ORIGINATING SUMMONS

1957 No.430 DEMERARA.

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

In the Matter of the Estate of SOPHIA MUSTERD
deceased,

- and -

In the Matter of the Supreme Court Ordinance,
Chapter 7 Section 45.

30

BETWEEN : STANLEY HEALD, as executor of the
Estate of Sophia Musterd, deceased,
(hereinafter called the deceased),
Plaintiff,

- and -

LETTER T. ESTATES LIMITED,
VICTORINE ROBERTS, singlewoman,
and OSCAR JAMES, as devisees under
the last Will of the deceased,
Defendants.

In the
Supreme Court of
British Guiana

No.1
Originating
Summons.

11th March 1957

LET Letter T.Estates Limited, whose registered

In the
Supreme Court of
British Guiana

No.1

Originating
Summons.

11th March 1957
continued

office is c/o Cameron & Shepherd Solicitors, Lot 1, High Street, Georgetown, Victorine Roberts, singlewoman; and Oscar James, both of 142 Regent Road Bourda, Georgetown, within eight days after service of this summons on you inclusive of the day of such service, cause an appearance to be entered for you to this summons, which is issued upon the application of Stanley Heald of 54 High Street, Kingston, Georgetown, who claims to be the executor of the estate of the deceased for an order of the Court giving directions herein as to whether the plaintiff should execute transfers of 242 shares in Letter T. Estates Limited to the persons named in the letter by the Company to the plaintiff dated the 22nd February, 1957, set forth in the affidavit by the plaintiff sworn to on the 11th day of March, 1957, and filed herein for the number of shares respectively set opposite their names or to execute two transfers one for 121 shares in the Company to the defendant Roberts and one for 121 shares in the Company to the defendant James the beneficiaries named in the last Will of the deceased, or make and give such directions as the Court may deem fit, and that the costs of these proceedings be provided for.

10

20

Dated the 11th day of March, 1957.

This summons was taken out by Carlos Gomes, Solicitor of and whose address for service and place of business is at his office lot 2, Croal Street, Stabrock, Georgetown, Solicitor for the plaintiff who resides at 54, High Street, Kingston, Georgetown.

30

The defendants may appear hereto by entering an appearance or appearances either personally or by Solicitor at the Registry Georgetown.

The plaintiff sues as executor of the deceased probate of her last Will was granted to him on the 25th January, 1957 and numbered 10.

The defendants Roberts and James are sued as two of the devisees named in the said last Will of the deceased, dated 23rd April, 1956

40

N.B. If the defendants do not enter appearance or appearances within the time and at the place above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

No.2

AFFIDAVIT OF STANLEY HEALD WITH
EXHIBIT "A" THERETO.

In the
Supreme Court of
British Guiana

No.2

1957 No.430 DEMERARA.

Affidavit of
Stanley Heald
with Exhibit "A"
thereto.

IN THE SUPREME COURT OF BRITISH GUIANA

11th March 1957

CIVIL JURISDICTION

In the Matter of the Estate of SOPHIA MUSTERD,
deceased,

- and -

10 In the Matter of the Supreme Court Ordinance,
Chapter 7 Section 45.

BETWEEN : STANLEY HEALD, as executor of the
Estate of Sophia Musterd, deceased,
(hereinafter called the deceased),
Plaintiff,

- and -

20 LETTER T. ESTATES LIMITED,
VICTORINE ROBERTS, singlewoman,
and OSCAR JAMES, as devisees under
the last Will of the deceased,
Defendants.

AFFIDAVIT IN SUPPORT OF APPLICATION

I, STANLEY HEALD, of 54, High Street, King-
ston, Georgetown, Chartered Accountant, being
duly sworn make oath and say :

1. I am the executor of the estate of the
deceased probate whereof was granted to me on the
25th day of January, 1957.

30 2. The deceased left 121 shares in Letter
T. Estates Limited (hereinafter called the Com-
pany) whose registered office is situate at lot 1,
High Street, Georgetown, to each of the defendants
Victorine Roberts and Oscar James, namely, 242
shares in all.

In the
Supreme Court of
British Guiana

No.2

Affidavit of
Stanley Heald
with Exhibit "A"
thereto.

11th March 1957
continued

3. The said Letter T. Estates Limited is a private company and the Articles of Association of the Company restrict the transfer of shares in the Company. The relevant articles of the Articles of Association of the Company are hereto annexed and marked "A".

4. On the 7th February, 1957, I wrote the following letter to the Company -

"54 High Street,
Kingston,
Georgetown,

10

7th February, 1957.

The Secretary,
Letter T. Estates Limited,
C/o Messrs. Cameron & Shepherd
Legal Practitioners,
1, High Street,
Georgetown.

Dear Sir,

I hereby give you notice that I desire pursuant to Article 25 to transfer the shares in Letter T. Estates Limited left by Miss Sophia Musterd, deceased, in her Will and to comply with Article 15 of the Articles of Association of the Company.

20

Will you please let me know as soon as possible if the members or in default of members the persons selected by the Directors are willing to purchase the shares.

The fair value of the 242 shares, as you know, has been fixed at \$410.00 each share, and I shall require payment of the sum of \$99,220.00 before transferring the shares to whoever may purchase same.

30

I would like to draw your attention to the provisions of Articles 10 and 13 fixing the time from receipt of this notice within which to find a member or person selected by the Directors of the Company to purchase the shares and give me

notice thereof.

Yours faithfully,

Estate Sophia Musterd, deceased.

S. Heald

Executor.

c.c. Linden F.S. Burnham, Esq.,
Barrister-at-Law,
Croal Street,
Georgetown, for

10 Mrs. Victorine Roberts,
- and -

Mr. Oscar Edmond James,
Letter T. East Coast,
Demerara. "

and sent a copy of this letter to Mr. Linden F.S. Burnham, Barrister-at-Law for the defendants Roberts and James.

5. On the 22nd February, 1957, I received the following letter from the Company:

20 "c/o The Georgetown Club
Ltd.,
Georgetown 3.
22nd February, 1957.

S. Heald Esq.,
Executor,
Estate Sophia Musterd Decd.,
54 High Street,
Georgetown 1.

Dear Sir,

30 I have just been notified by Messrs. Cameron and Shepherd that their clients, as listed hereunder, have accepted the offers made to them and will take the number of Shares set against their individual names.

In the
Supreme Court of
British Guiana

No.2

Affidavit of
Stanley Heald
with Exhibit "A"
thereto.

11th March 1957
continued

In the
Supreme Court of
British Guiana

No.2

Affidavit of
Stanley Heald
with Exhibit "A"
thereto.

11th March 1957
continued

| | |
|-----------------------------|------------------|
| Mrs. Watt will take | 101 shares |
| Mrs. E. J. Mearns will take | 81 shares |
| Mrs. G. E. Mearns will take | <u>60</u> shares |
| | <u>242</u> |

Messrs. Cameron & Shepherd also states that their other clients, Mrs. G. Mearns and Mr. M. Smith are not in a position to take up their proportion of the Shares offered.

I shall be glad, therefore, if you as Executor of the Estate of Sophia Musterd, deceased, and her nominees will execute transfers of the above Shares in favour of the abovenamed persons and forward them to Cameron & Shepherd for completion. On receipt of these transfers they will forward a cheque for \$99,220 in payment.

10

Mr. Edward De Freitas is most anxious to deal with the matter promptly, in order that the transfers should be placed before the Directors of Letter "T" Estates Ltd. at their meeting on the 25th, and he suggests that you might be good enough to send the transfers to him via Mr. Carlos Gomes early tomorrow. That, he thinks, will be the quickest method, and we hope you will be able to oblige.

20

Yours faithfully,

F.E. Phillips

Secretary,

Letter "T" Estates Ltd.

6. On the 21st February, 1957, Mr. Carlos Gomes on my instructions wrote Mr. Linden F.S. Burnham the following letter namely :

30

"2, Croal Street,
Georgetown,
21st February, 1957.

L.F.S. Burnham, Esqre,
Barrister-at-Law,
Croal Street,
Georgetown.

Dear Sir,

Re Estate Sophia Musterd, deceased.

40

Your letters of the 7th and 11th instant

addressed to Mr. S. Heald, the executor of the above estate have been handed to me for attention.

In the
Supreme Court of
British Guiana

No.2

Affidavit of
Stanley Heald
with Exhibit "A"
thereto.

11th March 1957
continued

10 My client is unable to give any information as to how the fair value of the shares in Letter "T" Estates Limited was arrived at, as requested by your clients. The valuation was made by Messrs. Fitzpatrick Graham & Co., under the provisions of Article 11 of the Company's Articles of Association and under the Article their certificate, (a copy of which is lodged with the Estate Duty Papers) is final and conclusive. My client is not entitled to ask them how their valuation was made. All he can say is that it appears to him to be very fair and considerably more than previous valuations of these shares.

20 Your clients appear to be under a misapprehension as to their right and obviously misunderstand my clients' letter to the Company. My client is making no new proposal and has in fact made no proposal whatever to your clients. He is merely under my advice as the only person recognised by the Company as being entitled to the shares, complying with the provisions of the Articles.

30 My client has no balance sheet in respect of last year's operations and in any event the Company being a private company its balance sheet is not open to inspection except with the consent of the directors. If you think that your clients are entitled to see such a balance sheet you should take the matter up with the Company.

Yours faithfully,

Carlos Gomes.

CG/dg.

7. On the 22nd February, 1957, Mr. Carlos Gomes, Solicitor, acting on my behalf in my capacity aforesaid received the following letter from Mr. Linden F.S. Burnham, namely :

40 LINDEN F.S: BURNHAM,
B.A., LL.B., (Hons) (LONDON)
Barrister-at-Law

"CHAMBERS:
6, Croal Street,
Georgetown 11,
Demerara
British Guiana.
February 22, 1957.

Dear Sir,

Re Estate of Sophia Musterd, deceased

Thanks for your letter of the 21st February

In the
Supreme Court of
British Guiana

No.2

Affidavit of
Stanley Heald
with Exhibit "A"
thereto.

11th March 1957
continued

1957 in reply to my three letters of the 7th and 11th February, written to Mr. S. Heald, the executor of the above named estate.

My clients are under no misapprehension whatever as to what their rights are in respect of the shares in question. They are indebted to you for the information contained in paragraph 3 of your letter, that your client is advised that he is the only person recognised by the Company as being entitled to the said shares.

10

Admittedly, it is difficult to understand the ultimate paragraph of your letter under reply. Your client's several capacities seem to render it difficult for him to function separately in any of them. If as executor of the estate of the deceased, who was a member of the Company whether a Private Company or otherwise, he has or can obtain a copy of the Balance Sheet which relates to shares bequeathed to my clients, it would seem that that capacity of executor would dictate that the Balance Sheet should be made available to my clients, if only for inspection.

20

I shall be out of the colony for a few weeks. Perhaps matters in connection with my clients' interest in the estate may be allowed to remain in abeyance pending my return. If, however, it is thought expedient to rush matters through, my clients' interest will be well protected.

30

Yours faithfully,

L.F.S.Burnham.

Carlos Gomes, Esq.,

Solicitor,

2, Croal Street,

Georgetown 11. "

8. On the 27th February, 1957, the said Carlos Gomes, Solicitor wrote on my instructions the following letter to the Company, namely :

9.

"Croal Street,
Georgetown,

27th February, 1957.

In the
Supreme Court of
British Guiana

No.2

The Secretary,
Letter T Estates Limited,
c/o The Georgetown Club,
Georgetown, 3.

Affidavit of
Stanley Heald
with Exhibit "A"
thereto

11th March 1957
continued

Dear Sir,

Re Estate Sophia Musterd, deceased.

10 My client Mr. S. Heald as Executor of the
estate of Sophia Musterd, deceased, has handed
me your letter of the 22nd February, 1957, and
requested me to reply thereto.

20 Whilst my client is quite prepared to exe-
cute the transfers of the 242 shares in Letter T
Estates Limited in favour of the persons named in
your letter for the number of shares respectively
set opposite their names in your letter, my
client has received a letter from Mr. L.F.S. Burn-
ham dated 22nd February, 1957, in which he inform-
ed my client that he will be out of the colony for
a few weeks, and requested my client to allow
"matters in connection with his client's interest
in the estate to remain in abeyance pending his
return"

In these circumstances, I have advised my
client and he has agreed to apply to the Court
for directions in this matter as Executor of the
above estate.

30 Yours faithfully,

Carlos Gomes "

CG/dg.

9. On the said 27th February, 1957, on my
instructions Mr. Carlos Gomes wrote the following
letter to Mr. L.F.S. Burnham, namely :

In the
Supreme Court of
British Guiana

"2, Croal Street,
Georgetown,

No.2

27th February, 1957.

Affidavit of
Stanley Heald
with Exhibit "A"
thereto.

L.F.S.Burnham, Esq.,
Barrister-at-Law,
Croal Street,
Georgetown.

11th March 1957
continued

Dear Sir,

Re Estate Sophia Musterd, deceased.

I am in receipt of your letter of the 22nd
February, 1957.

10

The balance sheet for the year ending 31st
December, 1956, for the Letter "T" Estates Limit-
ed has not yet been made out by the Auditors,
and none is in existence, and therefore my client
Mr. S. Heald as Executor of the Estate of Sophia
Musterd, deceased, has not a copy which he could
let you have.

My client has received a letter dated 22nd
February, 1957, from Letter T Estates Limited in
which he was advised that certain members of the
Company have agreed to purchase the 242 shares
at their fair value namely \$410.00 each share,
making a total of \$99,220.00 which they will pay
on receipt of the transfers of those shares
signed by my client as executor of the said
estate, and requested that my client execute
transfers of the said shares in favour of the
said members and forward them to Messrs.Cameron
& Shepherd Legal Practitioners for completion.

20

30

As you have asked my client that "matters
in connection with your client's interest in the
estate be allowed to remain in abeyance until
your return," my client has been advised by me
to apply and will be applying to the Court for
direction in the matter before signing the trans-
fers.

Yours faithfully,

Carlos Gomes

CG/dg.

40

11.

10. On the 5th March, 1957, Mr. Carlos Gomes, Solicitor, received the following letter from the Company, namely :

In the
Supreme Court of
British Guiana

"c/o The Georgetown Club

No.2

Georgetown 3.

Affidavit of
Stanley Heald
with Exhibit "A"
thereto.

5th March, 1957.

11th March 1957
continued

Carlos Gomes; Esq.,
Solicitor,
2, Croal Street,
Georgetown.

10

Dear Sir,

Re: Shares of Estates Sophia Musterd,
decd.

In reply to your letter of the 27th inst., I am directed to inform you that Mesdames Watt, E. Mearns and G. Mearns, have deposited with the Company the sum of \$99,220 :- in respect of the fair value of the above shares and have agreed to give you client up to 25th March, 1957, to transfer the same to them before requesting the Company to proceed under Article 12. This will give your client sufficient time to apply to the Court for directions.

20

After that date, or on prior transfer of the shares, the above sum will be accepted by the Company as the purchase money and will be held by the Company in trust for your client as the proposing transferor, as provided by Article 12.

Yours faithfully,
LETTER "T" ESTATES LTD.
F.E. Phillips
Secretary "

30

11. I am desirous of obtaining the directions of this Honourable Court in this matter and to carry out those directions.

S. Heald.

SWORN TO BY THE SAID STANLEY HEALD,)
at Georgetown, Demerara,)
this 11th day of March, 1957,)

40

Before me,
Arthur G. King
A COMMISSIONER FOR OATHS.

36¢ stamp cancelled.

In the
Supreme Court of
British Guiana

No.2

EXHIBIT "A" to AFFIDAVIT of STANLEY HEALD

No.2

"A"

Exhibit "A" to
Affidavit of
Stanley Heald

RELEVANT ARTICLES OF ASSOCIATION.

TRANSFERS AND TRANSMISSION OF SHARES.

11th March 1957.

8. Save as provided by clause 15 hereof, no share shall be transferred by any member or person to any person who is not a member, so long as any member or failing any member, any person (whether a member or not) selected by the Directors is willing to purchase the same at the fair value. But if no member or person selected as aforesaid is willing to purchase such share, then the same may, subject to clause 17 hereof, be transferred to any person whether such person is a member or not. 10

9. Except where a transfer is made pursuant to clause 15 hereof a person proposing to transfer any shares (hereinafter called the proposing transferor), shall give notice in writing to the Company that he desires to transfer the same. Such notice shall constitute the Company his agent for the sale of the shares to any member or to any person selected by the Directors as aforesaid at the fair value. The transfer notice may include several shares, and in such case shall operate as if it were a separate notice in respect of each. The transfer notice shall not be revocable except with the sanction of the Directors. 20 30

10. If the Company shall, within the space of one month after being served with the transfer notice, find a member or person selected as aforesaid willing to purchase the share (hereinafter for convenience called the purchasing member), and shall give notice thereof, to the proposing transferor, he shall be bound upon payment of the fair value to transfer the share to the purchasing member.

11. For the purposes thereof the fair value of any share shall be such a sum as any 40

three Directors shall declare in writing to be the fair value thereof, and if there be no such declaration, then as the Auditor shall certify in writing to be the fair value, and the said declaration or certificate, as the case may be, shall be final and conclusive.

In the
Supreme Court of
British Guiana

No.2

Exhibit "A" to
Affidavit of
Stanley Heald

11th March 1957
continued

10 12. If in any case the proposing transferor, after having become bound as aforesaid, makes default in transferring the share, the Company may receive the purchase money, and shall there upon cause the name of the purchasing member to be entered in the register as the holder of the share and shall hold the purchase money in trust for the proposing transferor. The receipt of the Company for the purchase money shall be a good discharge to the purchasing member, and after his name has been entered in the register in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any
20 person.

13. If the Company shall not within the space of three months after being served with the transfer notice; find a member or person selected as aforesaid, willing to purchase the shares and give notice in manner aforesaid, the proposing transferor shall at any time thereafter, subject to clause 17 hereof, be at liberty to transfer the shares (or those not placed) to any person and at any price.

30 14. Such shares shall be offered in the first place to the members in proportion to their holdings or as near there to as may be, and as to any shares not then accepted the same shall be offered to any members willing to accept the same in proportion to their holdings and any share not accepted by members shall be offered to the person or persons (if any) selected by the Directors as aforesaid. If it be not possible to so apportion all such shares as aforesaid, such share or
40 shares not dealt with shall be apportioned amongst those willing to accept the same by lot.

15. Any person, (not a member or the son, daughter, grandson, granddaughter, or other issue, brother, sister, husband or wife, nephew or niece, of a member) becoming entitled to shares in consequence of the death of any member, shall, within three months after his so becoming entitled, offer

In the
Supreme Court of
British Guiana

No.2

Exhibit "A" to
Affidavit of
Stanley Heald

11th March 1957
continued

the shares to members or in default of members to persons selected by the Directors in accordance with the provisions of clauses 8, 9 and 10 hereof so far as is applicable, and the provisions of clauses 8, 9, 10, 11, 12, and 13, and 14 hereof shall mutatis mutandis, and so far as they can be made applicable be deemed to apply to such shares, and the purchaser of such shares, shall be entitled, without making any payment therefor, except the fair value and costs of transfer, to all the shares held by such deceased person.

10

16. Any share may be transferred by a member to any son, daughter; grandson, granddaughter, or other issue, brother, sister, husband, or wife, nephew or niece, of such member and clause 8 hereof shall not apply to any such transfer.

17. The Directors may refuse to register any transfer of a share or shares (a) where the Company has a lien on the share or shares; (b) where it is not proved to their satisfaction that the proposed transferee is a responsible person; (c) where the Directors are of an opinion that the proposed transferee is not a desirable person to admit to membership. But paragraphs (b) and (c) of this clause shall not apply where the proposed transferee is already a member or is selected by the Directors as aforesaid, nor to a transfer made pursuant to clause 15 hereof.

20

30

18. The instrument of transfer of any share shall be signed by both the transferor and transferee, and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the register in respect thereof.

19. The instrument of transfer of any share shall be in writing in the usual form, or in the following form, or as near thereto as circumstances will admit :-

40

"I, _____ of _____
" in consideration of the
"sum of \$ _____ paid to me by
" _____ of _____
" (hereinafter called

"the said transferee") do hereby transfer to
 "the said transferee share (or shares)
 "numbered in the undertaking call-
 "ed "Letter "T" ESTATES LIMITED" to hold into
 "the said transferee, his executors, adminis-
 "trators, and assigns, subject to the several
 "conditions on which I held the same immedi-
 "ately before the execution hereof, and I
 "the said transferee, do hereby agree to take
 "the said share (or shares) subject to the
 "conditions aforesaid.

10

"As witness our hands, the day
 "of

"Witnesses to the signatures, etc."

20. No transfer shall be made to an infant or person of unsound mind.

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21. Every instrument of transfer shall be left at the office for registration accompanied by the certificate of the shares to be transferred, and such other evidence as the Company may require to prove the title of the transferor, or his right to transfer the shares.

22. All instrument of transfer which shall be registered shall be retained by the Company, but any instrument of transfer which the Directors may decline to register shall on demand be returned to the person depositing the same.

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23. A fee not exceeding half-a-dollar may be charged for each transfer and shall, if required by the Directors, be paid before the registration thereof.

24. The transfer books, and register of members may be closed during such time as the Directors think fit, not exceeding in the whole thirty days in each year.

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25. The heirs, executors or administrators or other the legal representatives of a deceased member (not being one of several joint - holders) shall be the only persons recognised by the Company as having any title to the shares registered in the name of such member, and in case of the death of any one or more of the joint-holders of any registered shares, the survivors shall be the only person recognised by the Company as having any title or interest in any such shares.

In the
 Supreme Court of
 British Guiana

No.2

Exhibit "A" to
 Affidavit of
 Stanley Heald

11th March 1957
 continued

In the
Supreme Court of
British Guiana

No.2

Exhibit "A" to
Affidavit of
Stanley Heald

11th March 1957
continued

26. Any guardian of any infant member and any curator or committee of a lunatic member, and any person becoming entitled to shares in consequence of the death or insolvency of any member upon producing such evidence that he sustains the character in respect of which he proposes to act under this clause, or of his title as the Directors think sufficient, may, with the consent of the Directors (which they shall not be under any obligation to give) be registered as a member in respect of such shares, or may, subject to the regulations as to transfers hereinbefore contained, transfer such shares. This clause is hereinafter referred to as the transmission clause.

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This is the document marked "A" referred to in the foregoing affidavit by Stanley Heald sworn before me this 11th day of March 1957.

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A. G. King

Commissioner for Oaths to Affidavits

No.3

Judge's Notes

20th May 1957
7th June 1957
and 13th June
1957.

No.3

JUDGE'S NOTES

Monday, 20th May, 1957.

IN THE MATTER OF THE ESTATE OF SOPHIA MUSTERD,
DECEASED

- and -

IN THE MATTER OF THE SUPREME COURT ORDINANCE
CHAPTER 7 SECTION 45

30

BETWEEN: STANLEY HEALD . Plaintiff

- and -

1. LETTER T. ESTATES LIMITED
2. VICTORINE ROBERTS
3. OSCAR JAMES

Defendants

Mr. Carlos Gomes for the Plaintiff.
Mr. J.H.S. Elliott for Letter T Estates.
Mr. L.F.S. Burnham for the other defendants.

Mr. Carlos Gomes for the Plaintiff lays over the

Probate and Copy of Will which is marked "A".

In the
Supreme Court of
British Guiana

No.3

Judge's Notes

20th May 1957.
7th June 1957
and 13th June
1957
continued

10 Mr.Gomes: Miss Musterd large shareholder in
Letter T Estates. Died and Probate granted on
25th January, 1957. Plaintiff was the only execu-
tor named. She left 121 of her shares in Letter
T to each of defendants Nos.2 and 3. The Company
is a private one and registered as such under the
Company's Ordinance. Acting under Articles of
Association the executor wrote letter mentioned in
paragraph 4 of his affidavit. Acting under Arti-
cles 25 and 15 asked Secretary certain questions
as had to be offered to members of Company at a
fair value. \$410 each was fixed by Auditor of
Company as a fair value making a total of \$99,220
to be paid for the shares which was to be paid to
the legatees. On 22nd February 1957 Company re-
plied to executor that members of Company have ac-
cepted offer as mentioned in paragraph 5 of execu-
tor's affidavit. Asked that executor execute
20 transfer of these shares. Counsel for Nos.2 and
3 defendants written to informing him of valua-
tion under Articles 11 of Articles of Association.

Private Company cannot ask public for sub-
scription. Restrictive articles with respect to
shares in all private Companies. Executor can
only carry out provisions of Articles and is ask-
ing Court for directions on matter.

30 Mr.Elliott: Refers to Article 15 of the Arti-
cles of Association. In this case the first
letter is a proper application by the executor
and offering shares to members of the Company.
There is a time restriction - 10 and 13 - of Arti-
cles. Refers to paragraph 4 of affidavit when
offer was made. Reply accepting shares in para-
graph 5. Therefore having accepted within one
month executor under obligation to transfer the
shares in return for payment of the fair value.
Article 11 is relevant article. Cannot be ques-
tioned unless on ground of fraud. Letter of 5th
40 March 1957 written within a month of 7th February
1957 informs of the deposit and asking for the
necessary transfer. Correct direction is that
executor transfers the shares to us for that sum.

Mr. Burnham: Plaintiff is member and director of
Company. Under Clause 25 of the Articles only
person recognised as entitled to shares is the

In the
Supreme Court of
British Guiana

No.3

Judge's Notes

20th May 1957
7th June 1957
and 13th June
1957
continued

plaintiff, Heald. Therefore under no compulsion under Clause 15 to make an offer to transfer the shares. He could therefore hold the shares. Person entitled to the shares is a member. Assuming, however, he is under obligation to transfer shares making Company his agent for sale, it is submitted that there is not sufficient information before Court that terms of Article 11 complied with. No where in affidavit that no declaration by three Directors. Ipse dixit not enough. Must be specifically sworn to. No writing before Court - no certificates. Should be produced to defendants or a copy should have been appended. That is not cured by off-hand reference to Probate Papers. It is important. Cites Dean -v- Prince and Others (1953) 2 All Eng. R. 636 Court has not sufficient evidence to direct as asked for by No.1 defendant that shares be sold or transferred for the sum of \$99,220. Plaintiff will have to swear to additional affidavit and lay over necessary documents.

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Mr. Gomes in reply: Heald comes into shares as executor and not as beneficial owner. Holds them for legatees in Will. Refers to Article 16. Cannot keep them. Must transfer. Nos.2 and 3 defendants not members of family.

Evidence on these matters by affidavit.

Mr. Gomes asks for supplemental affidavit to be laid over.

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Mr. Elliott: Says question raised does not arise in this summons - as to the fair value of shares. Meaning of 25 and 11. Article 15 must be construed differently to the two articles mentioned.

Adjourned 7th June, 1957 at 10 a.m. for evidence to be taken.

Friday, 7th June, 1957

Stanley Heald: I am a chartered accountant and have been practising as such in this Colony for over forty years. I am the executor named in the last Will of Sophia Musterd, probate of

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which was granted on 25th January 1957. I am also a director of Letter T. Estates Ltd. and a nominee shareholder. Under Article 11 of the Articles of Association the Directors declined to fix a value on the shares. The Auditors then issued a certificate as to a fair value. That certificate was filed for Estate Duty purposes in the Registry of Court. This is certified copy put in as Ex. B. On 22nd February 1957 I received this letter put in as Ex. C. I have brought these proceedings in order to get directions from the Court.

In the
Supreme Court of
British Guiana

No.3

Judge's Notes

20th May 1957
7th June 1957
and 13th June
1957

continued

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Cross-examined by Mr. Burnham: I am a director of Letter T. J.C. Falconer, J. Edward De Freitas, Jessie Watt are the other Directors. I have been a director from 1954. I was present at the Directors' Meeting. I was Chairman. Minutes were taken and could be produced. The Directors refused to give a fair value. I retired at the end of 1954 from the firm of Fitzpatrick, Graham and Company, Auditors. That was after I became a director. When I became a director Fitzpatrick Graham and Company were not the auditors. On the death of Mr. W.G. Smellie they became the auditors. I cannot remember the year. I ceased to be a partner at the end of 1954. Mr. Miliken a partner of Fitzpatrick, Graham and Company became Auditor when I became a director. I believe the appointments were simultaneous. There was a connection between the two events. Fitzpatrick, Graham and Company were auditors up to the time I became a director. Mr. Miliken is a partner in Fitzpatrick, Graham and Company. He resigned and Fitzpatrick, Graham and Company again became the auditors at the end of 1954. They are still the auditors. I can be regarded as a consultant to Fitzpatrick, Graham and Company or to anyone. I have not been consulted by them. I am a nominee shareholder for the late Miss Musterd. I did not apply to have the 242 shares registered in my name after I got probate. I hold 10 shares which are part of the 242. The shares represent a controlling interest in Letter T Estates Ltd. I do not remember if I personally received the certificate from the auditors. The Company applied to the auditors for the certificate. The Secretary was present at the meeting of the Board of Directors when they refused to fix a fair value. He was instructed to make the application. I was at the next meeting which confirmed the minutes of

In the
Supreme Court of
British Guiana

No. 3

Judge's Notes

20th May 1957
7th June 1957
and 13th June
1957
continued

the previous meeting. These are the minutes of the meeting of the 16th November 1956 put in as Ex. D. Witness refers to paragraph F. The letter referred to is not in the file. The fair value fixed was prior to my offer to transfer shares. My letter of the 7th February was considered by the Board on the 25th February 1957. There is no direct reference in the minutes of the 25th February 1957 of the fair value being considered and subsequent to my letter of the 7th February 1957 that had been considered before. The directors got their fair value from the auditors certificate. As executor I did not consider whether \$410 per share was a fair value. I know the Letter T. Estate. I did not enquire into the basis on which the value was arrived. For Estate duty purposes the shares of a private Company should be with reference to total shares in the Company. The assets of the Estate consist of land, cultivation, buildings and equipment. I think I could give the Company the value of my experience for some time more. The other directors have no objection to me. The other directors were aware of the ten shares being transferred to me by Miss Musterd. The letter referred to in the minutes could be had. The value of the estate has depreciated considerably since November.

Mr. Burnham submits: Moodie and Another -v- W. & J. Shepherd Ltd. and Others 1949 2 All Eng. R. page 1044. On page 1050 see dicta of Lord Porter - See dicta of Lord Reid. Asks Court to consider this dicta. Refers to Clause 15 of Articles of Association. Offer has to be intimated to Company and then under Clause 11 a fair value to be fixed. Heald is member of Company, Director of Company, does not propose to retire from Company, and does not anticipate hostility from others in Company. Heald as executor only person entitled to hold shares under Clause 25. He has not in evidence or affidavit said he has no desire to hold shares as a trustee for the two beneficiaries. His position in Company is that of trustee as a nominee shareholder. He feels he is bound to transfer shares to Company or its nominees. Heald as member entitled to hold shares as trustees for beneficiaries and by virtue of Clause 25.

Heald can now be directed to transfer shares

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to second and third named defendants whom the testatrix intended to benefit. Refers to Clause 8. Clause 9 deals with procedure. Notice given by Heald on 7th February 1957. Minutes of meeting of 25th February 1957 do not disclose Directors refused or declined to fix a fair value. Assuming if by reference back to auditor's document Ex.B. - of November 1956 - and valuation obtained for Estate duty purposes - cannot be cured by minutes of meeting of 16th November 1956 and there was no intimation or offer on which a fair value could have been fixed. May well be that on 25th February 1957 directors might have declined to fix a fair value and got a fair value from auditors. They might still have fixed \$410. Point is requirements of Clause 11 have not been complied with. Until notice of intention to transfer is sent to Company under Clause 9 no question of fair value arises to be considered. For certificate to be accepted must be a clear declining by directors to fix a fair value. Refers again to Moodie case. Authority for that proposition.

In the
Supreme Court of
British Guiana

No.3

Judge's Notes

20th May 1957
7th June 1957
and 13th June
1957
continued

No fair value at all before the Court and within the meaning of Clause 11. What purports to be a fair value in this case is a certificate given for Estate duty purposes and anterior to any notice of intended transfer by the plaintiff Heald. Gives value as at 19th October 1956, i.e. date of death. It must be a fair value at the time of offer and acceptance. Refers to future tense. Clearly showing cannot relate to something anterior.

Have failed within the space of three months to accept the offer made by Heald to them. Refers to Clause 13. Heald is therefore free to transfer shares to anyone and at any price. Court should direct transfer of shares to Nos.2 and 3 defendants whose testatrix left the shares to them. No evidence that directors do not want the two beneficiaries.

Adjourned to 13th June, 1957 at 1.00 p.m.

Mr. Elliott to reply.

R. Sydney Miller.

In the
Supreme Court of
British Guiana

Thursday, 13th June, 1957

No.3

In the Matter of the Estate of Sophia Musterd,
deceased.

Judge's Notes

20th May 1957

7th June 1957

and 13th June
1957

continued

Mr. Elliott in reply: Refers to Moodie case. Here no application by the executor to have himself put on the register. Articles in that case different to Articles which have to be considered in this case. Article in this case is No.15. Heald on death became entitled to shares and so he had to make offer within three months of his becoming so entitled. No obligation or wish on his part (Heald) to have shares registered in his own name. On 7th February gave notice that he intended to transfer shares. Fair value could be overcome by Auditors giving a new certificate if point accepted that certificate given was in respect and for purposes of Estate Duty. Article 11 says if no declaration then the auditors shall certify. Not necessary that directors should decline to fix a fair value before a certificate is given. Contends that proper order should be that transfer be made to the nominees of the Company and then question of fair value would arise.

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Mr. Carlos Gomes: This is a private Company - family getting together and purchasing property among themselves. Refers to 15 (i) of Chapter 328. Executor could have shares put in his name or transfer direct to those to whom shares left. He need not have come to the Court. Articles very clear and explicit. Fair value must be fixed as at the date of death. Could be fixed at any time after death.

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R. Sydney Miller.

No.4

O R D E R

1957 No.430 Demerara

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

In the
Supreme Court of
British Guiana

No.4

Order

8th August 1957

In the Matter of the Estate of SOPHIA MUSTERD,
deceased,

- and -

In the Matter of the Supreme Court Ordinance,
Chapter 7, Section 45

10

BETWEEN: STANLEY HEALD as executor of the
Estate of Sophia Musterd, deceased,
(hereinafter called the deceased)
Plaintiff

- and -

LETTER T. ESTATES LIMITED,
VICTORINE ROBERTS, singlewoman,
and OSCAR JAMES, as devisees
under the last Will of the
deceased, Defendants

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BEFORE THE HONOURABLE MR. JUSTICE MILLER

THURSDAY THE 8th DAY OF AUGUST 1957

ENTERED THE 13TH DAY OF SEPTEMBER 1957

Upon the application by originating summons dated the 11th day of March 1957 of Stanley Heald the executor of the estate of Sophia Musterd deceased for an order giving directions as to whether the plaintiff should execute transfers of two hundred and forty two shares in Letter T. Estates Limited to the persons named in the letter by the

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In the
Supreme Court of
British Guiana

No.4

Order

8th August 1957
continued

said Company to the plaintiff dated the 22nd February 1957 set forth in the affidavit by the applicant (plaintiff) sworn on the 11th day of March 1957 and filed herein for the number of shares respectively set opposite their names, or to execute two transfers - one for one hundred and twenty-one shares in the Company to the defendant Victorine Roberts and one for one hundred and twenty-one shares in the Company to the defendant Oscar James, the beneficiaries thereof named in the last Will of the aforesaid deceased - or making and giving such directions as the Court may deem fit and that the costs of these proceedings be provided for

10

WHICH UPON HEARING the solicitor for the Plaintiff and Counsel for the said Company and for the said Victorine Roberts and Oscar James the Respondents to the said originating summons in Chambers on the 20th day of May, 1957, was adjourned to be heard in Court coming on on the 7th and 13th days of June 1957 and on this day to be heard accordingly

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AND UPON HEARING the solicitor for the applicant and Counsel for each of the Respondents and the evidence adduced

AND UPON READING the said originating summons and the affidavit of the said Stanley Heald filed the said 11th day of March 1957 and the exhibit in the said affidavit referred to

30

THIS COURT DOETH ORDER AND DIRECT that the plaintiff as executor of the estate of Sophia Musterd deceased do execute two transfers - one for one hundred and twenty-one shares to the said Victorine Roberts and one for one hundred and twenty-one shares to the said Oscar James in the said Letter T. Estates Limited

AND THIS COURT doth not think fit to make any other order on the said application except that the costs of this application to be taxed of each party be paid out of the estate of the aforesaid Sophia Musterd deceased. Fit for counsel.

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AND IT IS FURTHER ORDERED that execution

under the order herein be stayed for six weeks from the date hereof.

Liberty to apply

BY THE COURT

J.E.N. Earl

Sworn Clerk & Notary Public

for REGISTRAR.

In the
Supreme Court of
British Guiana

No.4

Order

8th August 1957
continued

No.5

REASONS FOR JUDGMENT:

No.5

Reasons for
Judgment

8th August 1957

10

This is an originating Summons issued upon the application of Stanley Heald the executor of the deceased for an order of the Court giving directions as to whether the plaintiff should execute transfers of 242 shares in "Letter T Estates Ltd.", to the persons named in the letter by the Company to the plaintiff and for the number of shares set opposite their names or to execute two transfers one for 121 shares in the Company to the defendant Victorine Roberts, and one for 121 shares in the Company to the defendant Oscar James the beneficiaries named in the last Will of the deceased or to make and give such directions as the Court may deem fit.

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The Letter T Estates Ltd., is a private company and the holding of shares in the company is restricted by the Articles of the Company.

Article 15 reads:

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" Any person, (not a member or the son, daughter, grandson, grand-daughter, or other issue, brother, sister, husband or wife, nephew or niece, of a member) becoming entitled to shares in consequence of the death of any member, shall, within three months after his so becoming entitled, offer the shares to members or in default of members to persons selected by

In the
Supreme Court of
British Guiana

No.5

Reasons for
Judgment

8th August 1957
continued

the Directors in accordance with the provisions of clauses 8, 9, and 10 hereof so far as is applicable; and the provisions of clauses 8, 9, 10, 11, 12, 13 and 14 hereof shall mutatis mutandis, and so far as they can be made applicable be deemed to apply to such shares, and the purchaser of such shares, shall be entitled, without making any payment therefor, except the fair value and costs of transfer, to all the shares held by such deceased person. "

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The defendants Victorine Roberts and Oscar James quite clearly and definitely do not come within the scope and ambit of this article from the point of view of relationship to the deceased testatrix, and, that being so and having regard to Article 25 which reads :

"The heirs, executors or administrators or the other legal representatives of a deceased member (not being one of several joint-holders) shall be the only persons recognized by the company as having any title to the shares registered in the name of such member, and in case of the death of any one or more of the joint-holders of any registered shares, the survivors shall be the only persons recognized by the Company as having any title or interest in any such shares, "

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the plaintiff-executor wrote a letter on the 7th February, 1957, to the company offering (a) the sale and transfer of the shares to members, or in default of members the persons selected by the directors, at a fair value which was fixed at \$410 each share. That offer was accepted on the 5th March, 1957, and it is therefore contended that there having been acceptance on the part of the persons named in the letter of the 8th March, 1957 and the deposit of the sum of \$99,220 representing a fair value of the shares, it follows, and the direction should be that the executor transfers the shares to the persons accepting, and for the sum of money mentioned.

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It is submitted on behalf of the defendants Roberts and James that the plaintiff Stanley Heald, as executor is the only person, under

In the
Supreme Court of
British Guiana

No.5

Reasons for
Judgment

8th August 1957
continued

10 Article 25, entitled to hold the shares and he has not entered on affidavit or in evidence said he has no desire to hold the shares as trustee for the beneficiaries. There is in my opinion, merit in that submission and it is my view that it was not competent for the plaintiff to make the offer he purported to make in his letter to the company of the 7th February, 1957. My view is that the defendants Roberts and James by the bequest, are the persons entitled to the shares, and the plaintiff is merely a trustee, holding the shares in trust for them. That being so, the offer to the Company should come from them within the space of three months as provided under Article 15, and not from him. With that being done, then, under Article 10, "the Company shall within the space of one month after being served with the transfer notice, find a member or person selected who is willing to purchase." Therefore the plaintiff-executor being merely a trustee and holding the shares in trust, could not make the offer he did, and consequently I must find that the offer so made was not a valid one and therefore could not be properly accepted. It is to be noted and observed that the plaintiff had the desire to effect transfers in favour of the beneficiaries; but, on being advised against doing so, it therefore became necessary for him to come to the Court for directions.

30 There is also the question of the fair value to which I should now direct my attention. The value fixed is \$410 each share. That was done by the auditors, Messrs. Fitzpatrick Graham and Company at the time when the Estate Duty papers were filed, and for that purpose. The certificate was laid over in these proceedings. There has been no other valuation. Article 10 of the Company's Articles of Association says :

40 " If the Company shall within the space of one month after being served with the transfer notice, find a member or person selected as aforesaid willing to purchase the share, and shall give notice thereof, to the proposing transferor, he shall be bound upon payment of the fair value to transfer the share to the purchasing member. "

Then Article 11 provides :

In the
Supreme Court of
British Guiana

No.5

Reasons for
Judgment

8th August 1957
continued

" For the purposes thereof, the fair value of any share shall be such a sum as any three directors shall declare in writing to be the fair value thereof, and if there be no such declaration, then as the auditor shall certify in writing to be the fair value ..
..... "

In this case, it appears that the Directors declined to make such a declaration as shown in the minutes of the Company at a meeting held on the 16th November, 1956, and so, in the ordinary and normal way that should then be done by the auditor. The fixing of the fair value must be a deliberate act done at the appropriate time and for a definite and specific purpose. In this case, the appropriate time must be when an offer is made to the Company, and when, within the allotted time after a transfer notice is served, a member is found willing to purchase. It follows therefore that the certificate of valuation given for Estate Duty purposes cannot be properly used and accepted as one fixing the fair value of the shares within the articles and for the particular purpose.

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My direction is that the plaintiff as executor of the estate of Sophia Musterd, deceased, execute two transfers one for 121 shares in the Company to the defendant Victorine Roberts and one for 121 shares in the Company to the defendant Oscar James.

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There will be costs to each party payable out of the estate. Liberty to apply.

R. Sydney Miller

Puisne Judge (Ag.)

Dated this 25th day of September, 1957.

No.6

NOTICE OF APPEAL MOTION

1957 No.17 BRITISH GUIANA

IN THE WEST INDIAN COURT OF APPEAL

ON APPEAL FROM THE SUPREME COURT OF BRITISH

GUIANA

IN THE MATTER OF THE ESTATE OF SOPHIA MUSTERD,
DECEASED

- and -

10 IN THE MATTER OF THE SUPREME COURT ORDINANCE,
CHAPTER 7, SECTION 45.

BETWEEN: LETTER T. ESTATES LIMITED (First
Defendants) Appellants

- and -

STANLEY HEALD (Plaintiff)
VICTORINE ROBERTS (Second Defendant)
and OSCAR JAMES (Third Defendant)
Respondents

Originating Summons (No.430 of 1957 Demerara)

20 NOTICE OF APPEAL MOTION:

TAKE NOTICE that this Court will be moved on a day and at an hour of which you will be informed by the Registrar, by Counsel on the part of the (First Defendant) Appellant that the judgment of the Honourable Mr. Justice Robert Sydney Miller delivered in this Originating Summons on the 8th day of August 1957 and entered on the 13th day of September 1957 whereby it was ordered that the above-mentioned Stanley Heald (Plaintiff)
30 First Respondent, executor of the estate of the above-mentioned Sophia Musterd, deceased, do execute two transfers of shares, one in favour of the above-mentioned Victorine Roberts (Second Defendant) Second Respondent, for 121 shares in the

In the
West Indian Court
of Appeal

No.6

Notice of Appeal
Motion

18th September
1957

In the
West Indian Court
of Appeal

No.6

Notice of Appeal
Motion

18th September
1957
continued

Appellant Company, and one in favour of Oscar James (Third Defendant) Third Respondent, for 121 shares in the Appellant Company and deliver the same to the said Victorine Roberts and Oscar James, be wholly reversed and that the declarations therein made be set aside, and that it may be declared as follows :-

(a) That the said Stanley Heald (Plaintiff) First Respondent, as executor of the said estate, or the Appellant Company, do execute transfers of 242 shares in the Appellant Company to the persons named in a letter by the Appellant Company to the said Stanley Heald (Plaintiff) First Respondent dated the 22nd day of February, 1957, set forth in the affidavit by the said Stanley Heald (Plaintiff) First Respondent sworn to on the 11th day of March, 1957, and filed herein, for the number of shares respectively set opposite their names;

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(b) That the costs of these proceedings be provided for.

20

AND FURTHER TAKE NOTICE that the following are the grounds of or reasons for appeal:-

(1) That the learned trial Judge erred in law in holding that the persons becoming entitled to the shares of the said Sophia Musterd deceased in consequence of her death within the meaning of Article 15 of the Articles of Association of the Appellant Company are the specific legatees of the said shares;

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(2) That the learned trial Judge erred in law in holding that in default of the making and acceptance of an offer of shares under the said Article 15, the said executor should execute transfers of the said shares in favour of the said specific legatees;

(3) That the learned trial Judge erred in law in holding that Article 13 of the said Articles of Association applied even where no transfer notice or offer of shares has been served;

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(4) That the learned trial Judge erred in law in failing to hold that a transfer of the said shares executed by the said executor in

favour of the said specific legatees would be inconsistent with Article 9 of the said Articles of Association;

(5) That the learned trial Judge erred in law in making any declaration in respect of the fair value of the said shares as the said fair value was not one of the issues raised on the said originating summons;

(6) That the judgment was wrong.

10 Dated the 18th day of September, 1957.

H.C.B. Humphrys
Solicitor for the
First Defendants
(Appellants)

To Stanley Heald Esq

and

To:- Carlos Gomes Esq.

His Solicitor,

2, Croal Street, Georgetown.

20

and

To:- Victorine Roberts and

Oscar James

and

To:- Lloyd Babbington Martin Esq.,

their Solicitor,

7, Croal Street, Georgetown.

In the
West Indian Court
of Appeal

No.6

Notice of Appeal
Motion

18th September
1957
continued

In the
West Indian Court
of Appeal

No.7

AFFIDAVIT OF HUGH CECIL BENJAMIN HUMPHRYS

No.7

1957 No.17 BRITISH GUIANA

Affidavit of Hugh
Cecil Benjamin
Humphrys

IN THE WEST INDIAN COURT OF APPEAL

ON APPEAL FROM THE SUPREME COURT OF

24th September
1957

BRITISH GUIANA

IN THE MATTER OF THE ESTATE OF SOPHIA MUSTERD,
DECEASED

- and -

IN THE MATTER OF THE SUPREME COURT ORDINANCE,
CHAPTER 7, SECTION 45.

10

BETWEEN: LETTER T. ESTATES (First Defendants)
Appellants.

- and -

STANLEY HEALD (Plaintiff)
VICTORINE ROBERTS (Second Defendant)
and OSCAR JAMES (Third Defendant)
Respondents.

Originating Summons (No.430 of 1957 Demerara)

AFFIDAVIT

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I, HUGH CECIL BENJAMIN HUMPHRYS, of lot 2,
High Street, Georgetown, Demerara, being duly
sworn make oath and say as follows :-

1. I am the Solicitor of the Defendant
Company herein and am duly authorised to make
this affidavit on its behalf.

2. In this case probate of the Will of
Sophia Musterd deceased was granted to the
Plaintiff on the 25th January, 1957.

3. The said Sophia Musterd by her Will

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purported to leave 121 shares each in the Defendant Company to the second and third Defendants.

4. Before transferring the said shares the Plaintiff gave notice of his intention to transfer them to the Defendant Company as required by its articles of association.

5. Within one month of his so giving notice Mrs. Watt, Mrs. E. J. Mearns and Mrs. G. E. Mearns shareholders in the Defendant Company, offered to buy the said shares at their fair price.

6. On the 11th March, 1957, the plaintiff took out the originating summons in this matter asking for a declaration as to whether he should execute transfers of the said shares in favour of the said shareholders or in favour of the second and third Defendants.

7. On the 7th day of August, 1957, Mr. Justice Miller ordered the Plaintiff to execute transfers of the said shares in favour of the second and third Defendants, and granted a stay of execution for six weeks.

8. On the 18th day of September, 1957, notice of appeal was filed by the Defendant Company.

9. I am informed and verily believe that the Plaintiff is at present out of the Colony and has not yet executed the said transfers.

10. As there has been no order that the Defendant Company should register the said transfer of shares, and as the said transfer would be ineffective without registration, I would ask this Honourable Court to grant a further stay until the determination of the said appeal as it is undesirable that executed but unregistered transfers should be in existence.

11. I am advised by Counsel that as the said shareholders are affected by the said decision they should be given leave either to join in the said appeal or to have the matter re-heard.

12. I am instructed by the said shareholders to apply on their behalf for leave to have them joined in the appeal so that they may be represented

In the
West Indian Court
of Appeal

No. 7

Affidavit of Hugh
Cecil Benjamin
Humphrys

24th September
1957
continued

In the
West Indian Court
of Appeal

in the same and be bound by the final decision.

H.C.B. Humphrys

No.7
Affidavit of Hugh
Cecil Benjamin
Humphrys
24th September
1957
continued

Sworn to at Georgetown)
Demerara, this 24th)
day of September, 1957)

Before me,
H.V.B. Gunning
Commissioner for Oaths.

36¢ Stamp cancelled.

No.8

No.8

10

Order giving
leave to join
parties in
Appeal
28th September
1957

ORDER GIVING LEAVE TO JOIN PARTIES IN APPEAL

1957 No.17 BRITISH GUIANA

IN THE WEST INDIAN COURT OF APPEAL

ON APPEAL FROM THE SUPREME COURT OF

BRITISH GUIANA

IN THE MATTER OF THE ESTATE OF SOPHIA MUSTERD,
DECEASED

- and -

IN THE MATTER OF THE SUPREME COURT ORDINANCE,
CHAPTER 7 SECTION 45

20

BETWEEN: LETTER T. ESTATES LIMITED (FIRST
DEFENDANTS) Appellants

- and -

STANLEY HEALD (Plaintiff)
VICTORINE ROBERTS (Second Defendant)
and OSCAR JAMES (Third Defendant)
Respondents

Originating Summons (No.430 of 1957 Demerara)

BEFORE THE HONOURABLE MR. JUSTICE BOLLERS (IN
CHAMBERS)

SATURDAY THE 28TH DAY OF SEPTEMBER, 1957
ENTERED THE 4TH DAY OF OCTOBER, 1957.

30

UPON THE APPLICATION of the Appellant
Company (First Defendants) filed herein on the
25th day of September, 1957 AND UPON READING the
affidavit sworn to by Hugh Cecil Benjamin Hum-
phrys, solicitor, filed herein, AND UPON HEARING
Counsel for the Appellants (First Defendants) ex

parte, IT IS ORDERED that Mrs. Watt, Mrs. E.J. Mearns and Mrs. G.E. Mearns shareholders in the Appellant Company be granted leave to be joined in this appeal AND IT IS ORDERED AND DIRECTED that the said Mrs. Watt, Mrs. E.J. Mearns and Mrs. G.E. Mearns be served with a notice of the Order made by the Honourable Mr. Justice Miller herein on the 7th August, 1957, and that such notice be served in accordance with the provisions of Order 14 Rule 33 of the Rules of the Supreme Court 1955 AND that execution herein be stayed until the determination of the Appeal.

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BY THE COURT
L.P.Kerry
Sworn Clerk & Notary Public
for REGISTRAR.

In the
West Indian Court
of Appeal

No.8

Order giving
leave to join
parties in
Appeal

28th September
1957
continued

No.9

J U D G M E N T

IN THE FEDERAL SUPREME COURT
CIVIL APPELLATE JURISDICTION

20

ON TRANSFER FROM THE WEST INDIAN COURT OF APPEAL
BRITISH GUIANA No.17 of 1957
IN THE WEST INDIAN COURT OF APPEAL
ON APPEAL FROM THE SUPREME COURT OF BRITISH
GUIANA

In the
Federal Supreme
Court

No.9

Judgment
4th July 1958
(a) Eric
Hallinan C.J.

IN THE MATTER OF THE ESTATE OF SOPHIA MUSTERD,
DECEASED - and -

IN THE MATTER OF THE SUPREME COURT ORDINANCE,
CHAPTER 7, SECTION 45.

30

BETWEEN: LETTER T. ESTATES, LIMITED, APPELLANTS
(First Defendants)
- and -
STANLEY HEALD (Plaintiff)
VICTORINE ROBERTS
(Second Defendant)
and
OSCAR JAMES RESPONDENTS
(Third Defendant)
and

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JESSICA WATT
ELLA JEANNIE MEARNs, and
GRETA ENID MEARNs
(added by Order of the
Federal Supreme Court)
ADDED RESPONDENTS

JUDGMENT

The Chief Justice.

Sophia Musterd died on the 19th October, 1956,

In the
Federal Supreme
Court

No.9

Judgment

4th July 1958.

(a) Eric
Hallinan C.J.
continued

bequeathing a legacy of shares in a private company called Letter T. Estates Limited, to the second and third defendants, Victorine Roberts and Oscar James. Probate of her Will was granted on the 25th January, 1957.

Under the Articles of Association of the Company the shares could not be transferred to the legatees until they had been offered for sale by the Company to its members who were entitled to purchase them at a fair value to be determined by a declaration of three directors of the Company and, if the directors made no such declaration, then by a certificate of the company's auditors. In fact, the directors declined to make a declaration. The auditors gave a certificate valuing the shares at \$410.00 each as at the 19th October, 1956, (the date of the deceased's death), and this certificate was filed for the purposes of the computation of estate duties of the 9th January, 1957.

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On the 30th January, 1957, Miss Musterd's executor, the plaintiff, Stanley Heald, wrote to the legatees informing them that the shares had been valued at \$410.00 and explained that under the Articles of Association of the Company the shares had first to be offered to members of the company and asked for instructions. The legatees' lawyer on the 7th February, 1957, wrote to the executor asking for details of the company's finances and on the same day the executor wrote to the company giving notice of his desire "pursuant of Article 25 to transfer the shares" and "to comply with Article 15". On the 22nd February, 1957, the company replied that three shareholders (who on the application of the company have been joined as defendants and have appeared at the hearing of this appeal) had accepted the offer to buy the shares at \$410.00 each.

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In consequence of communications received from the legatees' counsel, the executor has applied to the Court for direction as to whether he should transfer these shares to the three shareholders or transfer half the shares to one legatee and half to the other.

It is convenient at this stage to set out

the provisions of Articles 25, 26, and 15 of the company's articles of Association.

In the
Federal Supreme
Court

No.9

Judgment

4th July 1958

(a) Eric
Hallinan C.J.
continued

10

"25. The heirs, executors or administrators or other the legal representatives of a deceased member (not being one of several joint-holders) shall be the only persons recognised by the company as having any title to the shares registered in the name of such member, and in case of the death of any one or more of the joint-holders of any registered shares, the survivors shall be the only person recognised by the company as having any title or interest in any such shares."

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"26. Any guardian of any infant member and any curator or committee of a lunatic member, and any person becoming entitled to shares in consequence of the death or insolvency of any member upon producing such evidence that he sustains the character in respect of which he proposes to act under this clause, or of his title as the directors think sufficient, may with the consent of the directors (which they shall not be under any obligation to give) be registered as a member in respect of such shares, or may, subject to the regulations as to transfers herein before contained, transfer such shares. This clause is hereinafter referred to as the transmission clause."

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"15. Any person, (not a member or the son, daughter, grand-son, grand-daughter, or other issue, brother, sister, husband or wife, nephew or niece, of a member) becoming entitled to shares in consequence of the death of any member, shall within three months after his so becoming entitled, offer the shares to members or in default of members to persons selected by the directors in accordance with the provisions of the clauses 8, 9, and 10 hereof as far as is applicable, and the provisions of clauses 8, 9, 10, 11, 12, and 13, and 14 hereof shall mutatis mutandis, and so far as they can be made applicable be deemed to apply to such shares, and the purchaser of such shares, shall be entitled without making any payment therefor, except the fair value and

In the
Federal Supreme
Court

No.9

Judgment

4th July 1958

(a) Eric
Hallinan C.J.
continued

costs of transfer to all the shares held by such deceased person."

Articles 8 to 13 contains the usual provisions relating to the transfer inter vivos of shares in a private company. If a member wishes to transfer his shares and is not transferring to a near relative he informs the company that he wishes to sell. The company, as his agent, must within one month find the members willing to buy. If there are such transfer must be made to them at a fair price. If within three months the company finds no member willing to buy, the intending transferor may sell or transfer to any one at any price.

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When the executor wrote the letter of the 7th February, 1957, to the company, both the executor and the company considered that it was for the executor acting in right of his office and without obtaining authority from the legatees to offer to transfer the shares to members of the company willing to buy. This is still the contention of the company and the three shareholders in these proceedings. On behalf of these parties two alternative interpretations of the articles of association have been put forward either of which would entitle the executor to make the offer without the legatees' authority. First, that he is the person becoming entitled to the shares on the deceased's death under article 25, and is entitled to be registered as a member in respect thereof under article 26 or transfer them in accordance with articles 9 to 13. Secondly, that article 15 should be construed as if after the opening words "any person" there were inserted the words "where the beneficial owner is." The words "any person" would then, in the circumstances of the instant case, only refer to the executor who under article 25 and 15 would be the proper person to make the offer.

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In my view, both these interpretations are untenable. The plain meaning of Article 15 is that the words "any person" means a person becoming entitled to the beneficial interest in the deceased's shares who is not a member or a close relative of a member. It may well be that this article was drafted without due regard to modern company law and practice, to the powers and duties of executors in dealing with

In the
Federal Supreme
Court

No.9

Judgment

4th July 1958

(a) Eric
Hallinan C.J.
continued

10 a testator's shares, and - especially to Article
25. Article 25 provides that the heirs, execu-
tors or administrators shall be the only persons
recognised by the company as having title to the
deceased's shares, but this does not constitute
them the persons to make the offer to transfer
which under Article 15 is conferred on those bene-
ficially entitled to the shares. There is no
irreconcilable conflict between Articles 25 and
15. In Article 25, "title" means the legal title,
--- and executor, qua executor, has nothing more.
The reference in the same article to the survivor
of a joint-holder having a title and interest
strengthens this interpretation. In Article 15,
the words "becoming entitled", taken in their con-
text, refers to the beneficial interest. Nor, in
my view, can Article 15 be passed over and ignored
so that the executor proceeds under Articles 25,
26 and Articles 9 to 13 alone. Some play has
20 been made with the fact that the executor in this
case is also the holder in the company of some
shares as nominee of the deceased, but I am unable
to see how this position - qua nominee - can
entitle him to make an offer on behalf of the leg-
atees and without their authority.

30 Counsel for the legatees did not seem much
concerned as to whether it was for the executor
to make the offer or for the legatees under Arti-
cle 15. His main endeavour was to show that, how-
ever one interprets the articles of association,
members of the company had lost their right to
purchase the deceased's shares, and the executor
must transfer them to the Legatees. Counsel
submitted that if the executor was entitled to
make the offer without the authority of the lega-
tees, the provisions of the articles had not been
observed as the fair value of the shares had not
been properly ascertained. More than three
40 months had elapsed since the offer and, therefore,
the legatees were entitled to have the shares
transferred to them. If, on the other hand, the
executor could not have made the offer then the
legatees having failed to comply with Article
15 and the directors having taken no legal steps
to compel them to do so, the restrictions on the
right to transfer were removed and the executor
should transfer the shares to the legatees.

50 The submissions made by Counsel for the
legatees are, except on one point, without sub-
stance. It was the duty of the legatees to offer

In the
Federal Supreme
Court

No.9

Judgment

4th July 1958

(a) Eric
Hallinan C.J.
continued

the shares to members within three months of the deceased's death. They have failed to do so through no fault of their own, but their duty to make the offer still continues and this Court should now direct them to do so. I accept Counsel's submission that the fair value has not been properly ascertained. Unless there are special circumstances (which do not exist in the present case) the purchase price under a contract is normally the price of the subject matter when the offer is made; and the auditors' certificate in the present case was given before the offer. However, the company's notice that members were prepared to purchase which was given under Article 10 within one month of the offer was not invalid because the fair value had not been properly ascertained.

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The true position, in my view, is that the offer made by the executor on the 7th February, 1957, was a nullity since he was not the person required by Article 15 to make this offer. The Court should now direct the legatees to comply with that article and make the required offer. The fair value should be ascertained by the auditors as at the date of the offer, but if this value should be greater than the value of the shares at any time during the three months ensuing after the deceased's death, then the fair value should be the highest valuation which the auditors might have placed on the shares during that period.

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The executor and the company are entitled to have their costs of this appeal out of the estate. There will be no order as to costs with regard to the shareholders or to the legatees. The order of the Court below with regard to the legatees' costs is set aside.

Dated this 4th day of July, 1958.

Eric Hallinan
Chief Justice.

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(b) Rennie J.

Mr. Justice Rennie: I concur.

A. Rennie.
Federal Justice.

Mr. Justice Archer.

In the
Federal Supreme
Court

No.9

Judgment

4th July 1958
continued

(c) Archer J.

I have had the advantage of reading the judgment which has been delivered. I differ from the other members of the court in so far as the judgment contains a direction to the beneficiaries to offer their shares to the Respondents who have been made parties to this appeal and to the effective date for ascertainment of the fair value of the shares.

10 Article 15 of the company's articles of association has been inartistically drawn and probably does not cover all the cases that can arise under it. Whether the expression "the person becoming entitled to the shares in consequence of the death of a deceased member" was intended to refer to the legal representative of the deceased member or to the person succeeding to the beneficial interest in the shares is, in my opinion, quite indeterminate. But in the view that I take
20 it does not matter, for purposes of a direction to the executor in this case, whether it refers to him or to the beneficiaries who are Respondents. It is at least clear that an offer of the shares should have been made within three months of entitlement to them. Miss Musterd died on the 19th October, 1956, and her Will was admitted to probate on the 27th January, 1957, so that when the trial judge gave his direction on the originating summons the time limit for offering the shares
30 had expired. The executor is the only person recognised by the company as having any title to the shares and any offer of the shares must have been made through him. Such an offer was made, admittedly by the plaintiff-respondent as executor and not on behalf of the beneficiaries, but equity treats as done that which ought to have been done and I do not think that the beneficiaries can be heard to say that his offer was invalid because they were the persons to make the offer
40 and they had not, and thus to rely on a breach of their own obligation to establish the invalidity of the offer.

In my view, therefore, the only outstanding matter is that of ascertainment of the fair value of the shares for there has already been offer and acceptance. I would have directed the executor to transfer the shares to the added respondents on payment of the ascertained fair value which should be the value of the shares on the 7th February, 1957, the date of the offer.
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I agree with the proposed order as to costs.

C.V.H.Archer
Federal Justice.

In the
Federal Supreme
Court

No.10
ORDER ALLOWING APPEAL AND
ADDING DEFENDANTS

No.10

Order allowing
Appeal and add-
ing Defendants.

4th July 1958.

ORDER OF FEDERAL SUPREME COURT

BEFORE:

THE HONOURABLE SIR ERIC HALLINAN, CHIEF JUSTICE

THE HONOURABLE MR. JUSTICE RENNIE

THE HONOURABLE MR. JUSTICE ARCHER

DATED THE 4TH DAY OF JULY, 1958

ENTERED THE 4TH DAY OF JULY, 1958

10

UPON READING the Notice of Motion on behalf of the appellants dated the 18th day of September, 1957, the Notice of Motion on behalf of the (added defendants) respondents, Jessica Watt, Ella J. Mearns, and Greta E. Mearns, dated the 17th day of June, 1958, and the affidavit in support thereof of Hugh Cecil Benjamin Humphrys sworn to on the 17th day of June, 1958, both filed herein by leave of the Court, the judgment hereinafter mentioned and the Record of Appeal filed herein AND UPON HEARING Mr. J. H.S. Elliott of Counsel for the appellants, Mr. L.F.S. Burnham of Counsel for the second and third (defendants) respondents, Mr. J. Carter of Counsel for the (plaintiff) respondent and Mr. S.L. Van B. Stafford, Q.C., of Counsel for the said added respondents and mature deliberation thereupon had THE COURT DOTH ORDER that the said Jessica Watt, Ella J. Mearns and Greta E. Mearns, be added as (defendants) respondents to this appeal and that they be bound by the decision of the Court AND THE COURT DOTH FURTHER ORDER THAT this appeal be allowed and that the judgment of the Honourable Mr. Justice Miller dated the 8th day of August, 1957, whereby it was ordered and directed that the

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abovementioned Stanley Heald (plaintiff) respondent, executor of the estate of the abovementioned Sophia Musterd, deceased, do execute two transfers of shares, one in favour of the abovementioned Victorine Roberts (second defendant) respondent for 121 shares in the appellant Company, and one in favour of Oscar James (third defendant) respondent for 121 shares in the appellant Company and deliver the same to the said Victorine Roberts and Oscar James be set aside AND THE COURT DOTH NOW ORDER AND DIRECT THAT the said second and third (defendants) respondents do comply with Article 15 of the Articles of Association of the appellant Company and make the offer required by the said Article 15 to be made to the appellant Company AND THIS COURT DOTH FURTHER ORDER AND DIRECT THAT the fair value of the said shares be ascertained by the auditors of the appellant Company as at the date when the abovementioned offer is made but that if this value should be greater than the value of the said shares at any time during the three months ensuing after the 19th day of October, 1956, the date of the death of the said Sophia Musterd, then the fair value should be the highest valuation which the auditors might have placed on the said shares during that period AND THIS COURT DOTH FURTHER ORDER THAT the costs of the (plaintiff) respondent and the appellants of this appeal be taxed and paid out of the said estate of the said Sophia Musterd, deceased, and that there be no order as to costs of the appeal with respect to the said added (defendants) respondents and the second and third (defendants) respondent AND THIS COURT DOTH FURTHER ORDER THAT the order of the Court below as to costs be and the same is hereby affirmed.

BY ORDER OF THE COURT

R. McIntosh Clarke

REGISTRAR.

In the
Federal Supreme
Court

No.10

Order allowing
Appeal and adding
Defendants

4th July 1958
continued

In the
Federal Supreme
Court

No.11

ORDER GIVING CONDITIONAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

No.11

Order giving
conditional
leave to Appeal
to Her Majesty
in Council

Before the Honourable Sir Eric Hallinan, Chief
Justice.

Dated the 26th September, 1958.

26th September
1958.

Entered the 11th December, 1958.

Upon the petition of the above-named Vic-
torine Roberts, the second defendant-appellant,
and Oscar James, the third defendant-appellant,
dated the 25th day of July, 1958, preferred
unto this Court on the 26th day of September,
1958, for leave to appeal to Her Majesty in
Her Majesty's Privy Council against the judg-
ment of the Federal Supreme Court comprising
the Honourable Sir Eric Hallinan, Chief Jus-
tice, The Honourable Mr. Justice Rennie and
The Honourable Mr. Justice Archer delivered
herein on the 4th day of July, 1958.

10

Upon reading the said petition, the affi-
davit of Lloyd Babbington Martin, sworn to on
the 25th day of July, 1958, and filed herein,
and upon hearing what was alleged by Counsel
for the petitioners and Counsel for the above-
named Letter T Estates Limited, the first
defendants-respondents,

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THE COURT DOTH ORDER

That subject to the performance by the
said petitioners of the conditions hereinafter
mentioned and subject also to the final order
of this Honourable Court upon the due compli-
ance with such conditions leave to appeal to
Her Majesty in Her Majesty's Privy Council
against the said judgment be and the same is
hereby granted to the petitioners.

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AND THE COURT DOTH FURTHER ORDER

In the
Federal Supreme
Court

No.11

Order giving
conditional
leave to Appeal
to Her Majesty
in Council

26th September
1958
continued

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That the petitioners do within a period of three months from the date of this Order enter into good and sufficient security to the satisfaction of the Registrar in the sum of \$2,400 for the due prosecution of the said appeal and for the payment of such costs as may become payable to the said first defendants-respondents in the event of the petitioners not obtaining an order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or of the Judicial Committee of the Privy Council ordering the petitioners to pay the said first defendants-respondents' costs of the appeal as the case may be

AND THE COURT DOTH FURTHER ORDER

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That the petitioners do within three months from the date of this order in due course take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England

AND THE COURT DOTH FURTHER ORDER

That the said judgment of the Federal Supreme Court dated the 4th day of July, 1958, be stayed pending the hearing and final determination of the said appeal to Her Majesty in Her Majesty's Privy Council.

Liberty to all parties to apply as they may be advised.

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R.S.Persaud

Deputy Registrar,

(L.S.)

Federal Supreme Court.

In the
Federal Supreme
Court

No.12

ORDER ALLOWING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

No.12

Order allowing
final leave to
Appeal to Her
Majesty in
Council

2nd March 1959

IN THE FEDERAL SUPREME COURT OF THE WEST
INDIES

CIVIL APPELLATE JURISDICTION

ON TRANSFER FROM THE WEST INDIAN COURT OF
APPEAL

BRITISH GUIANA No.17 of 1957

IN THE WEST INDIAN COURT OF APPEAL

10

ON APPEAL FROM THE SUPREME COURT OF BRITISH
GUIANA

IN THE MATTER OF THE ESTATE OF SOPHIA MUSTERD,
DECEASED

- and -

IN THE MATTER OF THE SUPREME COURT ORDINANCE
CHAPTER 7 SECTION 45

BETWEEN: LETTER T. ESTATES LIMITED
(First Defendants)
APPELLANTS

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- and -

STANLEY HEALD (Plaintiff)
VICTORINE ROBERTS

and (Second Defendant)
OSCAR JAMES (Third Defendant)

RESPONDENTS

and

JESSICA WATT,
ELLA JEANNIE MEARNs, and
GRETA ENID MEARNs,
(added by Order of the
Federal Supreme Court)

30

ADDED RESPONDENTS

BEFORE THE HONOURABLE MR. JUSTICE RENNIE

MONDAY THE 2ND DAY OF MARCH, 1959

ENTERED THE 4TH DAY OF MARCH, 1959

UPON the petition of the above-named

Victorine Roberts, the second-named defendant-respondent and Oscar James, the third-named defendant respondent dated the 27th day of December, 1958, preferred unto this Court, on the 2nd day of March, 1959, for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of this Court dated the 4th day of July, 1958, AND UPON READING the said petition the Order of this Court dated the 26th day of September, 1958, and the certificate of the Registrar dated the 22nd day of December, 1958, AND UPON HEARING Counsel for the petitioners Counsel for the respondents and added respondents consenting to this order being made and being satisfied that the terms and conditions imposed by the said Order dated the 26th day of September, 1958, have been complied with THIS COURT DOTH ORDER that final leave be and is hereby granted to the said petitioners to appeal to Her Majesty in Her Majesty's Privy Council AND IT IS FURTHER ORDERED that the costs of this petition be costs in the appeal.

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In the
Federal Supreme
Court

No.12

Order allowing
final leave to
Appeal to Her
Majesty in
Council.

2nd March 1959
continued

BY THE COURT

R. S. Persaud

DEPUTY REGISTRAR.

CERTIFIED

A TRUE COPY

R. S. Persaud

Deputy Registrar

Federal Supreme Court.

30

EXHIBITS

In the
Supreme Court of
British Guiana

EXHIBIT "A" - CERTIFIED COPY OF PROBATE
AND WILL OF SOPHIA MUSTERD, DECEASED

Probate and Administration No.10 ---- of 1957

Exhibit "A"

Certified copy of
Probate and Will
of Sophia Musterd,
deceased.

25th January 1957.

IN THE SUPREME COURT OF BRITISH GUIANA

(Seal)

PROBATE

Sch. B. 1957

No. 411

Fee \$32.50

IN the Estate of SOPHIA MUSTERD, spinster, --
deceased.

10

sworn at

\$297,822.38

The 25th day of January 1957.

BE IT KNOWN that the abovenamed Sophia Musterd,
spinster died on the 19th day of October, 1956
at Letter T Estate, Mahaicony, East Coast,
Demerara;

AND THAT on the 9th day of January, 1957 the
last Will (a copy whereof is hereunto annexed)
of the said deceased was deposited with proof
of due execution in the Registry of Court

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AND BE IT KNOWN that on the 25th day of January
1957 administration of the estate which by law
devolves on and vests in the personal represent-
ative of the said deceased was granted by the
above-mentioned Court to STANLEY HEALD resid-
ing at 54 High Street, Kingston, Georgetown,
Demerara, the executor named in the said Will
he having been first sworn faithfully to admin-
ister the same.

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J.E.N. Earl

Sworn Clerk & Notary Public
for Registrar.

Extracted by Carlos Gomes, Esq., Solicitor to
the applicant.

I, Sophia Musterd, Spinster of Plantation "Letter T", Mahaicony, in the County of Demerara, and the Colony of British Guiana, hereby revoke all former Wills and Codicils made by me and declare that this is my last Will and Testament.

(1) I, APPOINT STANLEY HEALD, of 54, High Street Kingston, to be the Executor of this my Will.

(2) I BEQUEATH the following legacies, namely :

- (a) To my niece Jessie Isabella Watt, of 105 King's Gate, Aberdeen, Scotland my $3\frac{1}{2}\%$ B.G. Inscribed Stock of the face value of £3,000 (Eight thousand pounds).
- (b) To Junor J. Watt, of 105 King's Gate Aberdeen, Scotland, my Town Council Bonds of the face value of \$10,000 (Ten thousand dollars).
- (c) To Michael Mearns, son of Mrs. Greta Mearns; of 50 Courtfield Gardens, London, the sum of \$2,500 (Two thousand and five hundred dollars).
- (d) To David Mearns, son of Mrs. Greta Mearns; of 50 Courtfield Gardens, London, the sum of \$2,500 (Two thousand and five hundred dollars).
- (e) To Belmont Scots Church, De Kendren East Coast, the sum of \$5,000. (Five thousand dollars).
- (f) To St. Mary's Scots Church; Mahaica East Coast, the sum of \$2,500. (Two thousand five hundred dollars).
- (g) To Annie Mabel Helen Jackson, of 257 Lamaha Street, Georgetown, the sum of \$5,000. (Five thousand dollars).
- (h) To John McCowan, of 357 Lamaha Street, Georgetown, the sum of \$5,000. (Five thousand dollars).
- (i) To John Cameron Falconer, of 82 Bel-Air Park, Kitty, the sum of \$5,000. (Five thousand dollars).

EXHIBITS

In the
Supreme Court of
British Guiana

Exhibit "A"

Certified copy of
Probate and Will
of Sophia Musterd,
deceased.

25th January 1957
continued

EXHIBITS

In the
Supreme Court of
British Guiana

Exhibit "A"

Certified copy of
Probate and Will
of Sophia Musterd,
deceased.

25th January 1957
continued

(j) To my washer Betsy Daniels, the sum of \$500. (Five hundred dollars).

(k) To the watchman Theophilus Nurse, of Airy Hall, Mahaicony, the sum of \$500. (Five hundred dollars).

(3) I BEQUEATH to Victorine Roberts, my maid for long and faithful years of constant service, 121 of my shares in "Letter T Estates Limited", also my new side-board, the Wardrobe with the mirror, and all of my China Wares, Dinner Set, Glasses and Silver.

10

I BEQUEATH to Oscar Edmond James, my chauffeur, for the invaluable help he gave to me on the Estate, the other 121 of my shares in "Letter T Estates Limited" also my writing desk and typewriter.

My car and all other furnitures in the house are to be sold and whatever money is got for them, together with what money might be left over from the Estate after all my expenses and outgoings have been deducted, are to be equally divided between Belmont Scots Church, De Kendren, East Coast, and St. Mary's Scots Church, Mahaica, East Coast.

20

I, Declare, that my Estate shall be administered in accordance with the following directions and that my executor shall have the following powers :-

(a) My Debts, Funeral, Testamentary and other expenses shall primarily be paid out of any ready money on hand or on deposit or on account current or saving in any bank. In the event that the cash in hand cannot meet my Testamentary and other expenses my remaining investments not specifically bequeathed by me to anyone shall be sold so as to meet all my expenses and legacies.

30

(b) All legacies bequeathed by me in this my Will shall be given free of any duty.

40

(c) To APPOINT such person to act as his Attorney as he shall think fit and to delegate to such person all or any of his powers and duties as executor.

- (d) To engage and to employ such solicitors as he may think fit for the purpose of doing any work in connection with this my Will and to pay them.
- (e) My executor shall be entitled to remuneration for his service as executor by fees in accordance with the terms of remuneration which are charged for similar services by the Trustee Department of Barclays Bank D.C.O. at the date of my death.

10

EXHIBITS

In the
Supreme Court of
British Guiana

Exhibit "A"

Certified copy of
Probate and Will
of Sophia Musterd,
deceased.

25th January 1957
continued

In Witness Whereof, I have hereunto set my hand this 23rd day of April in the year of Our Lord One thousand nine hundred and fifty six.

S. Musterd.

Witnesses to the signature of Sophia Musterd

- 1. Name Mohamed Bacchus
Address 17/17 Norton St., W/ville.
- 20 2. Name Kenrick Walton Billey
Address Mahaica Village.

Examined

A TRUE COPY

Donald Robinson

Assistant Sworn Clerk

14. 1. 1957.

EXHIBITS

EXHIBIT "B" - CERTIFIED COPY OF VALUATION

In the
Supreme Court of
British Guiana

No. 44/1957

Exhibit "B"

Certified copy of
Certificate of
Valuation

31st May 1957

SCHEDULE 2.

ESTATE OF SOPHIA MUSTERD, DECEASED

SHARES IN PRIVATE COMPANY AT THE

FAIR VALUE AS CERTIFIED BY THE

COMPANY'S AUDITORS, FITZPATRICK

GRAHAM & CO.

Chartered Accountants.

Letter "T" Estates, Ltd. -

10

| | | | |
|--------------|----------|-----|--------------------|
| 242 of \$100 | \$24,200 | 410 | <u>\$99,220.00</u> |
|--------------|----------|-----|--------------------|

S. Heald.

A TRUE COPY

James A. Patterson

Assistant Sworn Clerk.

31st May, 1957.

FITZPATRICK, GRAHAM & CO. TELEPHONES: 104 and 888
 Chartered Accountants. TELEGRAMS: FITZPAT,
 GEORGETOWN.
 H.C.MEDLAM, M.A. A.J.DONALD
 CABLES: FITZPATRICK
 DEMERARA
 A.B.WAY, M.B.E. W.G.MEDLAM
 C.F. FARRAR. H.V. LAKE. CODE: BENTLEY'S
 SECOND
 P.O. BOX 37
 J. MILLIKEN A.N. SMITH
 W.J. LEEMING F.A.H.SKINNER
 G. GOLDING

EXHIBITS

In the
 Supreme Court of
 British Guiana.

Exhibit "B"

Certified copy of
 Certificate of
 Valuation

31st May 1957
 continued

10 Also at THE DEMERARA LIFE BUILDINGS,
 LONDON: 93 A.CHANCERY LANE GEORGETOWN,
 TRINIDAD AND BARBADOS. DEMERARA.
 28th November, 1956.

LETTER "T" ESTATES LTD.

As requested by the Secretary, we have made
 a valuation of the shares of the above Company
 at 19th October, 1956, and in our opinion, a fair
 Cum Dividend value of a \$100.00 share at that
 date was \$410.00.

20 Fitzpatrick Graham & Co.

A TRUE COPY of the original which was included
 and filed with the Estate Duty Papers in the
 Estate of SOPHIA MUSTERD, deceased, on the 9th
 day of January, 1957.

James A. Patterson
 Assistant Sworn Clerk.

(Seal)

31st May, 1957.

EXHIBITS

In the
Supreme Court of
British Guiana

Exhibit "C"

Letter from
Letter "T"
Estates Limited
to S. Heald.
22nd February
1957.

EXHIBIT "C" - LETTER FROM LETTER "T"ESTATES LIMITED TO S. HEALD.

C/O The Georgetown Club Ltd.,
Georgetown 3.

22nd February 1957.

S. Heald Esq.,
Executor,
Estate Sophia Musterd Decd.,
54 High Street,
Georgetown 1.

10

Dear Sir,

I have just been notified by Messrs. Cameron and Shepherd that their clients, as listed hereunder, have accepted the offers made to them and will take the number of Shares set against their individual names.

| | | |
|----------------------------|-------------------|----|
| Mrs. Watt will take | 101 Shares | |
| Mrs. E.J. Mearns will take | 81 Shares | |
| Mrs. G.E. Mearns will take | <u>60</u> Shares | |
| | <u>242</u> Shares | 20 |

Messrs. Cameron & Shepherd also state that their other clients, Mrs. G. Mearns and Mr. M. Smith are not in a position to take up their proportion of the Shares offered.

I shall be glad, therefore, if you as Executor of the Estate of Sophia Musterd, deceased, and her nominees will execute transfers of the above Shares in favour of the abovenamed persons and forward them to Cameron & Shepherd for completion. On receipt of these transfers they will forward a cheque for \$99,220:- in payment.

30

Mr. Edward De Freitas is most anxious to deal with the matter promptly, in order that the transfers should be placed before the Directors of Letter "T" Estates Ltd. at their Meeting

on the 25th, and he suggests that you might be good enough to send the transfers to him via Mr. Carlos Gomes early tomorrow. That, he thinks, will be the quickest method, and we hope you will be able to oblige.

Yours faithfully,

F.E. Phillips
Secretary,
Letter "T" Estates Ltd.

EXHIBITS

In the
Supreme Court of
British Guiana

Exhibit "C"

Letter from
Letter "T"
Estates Limited
to S. Heald.

22nd February
1957
continued

10

EXHIBIT "D" - MINUTES OF A MEETING OF THE
DIRECTORS OF LETTER "T" ESTATES LIMITED

Exhibit "D"

Held on Friday, the 16th November, 1956, at
54 High Street, Kingston, Georgetown.

Minutes of a
Meeting of the
Directors of
Letter "T"
Estates Limited

16th November
1956

PRESENT:- Messrs.S.Heald - Chairman
J.Edward de Freitas - Alternate
Director for
Mrs.Jessie Watt.
J.C. Falconer - Director and
Secretary.

20

(a) The Minutes of a Directors' Meeting held on the 28th October, 1956, were read and confirmed.

(b) It was agreed that a responsible person should be appointed as Manager (preferably resident) as soon as possible, and several names including Messrs. Fraser and Barlow were suggested and Mr. J. Edward de Freitas undertook to approach them.

30

(c) Mr. Falconer intimated that on account of ill health he could not carry on after the end of this year. The appointment of a new secretary was to be considered at the next meeting.

EXHIBITS

In the
Supreme Court of
British Guiana

Exhibit "D"

Minutes of a
Meeting of the
Directors of
Letter "T"
Estates Limited
16th November
1956
continued

- (d) Mr. Falconer was asked to produce at the next meeting a Financial Statement from 19th October, 1956, to date.
- (e) Payments to the Estate of the late Miss S. Musterd of Director's fees - \$2,500:- - and Travelling Expenses - \$500:- - were authorised.
- (f) A letter dated 5th November, 1956, having been received from Mrs. Watt intimating that the remaining shareholders desired to acquire the shares held by the late Miss S. Musterd, for their fair value, the Directors unanimously decided that they did not propose to make a declaration and the secretary was instructed to request the Auditors to give a Certificate of fair value, in terms of Article-11. The letter of the 5th November, 1956, is filed with these Minutes. 10
- (g) The following 2 (two) transfers of shares were approved and the issue and sealing of new certificates were authorised :- 20

| Transfer Numbers | Name of Trans-feror. | Name of Trans-ferres. | Share Nos. Trans: to | Number on new Certi-ficates |
|------------------|----------------------------------|-----------------------------|----------------------|-----------------------------|
| | Estate Isabella Mearns, deceased | Greta Mearns and M.M. Smith | 24 to 28 29 to 33 | 26 27 |

- (h) In view of the proposed appointment of a Resident Manager, the Board considered the acquisition of furniture, etc., the property of the Estate of Miss Musterd. A figure of \$1,600:- was suggested or a valuation. Mr. de Freitas considered and it was agreed that he should submit the matter for the views of Mrs. Jessie Watt.

Signed -

J.C. Falconer,

Secretary - LETTER "T" ESTATES LTD.

EXHIBIT "E" - MINUTES OF MEETING OF THE
DIRECTORS OF LETTER "T" ESTATES LIMITED

LETTER "T" ESTATES LTD.

MINUTES of a Meeting of the Directors held at the Company's Registered Office, Lot 2 High Street, Newtown, on Monday, 25th February 1957, at 9.30 a.m.

Present: S. Heald, Esq., Chairman.
 J. Edward De Freitas Esq., Alternate Director for Mrs.J.Watt.
 J.C.Falconer Esq. Director
 F.E.Phillips Esq., Secretary,
 with
 M.P.Barlow Esq., in attendance.

The Minutes of the Meeting held on 1st February 1957, having been circulated, were confirmed.

The Financial Statement as at 25th February 1957 was submitted, disclosing Liquid Assets amounting to \$28,954.99 and Accounts Payable \$5,782.78. It was decided to withdraw further sums from the Shares held in the New Building Society Ltd. to provide for current expenditure.

Re 242 Shares of Estate Sophia Musterd Decd.
 Recent correspondence on this subject was submitted, and it was noted that on 7th February 1957, the Company had received a letter from Mr.Stanley Heald as Executor of Estate Sophia Musterd Decd, giving the Company Notice that he desired pursuant to Article 25 to transfer the 242 Shares in Letter "T" Estates Ltd. left by Miss Sophia Musterd, deceased, in her Will and to comply with Article 15 of the Articles of Association of the Company, and that

Mr.Heald had asked the Company in the

EXHIBITS

In the
Supreme Court of
British Guiana

Exhibit "E"

Minutes of
Meeting of the
Directors of
Letter "T"
Estates Limited

25th February
1957

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EXHIBITS

In the
Supreme Court of
British Guiana

Exhibit "E"

Minutes of
Meeting of the
Directors of
Letter "T"
Estates Limited

25th February
1957
continued

said letter to let him know if the members or in default of members the persons selected by the Directors were willing to purchase the Shares, and that he would require payment of the sum of \$99,220.00 before transferring the Shares to whoever may purchase same.

The round robin of 11th February 1957, authorising the offer of these Shares to the other Shareholders was minuted, and the Secretary placed before the Meeting the Letters of Acceptance from the Attorneys of Mesdames Watt, Ella Mearns and Greta Mearns, dated 22nd February 1957, and his letter to the Executor of the same date.

10

Mr. De Freitas referred to Article 10 and stated that the Company having found Members willing to purchase the 242 Shares and having giving Notice thereof to the Executor, he was bound to transfer the Shares to them. He then mentioned that the total purchase money had been paid to his firm.

20

Mr. Heald stated that in view of a letter received from Mr. Burnham, the legal adviser of Mrs. Victorine Roberts and Mr. Oscar James, he thought that the proper course he ought to adopt was to sign the transfers in favour of the two beneficiaries and leave it to the Company to accept or reject same, unless otherwise advised by Mr. Carlos Gomes, whom he would like to consult, Mr. De Freitas being the adviser of both the Members and the Company. It was then decided to invite Mr. Carlos Gomes to attend the Meeting.

30

On Mr. Gomes' arrival, he advised Mr. Heald that he could not execute transfers in favour of the two beneficiaries, as this would not be in accordance with the Articles; that he had, so far, complied with the Articles; that perhaps the best thing for him to do in view of the letter he had received from Mr. Burnham asking that the matter be allowed to remain until his return to the colony in about two weeks time, would be to apply to the Court for directions; that in the meantime a reply should be sent to the Secretary's letter of

40

22nd February 1957, and that if the Directors proceed under Article 12 to register Mesdames Watt, Ella Mearns, and Greta Mearns as the holders of the Estate's 242 Shares he should take no part in the proceedings.

Mr. Gomes then left the Meeting.

Manager's Report. Mr.Barlow then joined the Meeting.

10 a) Copra Tests. The Chairman having pointed out that the Directors had not yet received a statement regarding the comparative tests which had been arranged, Mr. Barlow replied that the tests had gone wrong and he was unable to obtain the correct figures, but he promised that these would be available by the date of the next Meeting.

20 b) Books for Audit. Mr.Falconer reminded Mr. Barlow that the Books which were on the Estate should be made up and sent to town for audit as early as possible.

c) Expenditure. Mr.Barlow estimated that he would need \$9,000.00 to cover expenditure before the next Meeting. \$3,900.00 would be spent in the next two weeks to complete Shovel Work which had already been started.

d) Furniture. Mr.Barlow was authorised to spend \$400.00 on household furnishings.

30 Estate Property. Mr. De Freitas reported that as a result of the legal action, the Company had obtained possession of the House and Tools.

A Plea would be entered for costs.

The Date of the Next Meeting having been fixed for 9.30 a.m. on Friday, 15th March 1957, the Meeting terminated.

CONFIRMED:

S. Heald
Chairman.

15. 3. 57.

EXHIBITS

In the
Supreme Court of
British Guiana

Exhibit "E"

Minutes of
Meeting of the
Directors of
Letter "T"
Estates Limited

25th February
1957
continued

EXHIBITS

In the
Federal Supreme
Court

EXHIBIT "A1" - LETTER FROM S. HEALD

TO OSCAR E. JAMES

Exhibit "A1"

Letter from S.
Heald to Oscar
E. James.

30th January
1957

54, High Street,

Georgetown,

30th January, 1957.

Mr. Oscar Edmond James,
Letter T Estate,
Mahaicony,
E.C. DEMERARA.

Dear Sir,

10

I have to advise you that upon the 25th instant I was granted probate of the Will of the late Sophia Musterd, in which she bequeathed to you certain shares in Letter T Estates Company Ltd.

As I explained to you upon the 14th November 1956, this bequest is subject to the Articles of Association of the Company and I called your attention to Article 15 in particular and to Articles 8 to 26. The "fair value" has been assessed at \$410 per share.

20

Please let me have your instructions.

Sgd: S. Heald.

Yours faithfully,

ESTATE OF SOPHIA MUSTERD DECEASED.

EXECUTOR.

EXHIBIT "A2" - LETTER FROM S. HEALD
TO VICTORINE ROBERTS

EXHIBITS

In the
Federal Supreme
Court

54, High Street,
Georgetown,
30th January, 1957.

Exhibit "A2"

Letter from S.
Heald to
Victorine
Roberts

30th January
1957

Mrs. Victorine Roberts,
Letter T Estate,
Mahaicony,
E.C. DEMERARA.

10 Dear Madam,

I have to advise you that upon the 25th instant I was granted probate of the Will of the late Sophia Musterd, in which she bequeathed to you certain shares in Letter T Estates Company Ltd.

20 As I explained to you upon the 14th November 1956, this bequest is subject to the Articles of Association of the Company and I called your attention to Article 15 in particular and to Articles 8 to 26. The "fair value" has been assessed at \$410 per share.

Please let me have your instructions.

Yours faithfully,

ESTATE OF SOPHIA MUSTERD DECEASED

(SGD.) S. Heald

EXECUTOR.