50 OF 1982

SUPREME COURT OF MAURITIUS

Record of Proceedings

Appeal to the Privy Council

Commissioner of Income Tax

(Appellant)

VERSUS

Espérance Co. Ltd.

(Respondent)

Supreme Court Record
No. 3416

INDEX OF REFERENCE

In the Privy Council

Record of Proceedings

Between:—

ESPERANCE CO. LTD.

Appellant

versus

COMMISSIONER OF INCOME TAX

Respondent

SUPREME COURT OF MAURITIUS

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PART I

Court Proceedings

Notice with grounds of appeal

IN THE SUPREME COURT OF MAURITIUS

In re:

ESPERANCE CO. LTD., having its registered office at 5, Léoville L'Homme Street, Port-Louis,

Appellant

versus

THE COMMISSIONER OF INCOME TAX, of Port-Louis,

Respondent

TAKE NOTICE that the Appellant in the above matter, electing its legal domicile in the office of the undersigned Attorney-at-law, situated at Georges Guibert Street, Port-Louis, feeling itself aggrieved by and dissatisfied with the assessment made upon it by the Respondent in respect of its income for the year ended 30th June 1981, under the Income Tax Act, 1974 — (Assessment No. LC 0092 10 dated 16th October, 1981) — does hereby appeal against such assessment to the Supreme Court of Mauritius to have the said assessment quashed, reversed, set aside or otherwise dealt with — with costs — as the said Court may deem fit and proper, on the following grounds:

1. BECAUSE the assessment made by the Respondent is based upon a wrong interpretation of the effect of section 2 (2) of the Income Tax Act, 1974;

2. BECAUSE the Respondent was wrong in holding that a distribution of Rs. 120,000 made by the liquidator of the Mon Loisir Sugar Estates Co. Ltd. (in voluntary winding up) to the shareholders of that Company in repayment of share capital represented by a number of preference bonus shares held by them constituted dividends under section 2 (2) of the Income Tax Act, 1974, and that the share of that distribution, namely Rs 14,997, received by the Appellant as shareholder of that Company was taxable in its hands as dividends;

3. BECAUSE the Respondent was wrong in holding that the distribution of Rs 120,000 made by the liquidator of Mon Loisir Sugar Estates Co. Ltd. as aforesaid to its preference shareholders could not be considered a genuine repayment of capital but constituted the payment of a dividend within the meaning of section 2 (2) of the Income Tax Act 1974 on the ground that the preference share capital of that Company was constituted wholly by bonus shares and was a liability created without any consideration having been received for it;

4. BECAUSE in arriving at his conclusion that the aforesaid repayment of share capital constituted dividends under the said section 2 (2) of the Act the Respondent wrongly disregarded the fact that the bonus shares, the repayment of which constituted, according to him, dividends in terms of that subsection, had been issued prior to the coming into force of the Income Tax (Amendment No. 2) Act 1971 which was the first enactment to lay down that a repayment of share capital which has been preceded by a bonus issue constituted dividends.

— And for all other reasons to be given in due course.

AND TAKE FURTHER NOTICE that the Appellant shall at the hearing of the above matter produce the documents set out in the list of documents herewith annexed.

Dated at Port-Louis, this 30th day of October, 1981

G. De COMMARMOND
of George Guibert Street, Port-Louis.
Appellant's Attorney

Reg. A 431 No. 1201

List of Documents

ESPERANCE CO. LTD.

1. Letter from Mr Hugues Maigrot, Notary Public and Liquidator of the Mon Loisir Sugar Estates Co. Ltd. (in voluntary winding up) to the Commissioner of Income Tax and dated 10th July, 1981.
2. Letter from the Commissioner of Income Tax to Mr Hugues Maigrot dated 2nd October 1981.
3. Letter from the Acting Commissioner of Income Tax to the Manager of Esperance Co. Ltd. (Appellant) dated 15th October 1981.
4. Notice of Assessment No. LC 009210 dated 16th October 1981 sent to Espérance Co. Ltd. (Appellant).

Dated at Port Louis, this 30th day of October, 1981.

G. De COMMARMOND
of George Guibert Street, Port Louis.
Appellant's Attorney

Reg. A 431 No. 1202

Minutes of 9.11.81

IN THE SUPREME COURT OF MAURITIUS

On Monday the 9th day of November 1981.
Before The Honourable Sir Maurice Rault, Chief Justice (S.C.R. No. 3416)

S.C.R. No. 3416 — Esperance Co. Ltd. *v* The Commissioner of Income Tax

M. David, Q.C., appears for Appellant.

S. Hatteea replaces the Solicitor General for Respondent and states that the Solicitor General requests that this matter be heard before a Full Bench as same involves a substantial amount of money, raises a question of law and is in a nature of test case.

To 26th November, 1981 — Merits.

Y. A. BEEBEEJAUN
for Master & Registrar

Shorthand Transcript Notes

IN THE SUPREME COURT OF MAURITIUS

Thursday 26th November, 1981

Before: Hon. P. Y. Espitalier Noel, Judge
Hon. A. M. G. Ahmed, Judge

In the matter of:

Esperance Co. Ltd.

Appellant

versus

The Commissioner of Income Tax

Respondent

Mr M. David, Q.C. appears for the Appellant
Mr K. Matadeen, Crown Counsel appears for the Respondent

Mr M. David, Q.C. Argues:

My Lords, this an appeal from a determination made by the Income Tax Commissioner under the Income Tax Act 1974, more precisely sub-section (2) of Section 2. The grounds of appeal are to be found at pages 1, 2 and 3 of the Brief and question the interpretation made by the Income Tax Commissioner as to the effect of the sub-section I have just quoted. Before I proceed, I should like to put in duly registered originals or in certain cases photocopies of the documents which have been listed together with the Notice of Appeal.

Documents put in and marked " A " to " E "

The grounds of appeal read as follows:

" 1. Because the assessment made by the respondent is based upon a wrong interpretation of the effect of section 2(2) of the Income Tax Act, 1974;

2. Because the respondent was wrong in holding that a distribution of Rs 120,000 made by the liquidator of the Mon Loisir Sugar Estate Co. Ltd. (in voluntary winding up) to the shareholders of that company in repayment of share capital represented by a number of preference bonus shares held by them constituted dividends under section 2 (2) of the Income Tax Act, 1974, and that the share of that distribution, namely Rs 14,997, received by the Appellant as shareholder of that company was taxable in its hands as dividends; "

Then we have grounds 3 and 4 which I do not think at this stage are necessary to read out. I shall take for granted for the purpose of my address that your Lordships had the opportunity of going through the Brief.

Now, My Lords, this problem of interpretation first arose when the appellant company decided to go into voluntary liquidation and the liquidator wrote to the Income Tax Commissioner on the 10th of July, 1981 — the letter is to be found at pages 9 to 12 of the Brief. In that letter the liquidator fully set out the share structure of the company and the various movements that is; issue of " bonus " shares, reduction of share capital that had taken place since the incorporation of the company. This is set out at paragraph 6 of the liquidator's letter.

Thereafter the Income Tax Commissioner wrote to the liquidator on the 2nd of October, 1981 as at pages 13 and 14 of the Brief and to his letter the Income Tax Commissioner attached a statement showing movements on share capital of the company. This is to be found at Page 17. My Lords, this compilation made by the Income Tax Commissioner is substantially correct except for one, what I shall call minor not to say irrelevant, error which has been found and this is in respect of the refund to shareholders which took place on the 17th of June, 1963. If your Lordships look at the statement, the part to which I am referring appears thus:

" 17.6.63 — Refunded to shareholders " and under the item " Consideration paid by shareholders" we see "—4,000,000" and under "Bonus Element" "—4,000,000". In fact, to be precise the " consideration paid by shareholders " in that aspect should have been " Nil " and the " Bonus Element " should have been " 8,000,000 " which would thereupon show that the full total consideration paid throughout by shareholders has remained at 5,000,000 whereas the Bonus Element was of 21,000,000. For the purposes of my appeal, this is not strictly relevant but for the sake of precision we thought it preferable just in case of any future difficulty to bring this to the notice of the authorities.

Court: The figure of 5,000,000 is mentioned by the liquidator himself in his letter?

Mr David, Q. C.: Yes, My Lord.

Court: Mr David, you mentioned the figure of 21,000,000 but here he mentioned the figure of 22,000,000.

Mr David, Q. C.: But it should be 21,000,000 because 25 minus 4 would make 21. But as I said, so long as the authorities take note of the fact that these figures are not accepted as such, that was the purport of my intervention on that point. It is important immediately to look at that letter of the 2nd October, 1981 at page 13 of the Brief where at paragraph 3 the Commissioner says:

> " 3. Th statement shows that the Preference Share Capital of the Company was constituted wholly by shares issued without receipt of any consideration from the shareholders to whom they were issued."

I shall have a lot to say about that in a moment.

> " The shares were all bonus shares. It also shows that while the shareholders paid Rs 5 million towards the share capital of the company, they were repaid in money during the period May 1951 to October 1969 a total of Rs 22 million on share capital account.
>
> 4. In my opinion. it is clear that the whole Preference Share Capital of the company was a liability created without any money consideration having been received for it. When such capital is repaid later, the repayment cannot be considered a genuine repayment of capital.
>
> 5. In the circumstances, the distribution of Rs 120,000 made by you of the assets of the Company to the Preference Shareholders on the 29 June 1981 constitutes payment of a dividend by virtue of Section 2(2) of the Income Tax Act. The dividend is chargeable to income tax by virtue of Section 11(1)*(d)* of the Act. "

and there follows a distribution of this sum of Rs 120,000.

My Lords, being given the purpose for which the company Mon Loisir Sugar Estate Co. Ltd. was going into voluntary liquidation that is for the purposes of a re-structure, it became essential for that company to have at the very earliest a Court ruling on the interpretation of the Income Tax Commissioner. So that the present case to-day, which has been taken as a matter of urgency, is in the nature of a test case and will determine the future of the company Mon Loisir Sugar Estate Co. Ltd. as to whether that company will proceed with its voluntary liquidation for the purposes of a restructure or whether it will step backward and put a stop to its intention along the line it had contemplated. My Lords, as my friend who appeared for the respondent — I do not think it was my friend Matadeen — on the last occasion and said that we are dealing with a very serious question of interpretation specially as this is, I should say in Mauritius, in way of being *res nova.*

Now, the Income Tax Commissioner has throughout referred generally to section 2(2) of the Income Tax Act of 1974. He had not gone into any other details beyond the two paragraphs 3 and 4 in his letter of the 2nd October, 1981 which gives us an idea of the way in which his mind is working, so that your Lordships may find that in addressing your Lordships I may be going a little bit beyond what will be the respondent's case. Unfortunately, unless my friend is prepared to address the Court first, I shall be rather in the dark and cannot do otherwise.

Mr Matadeen: I think the wording of section 2(2) gives the information required to my learned friend. What the Income Tax Commissioner had in mind is to be found in either section 2(2) paragraph *(a)* or section 2(2) paragraph *(d)*. It cannot be otherwise.

Mr David, Q.C.: So, in other words, my friend will be addressing the Court on both paragraph *(a)* and paragraph *(d)*.

MrMatadeen: The bulk of my argument will centre around section 2(2) paragraph *(d)* but I shall address the Court a few words on section 2(2) paragraph *(a)*.

Mr David, Q.C.: Now, my Lords, subsection 2 of Section 2 of the Income Tax Act 1974 is to all intents and purposes a reproduction of the corresponding part in the Income Tax (Amendment No. 2) Act of 1971 that is Act No. 32 of 1971 and in the course of my address I shall be referring to two English Acts that is the Finance Act of 1965 and the Income and Corporation Tax Act of 1970. If the Court will allow, I should like to put in, in the hope of facilitating and following my address a — shall I say — compendium I had made of the four relevant provisions. Looking from the last column, your Lordships will see that in 1974 the legislator purported to give a definition of dividends which was made to mean a distribution which is defined amongst others at paragraph *(a)* and paragraph *(d)* and when we go backward to 1971, of course the 1971 Act amended Ordinance No. 84 of 1950, in there your Lordships will see that in section 6(i) we had also paragraphs *(a)* and *(d)* but whereas in the 1974 legislation, it is " dividend " which means " distribution ". Originally it was " distribution " that meant " distribution " and when we go to the Finance Act of 1965 Schedule (11) we see a definition of " distribution " to mean first of all a " dividend " and then " other distributions " and when we turn to the Income and Corporation Tax Act of 1970 we see again a definition of " distribution " which comprehends " dividend " as well as other distribution ". The first two columns reproduce the English Acts and the last two columns reproduce the Mauritian Acts of 1971 and 1974. My Lords, the way in which those 4 pieces of legislation are reproduced will show that the Mauritian legislator intended to all intents and purposes to adopt the scheme of the English legislation and except for certain departures which " sautent aux yeux ", he tried as much as possible to remain within the same sort of framework. One departure to which attention must be drawn at the outset, is that whereas in the Finance Act, the Income and Corporation Tax Act of 1970 and the Mauritian Income Tax Act of 1971, we have the present tense of the verb " issues " which is used — I am referring to paragraph (d):

> " *(d)* any repayment of share capital to a shareholder where at or before or after the time of that repayment the company repaying the share capital issues . . ."

In the 1974 Act it is the past tense " issued " which is used. I draw attention to this immediately but I shall subsequently come to analyse the effect, if any, of this change to see what was the reason behind this change and to see what is the effect, if any. But it is quite clear, as I said earlier, that in 1971 our local legislator the draftsman borrowed from the two English Acts of 1965 and 1970 in order to reproduce what we have in the 1971 Act and subsequently in the 1974 Act. Of course, whereas the English draftsman purports to define " distribution " as first of all a " dividend " and then " any other distrubtion ", he does so in 1965 as well as in 1970. Our local draftsman in his 1971 definition of „ distribution " does not specifically refer to " dividend " but he says generally " any distribution ". Then

in 1974 for some reason he dislikes the definition of " distribution " and he introduces a definition of " dividend " which now comprehends " any distribution ". Now, one other difference which has to be noticed between the local Act and the English Act is the fact that whereas in 1965 we have paragraph 1(3) which reads:

" (3) Where a company —

(a) repays any share capital, or has done so at any time after 6th April, 1965; "

Then we have another set of provisions which is paragraph 2 and reads:

" 2. (1) Where —

(a) a company issues any share capital . . ."

In 1970 those two provisions of the law are set out in England in two separate sections which are sections 234 and 235 respectively, Your Lordships will see that to all intents and purposes that the paragraph 1.(3) of 1965 is reproduced in 234 and paragraph 2.(1) of 1965 is reproduced in 235 of 1970.

In Mauritius the draftsman purports to amalgamate, what I shall call for the sake of convenience, 234 and 235 of the English Act in a single provision, which I shall call for the sake of convenience again, paragraph *(d)* both in the 1971 Act and in the 1974 Act. But this we shall see later that by proceeding thus to compress important provisions within a narrow confine the local draftsman creates problems for others if not for himself.

I have alluded up to now to differences in drafting but there is one fundamental difference between the two legislations, local and English, to which attention must be drawn because it may certainly go to the root of the matter and that is that in England the English legislation expressly excludes liquidations from the application of the provisions relating to distributions. Your Lordship will see this set out at the bottom of the sheet which I have put in under section 233:

" S. 233 MATTERS TO BE TREATED AS DISTRIBUTIONS

(1) The following provisions in this part of this Act, together with sections 284 and 285 of this Act, shall subject to section 248 (8) of this Act and to any other express exceptions, have effect with respect to the meaning in the Corporation Tax Acts of " distribution ", and for determining the persons to whom certain distributions are to be treated as made, but references in the Corporation Tax Acts of distributions of a company shall not apply to distributions made in respect of share capital in a winding up."

Now, my Lords, we see therefore that under the English legislation liquidations are expressly excluded from the application of the provisions relating to distributions and special provisions are made in the English Acts to liquidations other than the provisions relating to distributions. Whereas in Mauritius the legislator is silent on this matter. Nowhere in the Act will one see any exclusion of liquidations from the provisions of the Act relating to distributions. The first question which arises therefore is whether this silence of the law has for effect to include in the provisions relating to distributions, provisions relevant to liquidations or whether the Court is going to interpret this relevant part of the Act as also not having anything to do with liquidations. I shall not say more at the present juncture because when I come to deal with the history of the company law relating to liquidations and to what is considered as capital or not, this will get more significance and I hope more clarity. Therefore purely and simply at this stage I shall put the question: Is the Court, in view of the fact that no exception has been made in our law, going to find that our section 2(2) — I am referring to the 1971 and 1974 Acts — applies to both going concerns and companies in winding up? Either it does not and that is an end of the matter or it does and we shall then find that being given that the local draftsman was borrowing English provisions which had nothing to do with liquidations for the purposes of dealing with a situation which embraces liquidations in Mauritius, he creates a state of confusion and uncertainty. Therefore the first question is: Does section 2(2) cover liquidations or does it not? I am talking of liquidations. Let us for the moment assume that those provisions in section 2(2) cover liquidations. We shall immediately see that there are two paragraphs of section 2(2) which concern distribution of assets in a winding up and those are the two provisions which my friend referred too earlier on and which I have also adverted to and they are paragraphs *(a)* and *(d)* which are set out in the sheet which I have submitted. It is quite clear that paragraph *(a)* speaks generally of assets whereas paragraph *(d)* speaks specifically of repayment of share capital. Now, it is quite clear that these two operations both take place in a winding up because obviously when distributing the assets of a company, a liquidator would first of all repay share capital to the shareholders and then distribute any surplus assets. Now, it is as well at this stage to consider why the legislator both in Mauritius and in England had to introduce such legislation. The purpose underlying those enactments both in Mauritius and in England was obviously to counteract certain tax avoidance processeses because we know that originally payment of tax on dividends would be avoided if a company retains its profits instead of distributing them. A dividend not having then, and in fact it was only in 1974 that we had any, any special meaning ascribed to it was in fact what it was in the company law that is to say a distribution by a company to its shareholders in money or money's worth representing a share of its profits but otherwise than by a return of capital of course. There is authority to the effect. I think it is the appropriate time for me " en passant " to say this, that a distribution after liquidation was always considered a return of capital. In that respect I should like to refer to the case of *Re Dominion Tar & Chemical Company Ltd.* (1929) 2 Chancery, page 387.

The next principle to which I should like to allude is that it was clearly understood that when the profits of a compang were capitalized and applied to the issue of bonus shares, this was not a dividend but a capital payment. This, my Lords, is an important principle which must be kept in mind throughout a consideration of this case, when profits of a company were capitalized and applied to the issue of bonus share, this was not a dividend but a capital payment. In that respect I should like to refer the Court to the case of Commissioners of Inland Revenue *v.* Blott (1921) 2 A.C. at page 171. It is opposite to quote a passage of that judgment by Viscount Haldane:

> " I think that it is, as matter of principle, within the power of an ordinary joint stock company with articles such as those in the case before us to determine conclusively against the whole world whether it will withhold profits it has accumulated from distribution to its shareholders as income, and as an alternative not distribute them at all, but apply them in paying up the capital sums which shareholders electing to take up unissued would otherwise have to contribute. If this is done the money so applied is capital and never becomes profits in the hands of the shareholder at all. What the latter gets is no doubt a valuable thing. But it is a thing in the nature of an extra share certificate in the company. His new shares do not give him an immediate right to a larger amount of the existing assets. These remain where they were. The new shares simply confer a title to a larger proportion of the surplus assets, if and when a general distribution takes place as in a winding up. In these assets the undistributed profits now allocated to capital will be included, profits which will be used by the company for its business but henceforth as part of its issued share capital. "

My Lords, at this stage I would also refer to Palmer's Company Precedents, Part 1. I am going to quote from the seventeenth edition, which is the 1956 edition. I am going to refer to the rules laid down by Lord Russell in the Privy Council in *Hill v. Permanent Trustee Co. of New South Wales* (1930) A.C. at page 730. Lord Russell proceeds to set out five essential rules and this is what he has to say amongst other things. I am not going to read everything.

> " (1) A limited company when it parts with moneys available for distribution among its shareholders is not concerned with the fate of those moneys in the hands of any shareholder. The company does not know and does not care whether a shareholder is a trustee of his shares or not. "

Then we have (2) and then (3).

> " (4) Other considerations arise when a limited company with power to increase its capital and possessing a fund of undivided profits, so deals with it that no part of it leaves the possession of the company, but the whole is applied in paying up new shares which are issued and allotted proportionately to the shareholders, who would have been entitled to receive the fund had it been, in fact, divided and paid away as dividend.

(5) The result of such a dealing is obviously wholly different from the result of paying away the profits to the shareholders. In the latter case the amount of cash distributed disappears on both sides of the company's balance sheet. It is lost to the company. The fund of undistributed profits which has been divided ceases to figure among the company's liabilities; the cash necessary to provide the dividend is raised and paid away, the company's assets being reduced by that amount. In the former case the assets of the company remain undiminished, but on the liabilities' side of the balance sheet (although the total remains unchanged) the item representing undivided profits disappears, its place being taken by a corresponding increase of liability in respect of issued share capital. In other words, moneys which had been capable of division by the company as profits among its shareholders have ceased for all time to be so divisible, and can never be paid to the shareholders except upon a reduction of capital or in a winding up. The fully paid shares representing them and received by the trustees are therefore received by them as corpus and not as income."

Your Lordships will see immediately the importance of that principle and in Palmer's at page 916 we see this last observation:

" In general, for the purpose of profits tax the issue by a company of bonus shares in the company itself does not involve the distribution of any asset belonging to the company and is not generally to be regarded as an application or distribution of an amount within the meaning of s. 36(1), Finance Act, 1947. If such a capitalisation follows or precedes a reduction of capital, s. 31 Finance Act, 1951, will deem a distribution to have occured."

In other words, there has to be something which follows and which is provided by statute. My Lords, I am referring to all this in order to show what is the state of the law until the legislator steps in 1971, that is the very important matter to be kept in mind. What is the state of law until the legislator steps in and says something and then we shall consider what are the powers of the legislator and so on.

As I have been dealing with this aspect perhaps I could straight away continue and refer your Lordships to Gower, the Principles of Modern Company Law, it is the third edition, the 1969 edition. I would like to refer the Court generally to Chapter 9 headed: Companies and Taxation, pages 170 to 177. I would like specifically to draw the attention of the Court to pages 174 and 175 dealing with " Distributions and franked investment income " where we see this:

" A Major feature of the corporation tax system is the special treatment accorded to distributions, . . ."

then he goes on:

" The usual type of distribution is, of course, a dividend, and this now includes a dividend out of capital gains. Simple bonus issues of ordinary shares are not distributions, but exceptional types of bonus issues may be caught. For example, issues of bonus debentures or of bonus redeemable shares are distributions,

and when we go to section 2(2) of our local law, we shall see that the situation is the same:

> " . . . and this rule is likely to put an end to bonus issues of that type. Also covered by the definition . . ."

the definition of " distributions " of course are what our law provides since 1971 and the Finance Act in England since 1965.

> " . . . are bonus issues which have been preceded at any time after April 6, 1965, by a repayment of capital (except where the capital repaid consisted of fully paid preference shares). The same applies in reverse- if a company makes a bonus issue and then repays the bonus shares, the repayment is a distribution and attracts an income tax and surtax liability."

This is provided in the Mauritian Act of 1971 but:

> " . . . That apart, however, repayments of capital — whether of redeemable preference shares or pursuant to a reduction of capital confirmed by the Court — do not constitute distributions. They are, however, disposals for capital gains tax, and may give rise to some liability to that tax. The same is true of distributions in a liquidation. This is an important practical point, because, where a company has accumulated profits within it, virtually the only methods whereby the shareholders can enjoy those profits subject only to capital gains tax, and not to income tax and surtax, is to liquidate the company — or to sell their shares if they can find a buyer at a price which will reflect the value of the accumulated profits.
>
> Thus bonus issues, repayments of capital and liquidations do not, as a general rule, amount to distributions."

Unless of course there is specific statutory provision and in our law there is nothing which is mentioned about exclusion as in England or inclusion of liquidations amongst the definition of " distributions".

Lastly, on that matter, I should like to refer Your Lordships to Gore and Browne on Companies, it is the 43rd Edition, I am going to refer to paragraph 24—34 and following. As I do not think this book is available at the Library I shall beg leave to put in photocopies for the Court and for my friend. If any doubt still subsisted and I submit there could not be any, I am going to read 24—34 — The Taxation of Distributions — Distributions by Companies other than Close Companies. If Your Lordships refer to Gower at page 177 Your Lordships will see a definition of closed companies:—

> " It is extremely important whether a transaction can be labelled a distrition because no distribution can generally be deducted against profits or constitute a charge on income, and because on payment a company must account

account for advance corporation tax to the Inland Revenue. Sections 233—237 of the consolidated Act set out the meaning of distribution with regard to all companies. For close companies there are further provisions. The broad intention behind the distribution provisions is to tax any payment or transfer to a shareholder qua shareholder that is made to him while the company is in existence and not in the process of liquidation which does not represent capital put into the company. Distributions made in respect of share capital in a winding up are not distributions for tax purposes. The principle is preserved which originates in company law that the assets of a company in liquidation lose their identity as profits or capital. They become one fund all of which for tax purposes is capital. This principle has given rise more than any other in the realm of tax on companies to schemes of avoidance. The second major exception is a repayment of share capital. Consistently with the broad intention of the distribution provisions, to the extent that capital subscribed is repaid there is no distribution that can be taxed as income."

Then, in the second page 24—36 which refers specifically to bonus shares and repayments of capital, this is a matter to which in fact, I shall be coming later on but I should like to draw once and for all Your Lordships' attention to the provision of 24—36 Bonus Shares and Repayments of Capital where the Legislator in Mauritius since 1971 has tried to reach certain combination of issue of bonus shares and repayment of capital which will be later on the subject of further comment by myself. I have been referring to those various cases to show that when profits of a company were capitalized and applied to the issue of bonus shares this was not in evidence but a capital repayment, Your Lordships will remember, I refer to the case Blott. Now, in those cases, it is clear that profits still remain in the hands of a company but the shareholders would ultimately realise the benefit of the retained profits either by selling their shares or on a capital reduction or on liquidation in which cases I submit and, there is a clear authority, they would receive it as tax free capital and not as taxable income. If necessary, I should like lastly to refer to this matter, the Inland Revenue Commissioner *v.* Burell 1923, 2 K.B. page 478 which was affirmed in 1924 at page 52.

It is quite clear there was the state of the law, such as it was allowed avoidance of taxes and it is therefore with a view to foiling tax avoiding schemes of that sort that provision was subsequently made. In England there was a series of fiscal measures to which I will not refer but which culminated in Sections 245 and following of the Income Tax Act of 1952 whereas in Mauritius we had our famous, not to say notorious Section 55 of the 1950 Ordinance which is now Section 40 of our Act by which if the company had distributed less than a reasonable amount of its profits the whole or part of its income could be notionally apportioned amongst its members and the revenue collected the tax which would have been payable if dividends had been declared in accordance with the notional apportionment. Then, in England in 1965 the Legislator introduced a new idea and that is the system of Corporate Taxation, where companies were charged with a new tax, that is the

Corporation Tax, one feature of which was that distributions made by companies became liable to Income Tax and as regards undistributed profits, they were initially liable to Corporation Tax only. In Mauritius, in 1971, we retained the provisions of Section 55 and we introduced as from 1971 an enlarged definition of distribution in 1971, which became dividends in 1974, and this then made taxable in the hands of the recipient benefits in money or money's worth which would not have been so taxable in the past, being by their nature capital and not income.

Therefore, the object of the change in the law is to prevent avoidance of tax by a process which was formerly available allowing shareholders to receive as non-taxable capital what has thus become receivable as taxable dividends, that is, by a combination of bonus issues and repayments of share capital but what I have been saying up to now, I submit, shows conclusively that when we turn to para. *(a)* of our Local Act whether 1971 or 1974:—

> " *(a)* any distribution out of the assets of a company (whether in cash or otherwise) to a shareholder of the company or to a family relative of a shareholder, except so much of the distribution, if any, as represents a genuine repayment of capital on the shares or as is, when it is made, equal in amount or valuae to any new consideration given for the distribution; "

is deemed to be a dividend. These words, apart for the insertion of the word " genuine " is a reproduction of what we find in the 1965 Finance Act and the Income and Corporation Act of 1970. I submit that what I have been saying throughout clearly shows that when bonus shares are repaid, it cannot under para. *(a)* constitute anything but a repayment of capital of the shares. The whole trend of our Company Law, English and Local, all the jurisprudence, all the authors tend irresistably to that conclusion.

It is quite clear that in Mauritius as well as in England repayment of capital on the shares will include repayment of capital on bonus shares. There can be no doubt as to that. Of course, when we talked of bonus shares, we have to restrict ourselves to irredeemable bonus shares, so repayment of capital on irredeemable bonus shares would not, whether in England or in Mauritius, constitute a distribution and consequently would not be taxable in the shareholders hands. The only way the authorities have in the present state of the law to reach such a repayment is by a provision other than para *(a)* and that is para *(d)* just like in England in order to be able to reach what has been called and I shall also call, combinations of issues of bonus shares and repayment of capital, in order to reach such combination in England the Legislator has now to rely on Section 234 and 235 and not on Section 233, equally, I submit that in Mauritius under para. *(a)* with such issue of bonus shares, such repayment of capital cannot be attained by the Commissioner of Income Tax who has to rely, if at all, exclusively on para. *(d)*.

It is quite clear that in para. *(a)* whether in 1971 or in 1974 the Legislator has made no distinction between paid-up shares and bonus shares. There is absolutely no distinction which is made, there is no provision in paragraph *(a)* which says that bonus shares are going to be excluded from the definition of shares. Therefore, there is no reason in law, logic or reason why the expression repayment of capital on the shares taken by itself should not be construed in the same way as in their English counterparts and the same effect given to them, that is including a repayment of bonus share capital. So that, I submit the result would be that the amount of share capital represented by bonus shares and received by shareholders in a winding up would not under para. *(a)*, be taxable as a distribution in the shareholders' hands and just as in English law I submit, recourse would have to be made to another provision to reach such a repayment but I could perhaps hear my friends say: but in Mauritian Law, there is one word and that is the word genuine, genuine repayments. What would be the purpose of adding this word " genuine "? Well, at the worst, the insertion of this word creates an ambiguity. I am not considering this for one moment but I say, at the worst, it would create an ambiguity, in which case, if there is a construction favourable to the taxpayer which is possible, I submit that that construction should be preferred. Now, what, sorry, I am transgressing, my friends, I cannot do otherwise, is the Income Tax Com'issioner going to say that this word " genuine " has been added to make repayment on bonus shares liable to taxation. Is the Income Tax Commissioner going to argue that the word " genuine " has been added to show that the repayment of a bonus share is not a genuine repayment of share capital and that is why the word " genuine " has been inserted, in other words, would the Legislator have introduced the word " genuine " in order to reach anything to do with bonus shares.

Now, if that is so, why did the Legislator have at all to add up para. *(d)* because the whole " raison d'être " of para. *(d)* is to reach transactions relating to bonus shares, that is the only possible " raison d'être " of para. *(d)*. When there is a combination, then, it becomes a distribution liable to the payment of tax. Therefore, are we going to give to this word " genuine " an interpretation which would make the whole, are we going by one word to make the whole of para. *(d)* repeated in 1974 from 1971 otiose and redundant? Would that be in any way in accordance with the canons of the interpretation?

I submit that this cannot have been the intention, obviously, this cannot have been the intention of the Legislator but then we come to ask ourselves if that is so, why did the Legislator have to introduce this? Just as we could ask ourselves, why in 1971, he defined distribution and in 1974 he defined dividend. I am not saying that there is no logic in what the draftman does, but I am just going to try and visualize the situation which the Legislator may have had in mind in view of difficulties that have occurred in practice and, one situation in which I can visualize why the draftsman would have used the word " genuine ", would have been to cover cases where share capital is being repaid in ' specie '. We must not forget that it can be repaid in money or money's worth where it is being repaid ' in specie '. In such cases, the value repaid could clearly exceed the par value of the shares and in

that case whether bonus shares or paid-up shares, then, we can understand that the addition of the word „ genuine " would ensure that any excess over and above the par value would be taxable as not being a genuine repayment of capital. We can then understand why this would have been done in order to be able to reach any excess over above the par value plus premium of shares whether bonus or paid-up. And, therefore, we have one plausible reason why the local draftsman in the light of past experience would have introduced and inserted the word " genuine " which does not appear yet in English law but I repeat it would be contrary to the canons of interpretation to come and say in the teeth of the principles of campany law, in the teeth of the canons of interpretation, to come and say that the word " genuine " has for effect to exclude bonus shares from the definition of repayment of capital because then as I say the result would be to make para. *(d)* completely otiose, completely redundant which I submit would be totally unacceptable.

My submission remains that the shareholder cannot, in this instance of a winding up, repayment of bonus shares cannot be reached under para. *(a)* at all and if anything, one has to go to para. *(d)* but what about para. *(d)*? Let us look at the 1965 Finance Act Schedule II (1)(3) where we see a specified date:—

" Where a company—

(a) repays any share capital, or has done so at any time after 6th April, 1965; and

(b) at or after the time of that repayment (but not before the year 1966–67) issues as paid up otherwise than by the receipt of new consideration any share capital, not being redeemable share capital;

the amount so paid up shall be treated as a distribution made in respect of the shares . . . . "

Therefore, the Legislator comes as from a specified time to reach a combination of the repayment of share capital which is simultaneous with or followed by an issue of bonus shares and we see that in 1970, there are some changes in the law, this is reproduced. Now, when we come to our Law in 1971 para. *(d)* our Legislator, as I say, combines Sections 234 and 235 and defines as distribution any repayment of share capital to a shareholder where at or before or after the time of that repayment the Company repaying the share capital and issues as paid-up otherwise than by the receipt of new consideration any share capital etc. Therefore, even when we look at his paragraph, we see the expression „ any repayment of share capital to a shareholder where at or before or after the time of that repayment the company repaying the share capital issues . . . . " Even when we look at this phraseology, we see that the Legislator cannot have meant to reach distribution which would have been made before the enactment of this legislation. It is quite clear even when we look at the phraseology, but if doubt there could have been, and we could ask ourselves why in English law the specified time was put whereas our Legislator did not do the same thing. We only have to turn to the Act itself, Act 32 of 1971, Section 5, sub-section (1):—

" The amendment made by Section 2 shall not affect any distribution mad before the 1st July, 1971. "

Therefore, for the sake even of avoidance of doubts I should say, because I make bold say, that even by reading the language of para. *(d)* we can see that it is prospective in its nature, it has no idea of being retroactive but even then if there could have been any doubt being given that in English law there is a specified time, Legislator says the amendment made by Section 2 shall not affect any distribution made before the 1st July, 1971. Therefore, I submit that in 1971 distributions which had already taken place could not be reached but we have to look beyond that and to consider combinations. What if one leg of the combination has taken place before 1971 and the other leg takes place after 1971, can we say, oh, no, such transactions are not saved by Section 5 of the 1971 Ordinance. That Section 5 of sub-section 1 of the Act, I submit, quite clearly shows that the Legislator intended to give prospective effect to all the distributions which come under the definition in Section 2 of sub-section 2 of the Act. We can see distribution which are defined in the various paragraphs. We can see under paragraphs *a*, *b*, *c*, *d*, *e* and *f* and, in so far as those various other matters which we considered as distributions are concerned, it is quite clear that there can be absolutely no hesitation, there can be absolutely no doubt, it is all prospective in its nature. Can it be said that the Legislator would have saved all distributions mentioned in Sub-section 2 of Section 2 *a*,*b*, *c*, *e* and *f* but would have meant to have any mental reservation about one situation covered by para. *(d)* which is inserted in the very midst of those other distributions. Is it likely that without " crier gare " the Legislator would have done such a thing because within para. *(d)* being constituted by a combination of repayment of share capital and bonus issues, only those combinations which have occurred prior to the 1st July, 1971 are saved whereas if only one component of the combination has occured prior to that date and the other later, there is yet no distribution which could be saved by section 5 subsection 1of the Act, 1971. As I said, it would mean therefore, that right in the midst of a saving clause relating to such a set of circumstances the Legislator would have to be inferred, to be interpreted, to have meant not to fully cover such a distribution.

Now, we must, as I say, go back to the very language where we see any repayment of share capital, where at or before or after the time of that repayment, the Company repaying the share capital issues. It is the tense of the word which is essentially, inevitably, irresistably prospective in its nature. Now, we can contemplate another situation. I am a shareholder of the company, there is an issue of bonus shares, it can happen that I can sell these bonus shares but I sell these bonus shares to a bona fide party who pays me consideration for those bonus shares which I sell to him and which have been issued to me. He is a holder for consideration that has passed between him and me and at the time of that issue of bonus shares before 1971 when there was absolutely no law reaching the issue of bonus shares tax-wise, repayment of bonus shares tax-wise, combination of issue and repayment tax-wise when there was absolutely no warning to that bona fide third party. Today the authorities would be able to come and tell that third party, you

are the holder of bonus shares, those bonus shares are being repaid being given that they are bonus shares although issued before 1971, you are liable to taxation in the way of distribution purely and simply because it deals with the issue of bonus shares. Would not that situation be completely unrealistic, be completely unfair and against logic apart from anything else. We can imagine a case where 50 years ago there could have been an issue of bonus shares sold, resold for consideration and today at a time when the law did not say " gare " and today because there is today a repayment of that bonus share capital in a winding up the unfortunate shareholder for consideration would be told, you are liable to tax. I shudder at the thought, I cannot use any other expression that at the thought of the situation, that would be thus created by an interpretation of the law and we must think, we have the question of any repayment of share capital to a shareholder where at or before or after the time of that repayment the Company repaying the share capital issues as paid-up otherwise than by receipt etc. We are clearly dealing with repayment of share capital in respect of bonus shares. Can we, at any time, in respect of any combination as a leg of which has taken place before the 1st July, 1971 come and say, it is the repayment of share capital which is the distribution and therefore today there is a repayment and therefore you are not safe, you are not protected.

My Lords, I do not know whether my friend addresses Your Lordships, my friend is going to look at it the other way. We are here dealing with an issue of bonus shares prior to 1971 followed by a repayment after 1971. What if there had been a repayment before 1971 followed by an issue more than 6 years after the repayment subsequent to 1971. I do not know whether my friend will be addressing Your Lordships on that situation, what his submission is going to be and therefore I shall call fire on that aspect of the matter if I may because I would not like to fortell what attitude my friend is going to make because if my friend adopts a certain attitude, I shall be told to suggest then that we reach an even more extraordinary situation.

My Lords, there is now one thing which we must keep in mind and that is, in 1971, the Income Tax Commissioner was given no specific power to re-open certain transactions. I am referring to Section 79 (1) of the 1974 Act. I am in difficulty here because I do not know what submission my friend is going to make. However it is, we have got to consider one situation and that is in 1974 the Legislator changes one word. He changes the tense of a verb instead in para. *(d)* of using the verb " issues ", he uses the word " issued ". My Lords, this use of that tense arises from the fact that the draftsman has tried to compress his phraseology into as few words as possible in order to cover as many situations as possible:—

> " any repayment of share capital to a shareholder where at or before or after the time of that repayment the company repaying the share capital issued as paid up, otherwise than for the receipt of new consideration . . . "

Can it be said that because in 1974 the Legislator comes and uses the past tense, this past tense is going to open the door to any situation that may have existed since before even 1971, any issue made, any repayment made. I very humbly submit that it is quite clear that the word " issued " is used in 1974 in order to cover any situation that might have cropped up between the 1st July, 1971 and the enactment of the 1974 legislation. The situation cannot be otherwise. It is not felicitous drafting, certainly not, because the Legislator has not clearly showed his intention and in a matter of interpretation, of course, we know in whose favour the interpretation should go but I submit that it would be against all the canons of interpretation to say that by using the past tense " issued " in 1974 the Legislator can have meant to re-open, to reach what had been saved and protected in 1971. I submit that we cannot possibly go to that length and that in order to be consonant with logic we must tell ourselves that this tense issued purely and simply to cover these transactions so that, if there had been an issue of bonus shares as there had been in this case prior to the 1st July, 1971, I submit that this situation is is saved by the 1971 legislation which then and only then tries to reach such transactions and that this cannot be received subsequently in 1974. I would like to refer the Court to the Interpretation and General Clauses 1974 Act, it is Section 17 (3) Act No. 33 of 1974:—

" (3) Subject to sebsection (4), the repeal of an enactment shall not —

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment; "

Therefore, my submission is that in 1971, I had by virtue of Section 5 subsec tion (1) acquired, let us use the word, a certain immunity. I had statutorily acquired an immunity by the very enactment which was to reach certain transactions. I submit that the subsequent repeal of that Act cannot, by virtue of this provision of the Interpretation and General Clauses Act which I have just quoted, cannot come and affect that right, that immunity which I have acquired.

——————RECESS ——————

AFTER RECESS

Mr David Q.C., resumes his address

My Lords, I was dealing, just before the recess, with this question of the combination of two components in order to come within the ambit of the law. It will, of course, be quite clear to the Court and to everyone concerned, that, in our particular case, since the 1st October 1969, there has been no transaction which could, in any way, be said to come within the ambit of the law, that is, on the 1st October 1969 there was an issue of share capital, and since then up to 1971 nothing was done and subsequent to 1971 there has been nothing until the present repayment of capital.

Court: This is the second leg of the combination.

Mr David: Exactly.

My Lords, the final word that I should like to have on this matter, I think, can be summarised thus: I shall put it under five different headings:

(1) We must remember that we are dealing with a matter of interpretation of statutes and that although, of course, it is possible for the legislator expressly to make a law which is of retrospective effect, there is a presumption, in the silence of the law, against retroactivity, so that at the worst, if there is any difficulty as to the interpretation, I submit that the interpretation should be against retroactive intent of the legislator. In other words, it would not, at the worst, be clear at all whether paragraph *(d)* applies to past issues of share capital, but I have already this morning, at length, referred to the incongruous result of an interpretation in favour of retroactivity.

(2) It is quite clear from the language of the law that only future repayments are caught by paragraph *(d)*. I submit that since only future repayments are caught by paragraph *(d)* and only the combination of such repayments, with bonus issues, will allow those repayments to be treated as dividends, therefore only future combinations can be reached by paragraph *(d)*. If one leg has taken place before, I submit that this situation cannot be reached by paragraph *(d)*.

(3) We must not forget what I have already said about the Interpretation and General Clauses Act. We must remember that such combinations of repayment and issues may — I won't only say may — have certainly already occurred before 1971. There have been such combinations. Of course, being given the state of the law, the benefiting shareholders could not be, and have not been, required to pay tax under the law then in force, so that the effect of bonus shares issued previously to the 1971 Act insofar as they could have any consequence when followed by a repayment of share capital has already been exhaustive. The effect is already exhaustive, so that we cannot, subsequent to 1971, revive any such situation in order to constitute that one leg a component of the combination within reach of paragraph *(d)*.

(4) We must remember that those combinations of bonus issues and repayments of share capital, which have occurred in years previous to the Acts, that is previous to 1971, are transactions which have conferred a benefit on the shareholders and which can no longer be reopened now to create a new burden on the latter.

(5) Lastly, we must remember that shareholders have already been taxed at the time the past issues of share capital were made in accordance with the existing law under which capitalised profits applied in the issue of bonus shares could only have been the residue leftover after the Commissioner had, or could have, under s. 55 of the then 1950 Ordinance, notionally apportioned what he considered reasonable, among the shareholders, and assessed them accordingly. So that to come today and once more impose an income tax on the present transactions would, I submit,

burden the shareholders with a second taxation and, in the absence of express provision to that effect, I submit that this cannot be said to have been the intention of the legislator, and, I repeat, what I have already said this morning, that we must not forget that all the other paragraphs of subsection (2) of section (2) of the Act 1971 or the Act 1974 are inescapably prospective in their effect and it is very hard, not to say impossible, to imagine that the legislator would have mixed all together without clearly showing a contrary intention. Perhaps after all that I have said I would wind up by going back to the letter of the Income Tax Commissioner which is at page 13 of the brief where the Commissioner has this to say:

> The Statement shows that the preference share capital of the company was constituted wholly by shares issued and then he uses those words:
>
> > without receipt of any consideration from the shareholders to whom they were issued

But he himself has to end up by saying what he means actually:

> The shares were all bonus shares.

There is a complaint of the Commissioner that the preference share capital constituted essentially of bonus shares. In paragraph 4 he says:

> It is clear that the whole preference share capital of the company was a liability created without any money consideration having been received for it. When such capital is repaid later, the repayment cannot be considered a genuine repayment of capital.

That is to say, that the repayment of bonus shares cannot be considered a genuine repayment of capital which, I submit, forcefully, My Lords, is in the teeth of the principles of company law, of jurisprudence of the case law on the matter and of the opinions of the various authors whom I have this morning quoted at length. Therefore, in respect of paragraph *(a)* it is quite clear — there is authority which I have quoted this morning—that an issue of bonus shares is not a distribution, that a repayment of bonus shares is not a distribution, and it cannot be said that the addition of the word " genuine " can have the effect of removing from the exception the question of bonus shares. For one thing, the intention of the legislator would be ambigous, to say the least, but secondly, there would have been absolutely no need of paragraph *(d)* which is a situation which would be totally unacceptable, that the whole of paragraph *(d)* would have to be swept away purely and simply because of the presence of the word " genuine " in the 1971 Act and in the 1974 Act, the existence of which word can be reasonably explained, as I have done this morning, in relation to the issue in specie. Therefore, very humbly, I submit, My Lords, but forcefully, that the Commissioner has misdirected himself in paragraphs 3 and 4 and that his interpretation cannot be accepted. It is quite clear that paragraph *(a)* cannot find its application in respect of the repayment of bonus share capital in a winding up. When we turn to paragraph *(d)*, I submit, My Lords, it is quite clear that the law is prospective in its language — issues in 1971 — in its

intention and that no retroactive effect can be given to that piece of legislation and that the Income Tax Commissioner cannot be heard to say that, being given repayment of capital is taking place after 1971, it is the repayment which is — I suppose he might say — the concluding part, the important part, that therefore it would be reached by paragraph *(d)*. I submit that this cannot be so in the teeth of the language, in the teeth of section 5 of the 1971 Act. I submit that the use of the past tense in the 1974 Act is understanable, although there can be no doubt that the drafting of paragraph *(d)* in 1974 is far from being felicitous. In that respect, finally, Your Lordships will remember that when I referred Your Lordships this morning to Gore and Brown on Companies, I said that I would later come back to bonus shares and repayments of capital which is paragraph 2436, and it is on this point that I should like to end by reading out paragraph 2436:

Bonus shares and repayments of capital

> Special provisions follow section 233 dealing with combinations of bonus issues and repayments of capital. It has been stated already that repayments of share capital are not taxable as distributions,

" It has been stated ", My Lords. It is so clear, it is such a legal matter of course.

> and it will have been appreciated that a bonus issue of shares does not constitute a distribution unless the shares are redeemable. Therefore a repayment of share capital accompanied by a bonus issue of irredeemable shares would be a convenient way of putting tax free (as far as income tax goes) income in a shareholder's hands while maintaining the company's paid up capital. In some circumstances (set out in section 234) the amount paid up on the reduction is taxed as a distribution.

Of course, we know that in England the 1965 law comes into existence and in Mauritius it is the 1971 law.

> A repayment of irredeemable bonus shares would not be distribution. It would represent a repayment of share capital within section 233 (2) *(b)*.

That is the statement of the law, My Lords.

> Nor would the issue of irredeemable bonus shares constitute a distribution. Thus a company could issue irredeemable bonus shares and then repay the capital paid up on them, and by this means could put tax free income in a shareholder's hands.

And to prevent this the legislature has to step in.

> This is prevented by the simple expedient of not treating the sums repaid as a repayment of share capital.

And the reference is to the Finance Act 1972, section 84(4). In other words, the egislature has to intervene.

I submit finally that neither under paragraph *(a)* nor under paragraph *(d)* is the present repayment reached by the law, and therefore the Income Tax Commissioner's determination should be reversed.

I have done, My Lords.

Mr K.P. Matadeen argues:

My Lords, before going into the merits of this case, I would like to inform Your Lordships that, as appears from the exchange of correspondence between the Law Office and this Court, in view of the magnitude of the interest involved in this case and in view of the intricate nature of the point of law which is raised, the Solicitor-General had intended himself to appear in this case. If a comparatively junior officer is appearing in this case, My Lords, it is because the Solicitor-General has been held up by some equally important matters of state. I shall therefore crave Your Lordship's indulgence if as a junior officer of the Law Office I cannot put the arguments on behalf of the Income Tax Commissioner with the same force and the same power of argument as the Solicitor-General would have done in the circumstances.

The second statement I would like to make is this, that again in view of the magnitude of the interest at stake, in view of the intricate nature of the point of law which is being raised, we should tread carefully when dealing with this case. This particular case, My Lords, refers to an assessment of about Rs 10,000. I would submit it is, in fact, in the nature of a test case in regard to the repayment of share capital represented by bonus shares issued by the Company, of which the appellant company is a shareholder. The decision of Your Lordships in this case will no doubt serve as a guidance to the Income Tax Officers in respect of bonus shares issued before 1971. The bonus shares issued by the company, of which the appellant company is a shareholder, amount to about Rs 25m, but the total value of bonus shares which may be affected by the decision of Your Lordships may well exceed the 100m mark.

I would like to make a third observation. My learned friend referred to the statement which was attached to the Commissioner's letter which I found at page 17 of the brief. My learned friend stated that instead of having Rs 4m and Rs 4m, it should have been nil on one side and Rs 8m on the other. Your Lordships will see from the letter which the liquidator sent to the Commissioner of Income Tax and which is to be found at pages 10 to 12 of the brief, and specially at page 11, your Lordships wiil see at para. 6, that there was a reduction of capital which was effected by returning to the holder the nominal amount of 400,000 ordinary shares and 400,000 preference shares. It is this transaction which is reflected in accountancy or income tax terms on the statement which has been appended to the letter of the Income Tax Commissioner.

Another correction which I would like to make, at this stage, is this: Your Lordships, this morning, referred to the letter of the Income Tax Commissioner where mention is made of Rs 5m and Rs 22m, at page 13 of the brief. This Rs 22m represents the amount which has been repaid during the period May 1951 to October 1969 and has got nothing to do with the amount which is to be repaid now. It is made up of the amounts which your Lordships will see on the attached statement at page 17 of the brief made up of the amount of Rs 8m on the 17th July, 1963, then Rs 4m on the 2nd September 1968 and Rs 10m on the 1st October 1969. I submit, therefore, that there has been no discrepancy in the statement of the facts put forward by the Commissioner of Income Tax.

My learned friend has referred to the state of the law now. He referred to subsection (2) of section 2 of the Income Tax Act 1974. In fact, as he said, the concept of dividend or distribution was first introduced by the Act of 1971 (No. 32 of 1971). If Your Lordships would permit I would like to take Your Lordships on a journey to the situation which prevailed before 1971 whereby tax dodgers would escape through the various loopholes in the Income Tax net. My Lords, before 1971 it was current practice for companies whose shareholders fell in the tax bracket which was higher than the rate which was applicable to companies, for example where a shareholder had to pay 80% or 85% and the company had to pay 40%. Therefore it was the practice before 1971 for companies whose shareholders fell in the tax bracket higher than the rate applicable to companies to declare as low a dividend as possible and retain whatever after-tax profits or earnings in the revenue reserves. So a low dividend was declared, the after-tax earnings were put in the reserves. After a few years that same company would issue bonus shares out of the reserves. This issue of bonus shares was subsequently followed by a repayment of capital, by a reduction in capital. What was the end product? The result was that by doing so, the shareholders obtain cash or other assets from the company and which, at that time, before 1971, did not represent taxable income and the same result would follow if the bonus shares followed the reduction of capital. It operated both ways. Therefore, My Lords, by 1970 or 1971 it was conceived that the law, as it stood then, the law as it obtained before 1971 was being abused in such a way as to offend against the general notions of fiscal equity. This, My Lords, was the state of affairs which obtained before 1971 and this was the mischief which the legislator set out in 1971 to remedy, and that is how we have the Act No. 32 of 1971.

My learned friend has already referred to the various provisions in the Act of 1971. I do not propose to go into the provisions of the Act, but as Your Lordships will see, the same provisions were re-enacted in 1974, subsection 2 of section 2, with this difference — and this to the credit of the legislator — that in 1974 the legislator got rid of the distinction between distribution and dividend. Everything was now made a dividend. If it is a dividend it was taxable in the hands of the shareholder. My Lords, I do not think that it would be improper for me, at this stage, to refer Your Lordships to what Lord Simon of Glaisdale has said in the case of Flemming v. Associated Newspaper Ltd. This is reported in the Tax Cases V. 48 at pp 410—411. My Lords, having talked about the mischief which

existed before 1971 and the intention of the legislator to remedy, to cure this mischief, I believe it would be proper for me to refer Your Lordships to this particular guideline which was enunciated by Lord Simon. I believe that these two pages bear reading *in extenso*. This was a case which concerned the entertainment expenses the substance of it has nothing to do with the present case, but the guideline which Lord Simon had enunciated are very apt. This is what Lord Simon says:

> Before 1965 the test whether an expense was deductible for the purpose of computing profits or gains chargeable to tax was whether it was wholly and exclusively laid out or expended for the purpose of enabling the taxpayer to carry on and earn profits in the trade in question . . . Reasonable as the taxpayers' claim to deduct entertainment expenses may have seemed in that particular case, by 1965. it was conceived that the law as it then stood was being abused. What was called " expense-account living " had become notorious. Expenses, even " wholly and exclusively " incurred in trading, were thought to enure to raise certain individual taxpayers' real income net of tax in such a way as to offend against general notions of fiscal equity. In some instances it was mere lavishness or extent of the entertainment which offended; in others an element of reciprocity in entertainment was suggested. Courts of law have no means of knowing how far criticism of this sort are justified, and it is not ordinarily any part of their function to form any judgment thereon. But it is very much part of the duty of the Courts, in their task of statutory interpretation, to as certain as best they can what was the mischief as conceived by Parliament for which a statutory remedy was being provided; nor is it necessary nowadays for courts to affect ignorance of what is notorious.

And then Lord Simon goes into the various sections which were relevant to that particular case. Further down, he says:

> Nor can there be any doubt about the method which the draftsman chose to adopt in order to provide the remedy. Experience must have taught him that if a fiscal abuse is too precisely remedied taxpayers with expert advice will find a means of evading the fiscal control. To counter this, the draftsman may spread his net very wide at first, in order to make sure that nothing gets by which should not; and he will then re-examine to ensure that nothing has been caught in the net contrary to fiscal equity, and re-adjust accordingly . . .

I have referred to this, My Lords, only to show that there existed a mischief before 1971 and by the Act of 1971 the legislator set out to remedy this defect in the tax law.

My Lords, I agree with my learned friend when he says that our legislation was borrowed from the British legislation. In fact, it was borrowed from the Income and Corporate Taxes Act 1970. my learned friend has referred Your Lordships to the various sections — section 233 and following. To this, I shall say that there are

two fundamental differences between what obtains in England and what is the law in Mauritius. The first and paramount difference is to be found in s. 233 whereby distributions made by a company in respect of share capital in a winding up are excluded. This is very important, my Lords, because my learned friend has referred Your Lordships to a plethora of case law and authoritative pronouncements by learned authors. My answer to this is that they do not apply to the present case because, in Mauritius, as the law stands, we have made no exception to distributions of a company in respect of share capital made in a winding up. In the absence of this exception, the Court is not to assume the mantle of Parliament and to say that it is there, and that because it is to be found in the English text, we should import it into our text. This is not so. The second difference is that whereas the English enactment — I am referring specially to section 234 — refers to a repayment at or after a specified date and the date is given as the 6th April 1965. Your Lordships will realise that the English Act of 1970 was a consolidated exercise and it consolidated the Finance Act of 1965. My Lords, I was saying that the fundamental difference here is that, whereas the British legislation refers to repayment of capital made at or after a specified da e, after a given date, what we have in our local enactment is this:

> Any repayment of share capital to a shareholder where at or before or after the time of that repayment the company repaying the share capital issued as paid up, otherwise than for the receipt of new consideration, any share capital, except in so far as the amount repaid exceeds the amount repaid exceeds the amount or aggregate of amounts of share capital previously, simultaneously or subsequently issued as paid up otherwise than for the receipt of new consideration.

And it is to be found both in 1971 Enactment and in the 1974 Enactment.

I shall, therefore, invite Your Lordships to tread very carefully when considering the authorities and the various pronouncements which have been referred to by my learned friend. I shall submit that they find no application in the present case because our legislation has specifically departed, in two instances, from the provisions which obtain in England.

I do not think that it would be necessary for me to go into the facts of this case and into the various transactions effected by the Company, of which the appellant company is a shareholder, but suffice it to say that a quick glance at the brief, at the letters, at the correspondence exchanged between the Income Tax Commissioner and the appellant company, would show that, even before 1971, there was a pattern: the company operated with a certain system-there was an issue of bonus shares with a repayment of capital, an issue of bonus shares, a repayment of capital. There was some method, if not in the madness at least . . .

Mr David: There was no madness in it.

Mr Matadeen: I am only quoting shakespeare! There is some method in this madness. There was some method, I was saying, if not in the madness, at least in the way they tried to riggle themselves out of the loopholes which then existed in the net of the Income Tax Authorities. Your Lordships will see that as soon as the 1971 Act was passed there has been no subsequent repayment of capital.

My Lords, I will go back again to the Act of 1971 and the same provisions are to be found in the Act of 1974, except that there is a special provision in section 5 which deals with commencement. What the law says is this: if there is an issue of bonus shares and it is either followed by, or preceded by, or accompanied by a repayment of capital, to the extent that the repayment of capital does not exceed the amount or the Aggregate amount of bonus shares issued, that repayment shall be considered as a dividend.

I agree with my learned Friend when he says that the issue of bonus shares in itself does not amount to a dividend, it is not taxable and he quoted the case of Inland Revenue Commissioner v. Blott. This is correct, but the law now steps in and says: an issue of bonus share whether followed by or preceded by a repayment of capital shall, in the hands of the taxpayer, or in the hands of the shareholder, be considered as a dividend. This is the clear prescript of the legislator and this is the law which the Income Tax Commissioner is applying in the present case Granted that in s. 5 of the 1971 Act the legislator exempts distributions which have been made before the 1st July 1971, the amendment made by section 2 shall not affect any distribution made before the 1st July 1971. But what is a distribution?

Court: A distribution to be followed by?

Mr Matadeen: I am coming to this, My Lords. The law says: the amendment made by section 2 shall not affect any distribution made before the 1st July, 1971. That is a distribution? We have got the law and it is defined. It is defined as being an issue of bonus shares which is either followed by or preceded by or accompanied by a repayment of capital. So my learned friend uses the word " combination ". We may use any other expression. There are two components to this. So to have a distribution there must be first an issue of bonus shares and secondly a repayment of capital. If these two components are not to be found then there is no distribution. Therefore, My Lords, to give another example, if there has been an issue of bonus shares before the 1st July 1971 which was not followed by a repayment of capital before the 1st July, 1971, this cannot be considered as a distribution. and vice versa, if there had been a repayment of capital before the 1st July 1971, which was not followed or preceded by an issue of bonus shares before the 1st July 1971, this would not be considered as a distribution. In order to have a distribution these two components must be found. They must exist. There must be first an issue of bonus shares and secondly the repayment of capital.

My Lords, it is clear, from the record, from the brief, from the exchange of correspondence, that all the issues of bonus shares were made prior to the 1st July 1971 and the repayment of capital is being effected now. It is only now that we have the repayment of capital. Therefore those issues of bonus shares cannot, of their own, be considered as distribution, they must be followed by a reduction of capital. If you have a reduction of capital now, this reduction of capital would be caught by the net of the Income Tax Commissioner, this is my submission to Your Lordships.

My learned friend referred to the case where before 1971 there had been an issue of bonus shares, and again before 1971 or even after 1971, a third party, *a bona fide* purchaser, would come in, would buy the bonus shares. My learned friend was contending that this would offend the principles of fiscal aquity if that *bona fide* purchaser would have to pay tax when the capital would be repaid to him. This is not so, My Lords. We are dealing with reasonable people. A third party who buys bonus shares is taking the risk and he must take the rap.

Court: How?

Mr Matadeen: He is buying bonus shares which have been issued by the company, *caveat emptor*, he is taking the risk, he is buying bonus shares, it is for him to pay, to run the risk if at the end of the day he finds that he has got to pay tax when the capital is being returned to him.

Court: In fact, that *bona fide* purchaser, he is buying what has become capital of the company, and you say that he should be careful of what?

Mr Matadeen: Perhaps I have not made myself clear enough, My Lords. In the course of his arguments, my learned friend referred to a hypothetical case where after the issue of bonus shares a third party steps in and buys the bonus from the shareholder. My learned friend — he will no doubt correct me if I am wrong — stated that it would have been unfair if that third party would have to pay tax when there was a return of capital to him subsequently for the simple reason that this was preceded by an issue of bonus shares. My answer to this is that not it is not offensive to the principles of fiscal equity because that third party before buying the shares should enquire, it is his duty to enquire.

Court: To find out what ?

Mr Matadeen: To find out what was the transaction of the company before the purchase of shares, whether there has been an issue of bonus shares or not, this is the fundamental principle of our law.

Court: And he finds out that there are bonus shares, what are his fears?

Mr Matadeen: Then it is for him to decide what is going to be the price he would pay for the shares: this is my simple answer to it.

My learned friend also gave the example of issue in specie. To this my simple answer is that this is covered by section 2(2) *(c)*.

My learned friend also mentioned that the Commissioner had powers, under section 55 of the Ordinance, to consider dividends as having been declared even though there have been no distributed profits. Granted there was such a power, my learned friend went on to say that the Income Tax Comissioner would be taxing the taxpayer twice and, as he rightly pointed out, there is a presumption against double taxation, but what my learned friend refrained from referring to was that during the period between 1965 and 1969, the provisions of section 55 of the Income Tax Ordinance were suspended, they were revived only in 1969. I am sure my learned friend is fully aware of this. Therefore at any rate he has not come forward wtth facts to show that these people have already been taxed before under section 55.

My learned friend also referred to section 79 subsection (1). All that I was going to say to the Court is that the very terms of section 79 exclude the provisions of section 2. Section 79 states:

> Subject to subsection (2) and to sections 2(2), 14, 22, 27, 33, 34, and 55, where a person has made a return and has been assessed to income tax for any year, the Commissioner shall not amend the assessment after six years from the end of the year of assessment to which the assessment relates.

I shall therefore submit to Your Lordships that this repayment of capital was not a genuine repayment of capital because previously there had been an issue of bonus shares. At any rate this is covered by section 2(2) *(d)*. My learned friend was arguing that this provision may be otiose. To this my answer is that it is not otiose. On the contrary the legis ator has acted *ex abundunte cautela*, and this shows the intention of the legislator to catch the repayment of capital after an issue of bonus shares.

My learned friend drew Your Lordships' attention to a slight difference between the provisions of the 1971 Act and those of the 1974 Act. In one it is stated "issues" and in the second, it is stated " issued ". My Lords, we are dealing with the 1974 Act. If the Income Tax Commissioner had proceeded to act under the 1974 Legislation, then we have to refer to this legislation in order to see whether he had acted within the ambit of the law or not. As my learned friend rightly conceded, Parliament can enact fiscal laws with retrospective effect, its power is to be found in the Constitution of Mauritius itself and this principle has been enunciated in various cases. If I may briefly refer Your Lordships to Halsbury Laws of England, 4th Edition, paragraph 82. There are other cases and the most recent one, which I have come across, My Lords, is the case of James *v.* Inland Revenue 1977 All E.R. p. 897. I shall submit to Your Lordships that I am not saying that this is retrospective fiscal legislation. What I am saying is that even assuming that this is to be considered retrospective fiscal legislation, the Legislature had the power to do so, had the power to pass such a law.

Now, the text of the law refers to issues of bonus shares at or before or after the repayment of capital. I shall submit to Your Lordships that these words are merely descriptive. They describe one of the components in the definition of a dividend.

The remarks I am making now with respect to retrospective fiscal legislation apply specially in relation to the contention made by my learned friend that there has been some sort of immunity granted to those people by the difference in language in the 1971 Act and in the 1974 Act. I submit that there has been no such immunity. We have to look at the text of the 1974 Act and the 1974 Act says: where the company " issued " bonus shares.

Court: You are saying that if there has been an issue with the two components prior to July 1971 that would be caught by the 1974 legislation.

Mr Matadeen: Yes. As I intimated earlier, the provisions of section 79(1) do not find their application — because this is 6 years prescription — in the case of subsection 2 of section 2.

To sum up, therefore, I shall submit to Your Lordships that the interpretation put by the Commissioner of Income Tax on the provisions of subsection (2) of section 2 is the correct one and should be upheld, that the Commissioner was not wrong in holding that this distribution amounted to a dividend and this is not a case of genuine repayment of share capital and that the fact that the bonus shares were issued prior to 1st July 1971 do not affect the issues raised in the present case

My Lords, that is all I have got to submit to Your Lordships. I would be very glad to answer any queries from your Lordships if there is any.

Mr David Rejoins

My Lords, I just have three or four small points to refer to. My learned friend refers to section 2(2) *(c)* in order to say that it constitutes a short answer to my argument in respect of distribution in specie. I shall read that paragraph:

> The amount or value of the benefit received by a shareholder or by a relative of a shareholder on the occasion of a transfer of assets by a company to a shareholder or to a relative of a shareholder, where the transfer is not made for normal reasonable commercial consideration.

It is quite clear that the legislator is reaching non genuine transactions between relatives where a shareholder transfers to a relative for less than the normal reasonable commercial consideration like between father and son and relatives or something like that. But this is certainly not a short answer to the submission I made in relation to distribution in specie. Far from it, in fact, if anything, this, in fact, would show what the legislator had in mind when he used the expression " genuine " if anything. I am grateful to my learned friend for referring Your Lordships to that provision.

In so far as the plethora of cases I quoted this morning, it is quite clear that I was referrring to the situation as to the principles of company law up to the time that the legislator intervening so that whether in England or in Mauritius, that case law would find its application to define what the law was, at the time that the legislator intervened. The question, therefore, is to what extent can the legislator affect the previous situation and to what extent has the legislator affected, in fact, that situation? That is what I submitted this morning.

Now, in so far as the principles of *caveat emptor* is concerned, it is quite clear that before 1971 anyone who bought bonus shares would not have to be wary because he would take the law as he found it. That, I think, is the sort answer. Now the last two points: On the one hand it is quite clear that when we come to paragraph *(d)* of Act 1971 we cannot blind ourselves to the tense that is used in the word " issues ". Any repayment of share capital — my learned friend has admitted that it would have to be after 1971 — in 1971 or after to a shareholder where at or before or after the time of that repayment, the company repaying the share capital " issues ". Is it likely that the legislature then contemplating reaching issues prior to the commencement of the legislation, would have used that expression " issues "? I very humbly submit that the language of this paragraph is clearly prospective in its nature and that we cannot run away from that and once that is done, once the situation, up to then, is saved, I submit that the 1974 legislation cannot jump " à pieds joints " on the sacred principles enunciated by the Interpretation and General Clauses Act of 1974 — I have referred Your Lordships to section 17, subsection (3), and that when the legislature in fact, uses the word " issue " in 1974, it is to cover the interval between 1971 and 1974 and, in fact, the same argument would apply in relation to s. 79 (1) because s. 79(1) could not operate against the principles of the Interpretation and General Clauses Act and the same section 17(3). That is all, My Lords.

Court: Thank you. Court reserves judment.

JUDGMENT

RECORD No. 3416

IN THE SUPREME COURT OF MAURITIUS

In the matter of:—

ESPERANCE CO LTD

Appellant

versus

THE COMMISSIONER OF INCOME TAX

Respondent

Judgment

On the 4th May 1951, 8th September 1954, 3rd December 1965, 5th August 1968 and finally on the 29th September 1969, the capital of Mon Loisir S.E. Company Limited (the Company) was increased by the creation of shares issued as fully paid " bonus " shares by way of capitalization of sums from the Reserve Fund of the Company.

In 1961 there was a reorganisation of the share capital of the Company.

On the 17th June 1963. 2nd September 1968 and finally on the 1st October 1969, the capital of the Company was reduced; such reductions were effected by returning to the shareholders the nominal amount of a number of their shares and cancelling such shares, and were in each case duly approved by the Court.

As a result of those various alterations made to the capital of the Company, all the preference shares held by the shareholders of the Company were as from October 1969 and remained constituted by bonus issues.

The Company has gone into voluntary winding up in June 1981. The rights and privileges attached to the preference share comprising *inter alia* the right in case of winding up to the repayment of the capital paid up thereon by preference to ordinary shares, the liquidator has accordingly started repaying from the assets of the Company their share capital to the preference shareholders. A partial repayment was effected among the preference shareholders on the 29th June 1981.

The question raised on the present appeal, which is in the nature of a test case, is whether such repayments to the preference shareholders are dividends and taxable as such, by virtue of section 2(2) of the Income Tax Act of 1974, as contended by the Commissioner of Income Tax.

The contention of the Commissioner is expressed in paragraphs 3, 4 and 5 of answer dated 2nd October 1981 (Document " B ") to the letter written to him by the liquidator on the 10th July 1981 (Document " A "). The liquidator had in his letter set out in detail the history of the Company's share capital referred to above.

Paragraphs 3, 4 and 5 of the Commissioner's letter read as follows:—

> 3. The statement shows that the Preference Share Capital of the Company was constituted wholly by shares issued without receipt of any consideration from the shareholders to whom they were issued. The shares were all bonus shares. It also shows that while the shareholders paid Rs 5 million towards the share capital of the company, they were repaid in money during the period May 1951 to October 1969 a total of Rs 22 million on share capital account.
>
> 4. In my opinion, it is clear that the whole Preference Share Capital of the company was a liability created without any money consideration having been received for it. When such capital is repaid later, the repayment cannot be considered a genuine repayment of capital.
>
> 5. In the circumstances, the distribution of Rs 120,000 made by you out of the assets of the Company to the Preference Shareholders on the 29 June 1981 constitutes payment of a dividend by virtue of Section 2(2) of the Income Tax Act. The dividend is chargeable to income tax by virtue of Section 11(1) *(d)* of the Act.

The Commissioner consequently served a notice of assessment on each of the preference shareholders of the Company.

The appellant, one of the preference shareholders, has appealed against the Commissioner's assessment on the following grounds:—

> 1. Because the assessment made by the Respondent is based upon a wrong interpretation of the effect of section 2(2) of the Income Act, 1974;
>
> 2. Because the Respondent was wrong in holding that a distribution of Rs 120,000 made by the liquidator of the Mon Loisir Sugar Estates Co. Ltd. (in voluntary winding up) to the shareholders of that Company in repayment of share capital represented by a number of preference bonus shares held by them constituted dividends under section 2(2) of the Income Tax Act, 1974, and that the share of that distribution, namely Rs 14,997, received by the Appellant as shareholder of that Company was taxable in its hands as dividends;

3. Because the Respondent was wrong in holding that the distribution of Rs. 120,000 made by the liquidator of Mon Loisir Sugar Estates Co. Ltd. as aforesaid to its preference shareholders could not be considered a genuine repayment of capital but constituted the payment of a dividend within the meaning of section 2(2) of the Income Tax Act 1974 on the ground that the preference share capital of that Company was constituted wholly by bonus shares and was a liability created without any consideration having been received for it;

4. Because in arriving at his conclusion that the aforesaid repayment of share capital constituted dividends under the said section 2(2) of the Act the Respondent wrongly disregarded the act that the bonus shares, the repayment of which constituted, according to him, dividends in terms of that subsection, had been issued prior to the coming into force of the Income Tax (Amendment No. 2) Act 1971 which was the first enactment to lay down that a repayment of share capital which has been preceded by a bonus issue constituted dividends.

It is common ground that in England as well as in Mauritius neither a bonus issue of shares by a Company nor a repayment of share capital to a share holder used, in any circumstances, to be taxable as dividends.

The combination of an issue of bonus shares with a corresponding repayment of share capital, in whichever order effected, thus provided a convenient way of putting tax free income in the shareholder's hands.

The legislator, both in England and in Mauritius, stepped in clearly to put an end to such tax avoidance schemes.

He first did so in England in schedule 11 to the Finance Act of 1965, subsequently repealed and replaced by sections 233, 234 and 235 of the Income and Corporation Tax Act of 1970 (to which we shall be referring to as the English Act).

The legislator in Mauritius followed suit in 1971, borrowing largely from the new English provisions, when the Income Tax Ordinance of 1950 (the Ordinance) was amended by the Income Tax (Amendment No. 2) Act of 1971 (the 1971 Act). The Ordinance as amended was repealed and replaced by the Income Tax Act of 1974 (the 1974 Act) which amended and consolidated the law relating to Income Tax in Mauritius.

It is, we find, apposite to set out here, side by side the relevant provisions of secs 233, 234 and 235 of the English Act and the corresponding ones of both the 1971 Act and the 1974 Act.

The English Act	*The 1971 Act*	*The 1974 Act*
See 233 **Matters to be Treated as Distributions**	Sec. 2 Section 5 of the Ordinance shall have effect as if	2(2) — In this Act " dividends " means —
(1) The following provisions in this part of this Act, together with sections 284 and 285 of this Act, shall subject to section 248(8) of this Act and to any other express exceptions, have effect with respect to the meaning in the Corporation Tax Acts of „ distribution ", and for determining the persons to whom certain distributions are to be treated as made, but references in the Corporation Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding up.	*(a)* in subsection (1) (i), for paragraph *(e)*, there were substituted the following paragraph *(e)* distributions, dividends, interests, or discounts;	*(a)* any distribution out of the assets of a company whether in money or money's worth to a shareholder of the company or to a relative of a shareholder, except so much of the distribution, if any, as represents a genuine repayment of capital on the shares or as is, when it is made, equal in amount or value to any new consideration given for the distribution;
233(2) — In relation to a company " distribution " means—	*(b)* immediately after subsection (5) there were added the following subsection —	
(a) any dividend paid by the company, including a capital dividend;	(6) (i) For the purposes of paragraph *(e)* of subsection (1) (i) of this section the term „ distribution " means —	
(b) any other distribution out of the assets of the company (whether in cash or otherwise) in respect of shares in the company, except so much of the distribution, if any as represents a repayment of capital on the shares or is, when it is made, equal in amount or value to any new consideration given for the distribution.	*(a)* any distribution out of the assets of a company (whether in cash or otherwise) to a shareholder of the company or to a family relative of a shareholder, except so much of the distribution, if any, as represents a genuine repayment of capital on the shares	

The English Act

234(1) — Where a company—

(a) repays any share capital or has done so at any time after the 6th April 1965; and

(b) at or after the time of that repayment issues as paid up otherwise than by the receipt of new consideration, any share capital, not being redeemable share capital;

the amount so paid up shall be treated as a distribution made in respect of the shares on which it is paid, except in so far as that amount exceeds the amount or aggregate amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this subsection as distributions.

235(1) — Where

(a) a company issues share capital as paid up otherwise than by the receipt of new consideration, or has done so after 6th April, 1965; and

(b) any amount so paid up does not fall to be treated as a distribution,

then, for the purposes of sections 233 and 234 above distributions afterwards made by the company in respect of shares representing that share capital shall not be treated as repayments of share capital except to the extent to which those distributions, together with any relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after that date and not falling to be treated as distributions.

The 1971 Act

(d) any repayment of share capital to a shareholder where at or before or after the time of that repayment the company repaying the share capital issues as paid up otherwise than by the receipt of new consideration any share capital, except in so far as the amount repaid exceeds the amount or aggregate amounts of share capital previously or subsequently issued as paid up otherwise than by the receipt of new consideration.

Sec. 5—(1) The amendment made by section 2 shall not affect any distribution made before 1st July, 1971.

The 1974 Act

(d) any repayment of share capital to a shareholder where at or before or after the time of that repayment the company repaying the share capital issued as paid up, otherwise than for the receipt of new consideration, any share capital, except in so far as the amount repaid exceeds the amount or aggregate of amounts of share capital previously simultaneously or subsequently issued as paid up otherwise than for the receipt of new consideration;

We find that while in England distributions made in respect of share capital in a winding up are expressly excepted from the new provisions, there is no such corresponding exceptions expressed in our texts.

Commenting on this aspect of the new legislation in England the learned author in Gore and Brown on Companies (43rd Edition) has this to say at No. 24—34 — " Distributions made in respect of share capital in a winding up are not distributions for tax purposes. The principle is preserved which originates in company law that the assets of a company in liquidation lose their identity as profits or capital. They become one fund all of which for tax purposes is capital. This principle has given rise more than any other in the realms of tax on companies to schemes of avoidance ".

We find this principle set out in Halsbury Laws of England (4th Edition) Vo. Income taxation at paragraph 17, as follows:—

> " In a liquidation of a company, surplus assets representing accumulated and undistributed profits which are returned to the shareholders are not income in their hands, because in a liquidation profits can no longer be distinguished from capital ".

It was submitted for the appellant that this principle of company law had been firmly established and consistently followed in Mauritius as well and that our legislator had he intended to depart from it would have been expected to say so clearly. That in the silence of our new legislation, it is at most doubtful that there was such an intention and that, in doubt, our new legislation should be interpreted in favour of the appellant, the tax payer, and the new provisions held not to apply to distributions made by a liquidator in a winding-up.

We are only concerned in the present case with that part of the distribution made by the liquidator consisting of the priority repayment to the preference shareholders of their share capital and not with further distributions which could thereafter he made to them out of the remaining assets of the company.

The preference shareholders are now being repaid share capital just as would have been the case had there been a reduction of the capital of the company.

It would appear, as noted in Gore & Brown (supra) thct the English Act did not prevent tax avoidance schemes by companies which could consist in following an issue of bonus shares by a voluntary winding up.

We find that when our law was amended in 1971, the legislator, by not expressly excepting from the new provisions in a winding up and by specifically defining as taxable distributions in sub-section *(d) any* repayment of bonus share capital to a shareholder, made sufficiently clear his intention to reach under sub-section *(d)* such repayment even if made in a winding up of the company.

Now we do not agree with the submission made by Counsel for the respondent that the repayment of capital wholly constituted by bonus issues " cannot be considered a genuine repayment of capital " (paragraph 4 of the Commissioner's letter), so that such repayment would in any case be taxable under the provisions of sub-section *(a)*.

It will be seen that in the English Act it was found necessary to provide in section 235 that such repayments shall not be treated as repayments of share capital which repayments are excepted from the definition in section 233(2) *(b)*.

Similarly although in our coresponding sub-section *(a)* the qualification " genuine " is added to the repayments of capital excepted, it was still found necessary to specifically define in sub-section *(d)* as taxable distribution repayments preceded by a corresponding bonus issue. We agree with Counsel for the appellant that sub-section *(d)* would not have its " raison d'être " if such repayments were not considered to be genuine repayments of share capital and therefore excepted from the definition in sub-section *(a)*.

We are satisfied that the repayment in the present case could only be reached under sub-section *(d)*.

It was submitted for the appellant that the bonus issues in the present case having last been effected in 1969, that is before the new anti tax avoidance provisions were first enacted on the 1st July, 1971, the repayments presently made were not caught under those new provisions.

It will be seen that under the English Act repayments of bonus share capital are only taxable under the new provisions, which were first enacted in 1965, in relation to bonus issues made after the 6th April, 1965 (Section 235).

The 6th April, 1965 happens to have been Budget day in England and although the Finance Act was passed in August 1965 it is to be inferred, that as from the 6th April, advance notice was given in the budget speech to all concerned of the intended new anti tax evasion legislation. The legislator in England made it clear that he was only out to catch combinations that would be started " en toute connaissance de cause ".

It has been seen that the legislator in Mauritius stepped in, as was done by his counterpart in England, to put an end to income tax evasion by the combination bonus issue cum repayment of bonus share capital.

It is submitted for the appellant that the same prospective effect as given to the new provisions in England should be held to have been intended to be given to our new provisions.

We have seen that as the law existed in Mauritius before 1971, a company issuing bonus shares to its shareholder did so with the knowledge that subsequent repayments of share capital to the shareholders would not be chargeable to income tax. There is no doubt that the legislator was entitled to decree in 1971 that such repayments, even where the corresponding bonus issue was effected at any time before 1971 would be taxable as dividends (or distributions), though such retrospective feature might result in a certain amount of unfairness being caused. Counsel for the appellant referred to the case of a third party who would, years ago, have *bona fide* purchased shares in company and unexpectedly find later that on its being repaid to him, his capital has become chargeable to income tax.

We agree with counsel for the respondent that, unfairness or no unfairness, if the language used by the Legislator makes clear such an intention, the Court could only give effect to it.

We have considered how far our Legislator, when he replaced section 5*(b)* of the Ordinance, as it was made to read by section 2 at 5 (1) *(a)* of the 1971 Act, by section 2(2) of the 1974 Act (by which the Ordinance was repealed) intended to reach such transactions which, because of the time at which they had taken place or been started, were not reached by the provisions of the 1971 Act. We are of opinion that no retrospective effect other than that which the provisions of the 1971 Act could be held to have had, regarding transactions started before the 1st July 1971, was, on the language used in the 1974 Act, meant to be given to its provisions. In other words if the present repayment would not have been taxable under sub-section *(d)* of the 1971 Act because the bonus issues had been completed before the 1st July 1971, such repayment would still not be taxable under sub-section *(d)* of the 1974 Act.

Section 17 (3) *(c)* of the Interpretation and General Clauses Act of 1974 provides that the repeal of an enactment shall not affect any right or privilege accrued under the repealed enactment.

Had the Legislator intended to reach, ex post facto in 1974 such transactions as would have been left unaffected by the 1971 Act, we would have expected him to say so, in clear terms, and this, we find he has not done.

If for instance the expression " where the company..... *issues*..... " used in sub-section *(d)* of the 1971 Act was replaced in 1974 by " when the company issued..... " for other than grammatical reasons, we would still consider that this could only have been done to cover any transactions having taken place between the 1st of July 1971 and the passing of the 1974 Act.

We find that we should, in the present case, examine the whole of the language used in the 1971 Act, to decide, whether, the bonus issues dating back prior to the 1st July 1971, the subsequent repayment of share capital was still intended to be taxable under sub-section *(d)*.

Reference was made to section 5(1) *(a)* of the 1971 Act, which, it was submitted for the appellant, would by itself leave the repayment in the present case unaffected by the new provisions.

Counsel for the respondent contended that since for there to be a distribution as defined under sub-section *(d)* a repayment must have been preceded, accompanied or followed by a bonus issue, so long as those two components of the combination had not taken place, there was no " distribution ". In the present case therefore there had been by the 1st July 1971 still no " distribution " so that the proviso in section 5(1) *(a)* could be of no avail to the appellant.

Be that as it may this proviso certainly provides some indication that only a prospective effect was intended to be given to the new provisions.

When we turn to the language of sub-section *(d)* of the 1971 Act we find that a repayment of share capital is deemed to be a taxable distribution " where at or before or after the time of that repayment, the Company..... " issues " bonus shares.

The use of the present tense of the verb issue, which, were sub-section *(d)* to be read by itself, could seem to have been a lapsus or grammatical mistake, appears, when the sub-section is read together with the rest of the section and with section 5(1) *(a)* to have been deliberate on the part of the Legislator. This, we are satisfied, indicates with sufficient clarity that the provisions of our new legislation were only intended to be given the same prospective effect, as that expressly given to the English provisions.

We have, for the reasons set out above, reached the conclusion that as far as the sums paid by the liquidator to the preference shareholders of the company represent repayment of their preference share capital, those sums are not chargeable to Income Tax under either of sub-section *(a)* or subsection *(d)* of section 2(2) of the Income Tax Act of 1974.

We are expressing no opinion as to whether distributions, over and above the amount representing their share capital, which could be made by the liquidaror to the preference shareholders of the Company, would be taxable under section 2(2) *(a)* of the Act.

The present appeal is allowed and that assessment No. L 0009210 dated 16th October 1981 is set aside.

We make no order as to costs.

P. Y. ESPITALIER-NOEL
Judge

A.M.G. AHMED
Judge

9th April, 1982.

CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of all proceedings, judgments, decrees and orders had and made or given in the above matter.

Given under my hand and seal of the Supreme Court of the Island of Mauritius.

This day of September 1982.

Master and Registrar, Supreme Court.

PART II

Documents Produced

Document A

Letter from Mr H. Maigrot, Notary Public dated 10th July, 1981

Mon Loisir S.E. Co. Ltd.
5, Rue Leoville L'Homme
Port-Louis
Ile Maurice

Port-Louis, 10th July 1981.

THE COMMISSIONER OF INCOME TAX
PORT LOUIS.

Dear Sir,

" Mon Loisir S.E. Company Limited " (In Voluntary Winding Up)

1. The abovenamed Company has gone into Voluntary Winding Up by virtue of a Special Resolution passed and confirmed at Extraordinary General Meetings of the Company held respectively on 11th May and 4th June 1981 and I have been appointed as liquidator.

2. The provisions of Sections 165 and 168 (1) of The Companies Ordinance (Cap. 397 Laws of Mauritius) have been complied with, and the required advertisements and convening of creditors' meeting were duly made.

3. By Virtue of the powers conferred upon me as liquidator, I have proceeded to a provisional or first distribution of Rs. 120.000. — among the contributories of the Company, out of the assets of the Company.

4. In view of the fact that the Company's capital is divided into ORDINARY and PREFERENCE SHARES, and that the Preference Shares were constituted by Bonus issues, I am advised that your department might consider the distribution made by me as aforesaid as dividends paid to the holders of such Preference shares and that Income Tax should be payable in respect of same.

5. For your information, I am setting out hereunder a description of the Company's capital and of its history.

6. The present capital of the Company is Rs. 26,000.000. — divided into 1,400.000 Ordinary Shares of Rs 10. each and 1,200.000 Preference Shares of Rs 10. — each. The present capital has been reached by the following stages:

6.01 The original capital of the Company was Rs 3.187.000 — divided into 15.935 Ordinary Shares of Rs 200. — Each, all subcribed and fully paid up.

6.02 On 15th September 1947, the capital of the Company was increased to Rs 5.000.000. — by the creation of 9.065 Ordinary Shares of Rs 200. Each, all subscribed and fully paid up.

6.03 On 4th May 1951, the capital of the Company was increased to Rs 10.000.000. — by the creation of 25.000 Ordinary Shares of Rs 200. — Each issued as fully paid " Bonus " Shares by way of capitalisation of — Rs 5,000.000. from the Reserve Fund of the Company.

6.03 On 8th September 1954, the capital was increased to Rs 20.000.000. — by the creation of 50.000 Ordinary Shares of Rs 200. — Each, issued as fully paid „ Bonus " Shares by way of capitalisation of Rs 5.000.000. — on the date aforesaid and of Rs 5.000.000. — on 11th December 1959, respectively, from the Reserve Fund of the Company.

6.05 On 30th June 1961, the capital of the Company which then was Rs 20.000.000. divided into 100.000 Shares of Rs 200. — Each was divided equally into Ordinary and Preference Shares: the first 50.000 Shares bearing No. 1 to 50.000 were kept as Ordinary Shares and the following shares numbered 50.001 to 100.000 were made Preference Shares.

By virtue of the Resolutions passed on the same date, the said existing shares were subdivided into shares of Rs 10. Each so that the capital of the Company was thenceforth Rs 20.000.000. — divided into 1.000.000 Ordinary Shares of Rs 10. Each and Rs 1.000.000. — Preference Shares of Rs 10. — Each.

6.06 On 17th June 1963, the capital of the Company was reduced from Rs 20.000.000. — to Rs 12.000.000. — and such reduction was effected by returning to the holders thereof the nominal amount of 400.000 Ordinary Shares bearing Nos. 600.001 to 1.000.000 and of 400.000 Preference Shares bearing Nos. 600.001 to 1.000.000 respectively held by them, and by cancelling such shares. The aforesaid reduction of capital was duly approved by the Supreme Court.

6.07 On 3rd December 1965, the capital of the Company was increased to Rs 26.000.000. — by the creation of 800.000 Ordinary Shares and 600.000 Preference Shares of Rs 10. Each, issued as fully paid " Bonus " Shares by way of capitalisation of Rs 14,000.000. — from the Reserve Fund of the Company.

6.08 On 5th August 1968, the capital of the Company was increased to Rs 30.000.000.— by the creation of 400.000 Preference Shares of Rs 10. Each, issued as fully paid " Bonus " Shares by way of capitalisation of Rs 4.000.000. from the Reserve Fund of the Company.

6.09 On 2nd September 1968, the capital was reduced from Rs 30.000.000.— to Rs 26.000.000.— and such reduction was effected by returning to the holders of 400.000 Preferences Shares bearing Nos. 1.200.001 to 1.600.000 the nominal amount of their shares and by cancelling such shares. The said reduction was duly approved by the Supreme Court.

6.10 On 29th August 1969, the capital of the Company was increased to Rs 36.000.000.— by the creation of 1.000.000 Preference Shares of Rs 10.— Each, issued as fully paid " Bonus " Shares by way of capitalisation of Rs 10.000.000. from the Reserve fund of the Company.

6.11 On 1st October 1969, the capital of the Company was reduced from Rs 36.000.000.— to Rs 26.000.000.— and such reduction was effected by returning in specie to the holders of 1.000.000 Preference Shares bearing Nos. 1.200.001 to 2.200.000 the nominal amount of their shares and by cancelling such shares. The said reduction of capital was duly confirmed by the Supreme Court and according to the Minute of the Court, the then capital of the Company was Rs 26.000.000.— divided into 1.400.000 Ordinary Shares of Rs 10.— Each and 1.200.000 Preference Shares of Rs 10.— Each.

6.12 No other increase or reduction of the Company's capital has since taken place.

7. It results from the above history of the Company's capital that all the Preference shares are constituted by Bonus issues. As the rights and privileges attached to the said Preference Shares comprise " inter alia " the right in case of winding up to the repayment of the capital paid up thereon by Preference to Ordinary Shares, any distribution of the assets of the Company must first be effected among such Preference Shareholders.

8. Consequently the partial distribution of Rs 120.000.— made by me on 29th June 1981 has been effected among the holders of Preference Shares only.

9. In view of the fact that the matter of distributions made in respect of Bonus Shares might give rise to a dispute as to whether Income Tax would be payable thereon, I am withholding any further distributions until such time as the question has been decided.

HUGUES MAIGROT
Liquidator

Reg. A 431 No. 1207

Document B

Letter from Commissioner of Income Tax

In reply please quote
F 00019.1/LP/16

Income Tax Headquarters,
Level 8
Registrar General Building,
15, Jules Koenig Street,
Port Louis
2 October 1981

Mr Hugues Maigrot
Liquidator
Mon Loisir Sugar Estate Co. Limited
(IN VOLUNTARY WINDING UP)
5 Léoville L'Homme Street
Port Louis

Mon Loisir Sugar Estate Co. Ltd (In Voluntary Winding up)

Dear Sir,

Thank you for your letter of the 10 July 1981.

2. I have prepared the attached statement showing the movements in the share capital of the company. I have used as basis the information contained in your letter.

3. The statement shows that the Preference Share Capital of the Company constituted wholly by shares issued without receipt of any consideration from the shareholders to whom they were issued. The shares were all bonus shares. It also shows that while the shareholders paid Rs 5 million towards the share capital of the company, they were repaid in money during the period May 1951 to October 1969 a total of Rs 22 million on share capital account.

4. In my opinion, it is clear that the whole Preference Share Capital of the company was a liability created without any money consideration having been received for it. When such capital is repaid later, the repayment cannot be considered a genuine repayment of capital.

5. In the circumstances, the distribution of Rs 120,000 made by you out of the assets of the Company to the Preference Shareholders on the 29 June 1981 constitutes payment of a dividend by virtue of Section 2(2) of the Income Tax Act. The dividend is chargeable to Income tax by virtue of Section 11(1) *(d)* of the Act.

6. The copy of the deed dated the 29 June 1981 attached to your letter shows that the Rs 120,000 have been distributed as follows:

	Rs
Mr Jean Lagesse	14,997
Société du Patrimoine	750
Compagnie Desmem Ltée ...	24
Compagnie Mon Désir Ltd. ...	14,997
Compagnie Entente Ltd. ...	14,997
Stam Investment Ltd.	14,997
Société Jean Claude Harel ...	14,247
Espérance Co. Ltd.	14,997
Mon Souci Ltd.	13,567
Mrs Robert Rey Lagesse ...	1,430
Compagnie du Vas Ltd. ...	14,997

7. The sums shown against the names of the above recipients constitute income chargeable to tax. They will be added to the income of the recipients in computing the income or profits for tax purposes.

8. The accounts submitted by Espérance & Co. Ltd. for the accounting year ended 30 June 1981 show that the sum of Rs 14,997 received by that Company has been credited to Portefeuille Actions and has not been included as an item of income in its computation of profits. The necessary adjustment will be made in the computation of the Company's chargeable income and an assessment will be raised upon the Company shortly.

Yours faithfully
D.M. HENRY
Commissioner of Income Tax

Copy to:

Mr Vincent Kœnig
Attorney-at-law
George Guibert Street
Port Louis

Reg. A 431 No. 1203

Document C

Letter from Ag. Commissioner of Income Tax to Manager of Espérance Co. Ltd.

Income Tax Headquarters
Level 8, Registrar General
Building
15 Jules Koenig Street
Port-Louis

REGISTERED

15 October 1981

The Manager
Esperance Co. Ltd.
5 Leoville L'Homme St.
Port-Louis

ESPERANCE CO. LTD.
ACCOUNTS FOR YEAR TO 30 JUNE 1981

Dear Sir,

Following the determination made by me under Section 2(2) of the Income Tax Act, 1974 to the effect that the distribution of Rs 120,000 — made by Mr H. Maigrot the Liquidator of Mon Loisir S. E. Ltd., out of the assets of the company to the Preference Shareholders on 29 June 1981 constitutes the payment of a dividend, I have revised the chargeable income and tax liability of Esperance Co. Ltd. for the year ended 30 June 1981 as per statement below. Mr H. Maigrot, the Liquidator of Mon Loisir S. E. Ltd. was duly notified of my abovementioned determination on 2 October 1981.

		Rs
	Chargeable Income as per income tax computation submitted	nil
Add	deemed dividend under section 2(2) of the Income Tax Act, 1974 in respect of the distribution of Rs 120,000 out of the company's assets to the Bonus Preference Shareholders by the Liquidator of Mon Loisir S.E. Ltd.	14,997
	Revised Chargeable Income	14,997
	Income Tax at 66%	9,898

A notice of assessment claiming the tax payable will be issued in due course

The question of deemed rent on the immoveable property occupied by Mr Cyril Lagesse is still under consideration. Notices of assessment claiming the additional tax payable on the deemed rent will be issued as soon as this matter is settled.

Yours faithfully
Ag. Commissioner of Income Tax

Reg. A 431 No. 1205

INCOME TAX

Income Tax Act 1974

NOTICE OF ASSESSMENT

YEAR OF ASSESSMENT ENDING 30th JUNE 197 1982

(Assessment based on income of the year ended 30th June 197 1981

or of the Approved Accounting Period.....to.....)

TAKE NOTICE that for the above year of assessment, I have made an assessment upon you, particulars of which are set out below. This notice is addressed to you as required by law *but if you have a professional adviser or agent it is desirable that you should let him see it immediately.*

Doo

MAURITIUS

I.T. FORM 50

8083-10-76—3m

To.....Esperance Co. Ltd.
.....5 Leoville L'Homme St.
.....Port-Louis

Please quote these references		
	File No.	F01443.5
	VP/Asst. No.	LC009210
	Addtl. Asst. No.	
	Addtl. Asst. No.	16.10.81

Note:—The tax in this Part is payable in addition to:
(a) any tax of which you have already been notified by me; and
(b) the second instalment of tax as calculated by you in your Return of Income.

PART A.—Tax payable not later than

1st instalment or in one sum	2nd instalment 31st March 197 1982
payable forth-with	
Rs 4,949	Rs 4,949

PART B. **Chargeable Income Rs** 14,997

PART C. TAX

		Rs
	Tax at 45% ... 66% ...	9,898
Deduct	Credit for foreign tax ...	
		9,898
	Penalty (Section 100) ...	
	Total Tax Charged ...	9,898
Deduct	Tax Already Charged ...	
	Additional Tax Charged by this Assessment *c/f* ...	9,898

	Rs
Additional Tax Charged by this Assessment *b/f* ...	9,898
Deduct Tax on withholding income ...	
	9,898
Deduct Prepayments and over-payments	
Tax Payable—as in Part A ...	9,898

1. *If you are satisfied with this assessment* and the tax is not paid by the date specified in Part A, ten per cent of the amount of income tax unpaid will be added by way of penalty. In addition, interest at the rate of seven per cent per year is payable in certain cases.
2. *If you are dissatisfied with this assessment*, you may either :
   (a) give me notice of objection in writing, stating the grounds of your objection within thirty-two days from the date below*, *or*
   (b) appeal to the Supreme Court within sixty days from the date below*
3. Cheques should be made payable to the Commissioner of Income Tax and crossed "Income Tax Account". They should be sent with the detachable counterfoils (below) to the Commissioner at the first address shown below.

*Dated this 16.10.81

Office of the Commissioner of Income Tax
Development Bank Building *OR* Headquarters
Chaussée, 21, Pope Hennessy Street
Port Louis. Port Louis

Identification

Commissioner of Income Tax

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 2nd instalment to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

Name Esperance Co. Ltd. — **INCOME TAX—Year of Assessment 197 -7 81/82**

Address 5 Leoville L'Homme St. — File No. 01443.5 — Assessment No LC009210 / 16.10.81

Port-Louis — Tax payable Rs 4,949 not later than 31.03.82

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 1st instalment or total sum to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

Name Esperance Co. Ltd — **INCOME TAX—Year of Assessment 197 -7 81/82**

Address 5 Leoville L'Homme St. — File No. 01443.5 — Assessment No LC009210/16.10.81

Port-Louis — Tax payable Rs 4,949 not later than forthwith

Reg. A 431 No. 1206

Document E

MON LOISIR SUGAR ESTATE COMPANY LIMITED

Statement Showing Movements on Share Capital Account

Date of Incorporation					*Consideration paid by shareholders*	*Bonus Element*	*Refunded to shareholders*
	Authorised and Issued Share Capital						
	15,935 Ord. Shares of Rs 200 each subscribed and fully paid up		3,187,000	=	3,187,000		
15. 9.47 ...	Issue of 9,065 Ord. Shares of Rs 200 each subscribed and fully paid up		+1,813,000				
	Authorised and Issued Share Capital		5,000,000	=	5,000,000		
	Issue of 25,000 bonus Ord. Shares of Rs 200 each ...		+5,000,000				
	Authorised and Issued Share Capital		10.000,000	=	5,000,000+	5,000,000	
8. 9.54 ...	Issue of 50,000 bonus Ord. Shares of Rs 200 each ...		+10,000,000				
	Authorised and Issued Share Capital		30,000,000	=	5,000,000+	15,000,000	
	100,000 shares of Rs 200 each						
30. 6.61 ...	Rearranged into 50,000 Ord. Shares of Rs 200 each ...	10,000,000		=	5,000,000+	5,000,000	
	50,000 Pref. Shares of Rs 200 each ...	10,000,000				10,000,000	
	Further rearranged into 1,000,000 Ord Shares of Rs 10 each ...	10,000,000			5,000,000	5,000,000	
	1,000,000 Pref. Shares of Rs 10 each ...	10,000,000				10,000,000	
17. 6.63 ...	Refunded to shareholders						
	400.000 Ord. Shares of Rs 10 each	4,000,000			—4,000,000		
	400,000 Pref. Shares of Rs 10 each	4,000,000	—8,000,000			—4,000,000	8,000,000
	Authorised and Issued Share Capital		12,000,000	=	1,000,000+	11,000,000	
	600,000 Ord. Shares of Rs 10 each						
	600,000 Pref. Shares of Rs 10 each						
3.12.65 ...	Issue of 800,000 bonus Ord. Shares of Rs 10 each ...	8,000,000					
	600,000 bonus Pref. Shares of Rs 10 each ...	6,000,000	+14,000,000		—	14,000,000	
	Authorised and Issued Share Capital		26,000,000	=	1,000,000	25,000,000	
	Issue of 400,000 bonus Pref. Shares of Rs 10 each ...	4,000,000	+4,000,000			4,000,000	
	Authorised and Issued Share Capital		30,000,000		1,000,000+	29,000,000	
	Refunded to shareholders						
2. 9.68 ...	400,000 Pref. Shares of Rs 10 each		—4,000,000			—4,000,000	4,000,000
	Authorised and Issued Share Capital		26,000,000	=	1,000,000+	25,000,000	
29. 8.69 ...	Issue of 1,000,000 Pref. Bonus Shares of Rs 10 each ...		+10,000,000	=		10,000,000	
	Authorised and Issued Share Capital		36,000,000	=	1,000,000+	35,000,000	
1.10.69 ...	Refunded to shareholders 1,000,000 Pref. Shares of Rs 10 each		—10,000,000			—10,000,000	10,000,000
	Authorised and Issued Share Capital		26,000,000	=	1,000,000+	25,000,000	
	1,400,000 Ordinary Shares of Rs 10 each						
	1,200,000 Preference Shares of Rs 10 each						

Reg. A 431 No. 1204

5462/9/82—50

Printed by L. CARL ACHILLE, Government Printer, September 1982.