

JOHNSON v. MORRIS HEDSTROM LTD. & ORS.

[Civil Jurisdiction (Seton, C.J.) March 18, 1946.]

*Income Tax Ordinance*¹—*Income Tax (Amendment) Ordinance, 1925*
—*whether a Company can deduct income tax from dividends payable to preference shareholders.*

Plaintiff was a preference shareholder in the defendant Company entitled in terms of the share certificates held by him to a fixed cumulative dividend of 6 per cent. The question arose as to whether the Company was entitled to deduct income tax from dividends. There was nothing in either the share certificates or the Articles of Association in favour of this course.

HELD.—The Company is neither obliged nor has it the power to deduct income tax from the dividends of its preference shareholders.

Cases referred to :—

(1) *Greening v. Morris, Hedstrom, Limited* [1943] 3 Fiji L.R.

ORIGINATING SUMMONS to determine whether a Company is entitled to deduct income tax from dividends of preference shareholders. The facts are fully set out in the judgment.

R. L. Munro, for the plaintiff (representing preference shareholders).

H. G. W. Bagley, for Morris, Hedstrom, Limited (defendant).

D. M. N. McFarlane, for Herbert Agnew (defendant) (representing ordinary shareholders).

SETON, C.J.—This originating summons has been taken out by the plaintiff who is the holder of preference shares in the defendant Company and it concerns the recent amendment of the law relating to income tax which has been made by the Income Tax (Amendment) Ordinance (No. 25 of 1945). Before the enactment of this Ordinance the last paragraph of s. 3 (1) (c) of the Income Tax Ordinance (Cap. 152) provided as follows :—

“ Nothing in this Ordinance shall be so construed as to prevent
“ a Company from deducting the income tax from dividends pay-
“ able to shareholders or to a particular class of shareholders, and,
“ in the case of preference shareholders, the Company shall deduct
“ the income tax from dividends payable unless the conditions
“ governing the issue of such preference shares provide to the
“ contrary ”.

It was held in the case of *Greening v. Morris Hedstrom Ltd.* that in the case of the preference shareholders of the defendant Company, since there were no conditions to the contrary governing the issue of their shares, this provision obliged the defendant Company to deduct from the dividends payable to the Company's preference shareholders income tax at the rate paid by the Company.

S. 3 of Cap. 152 has been repealed by the amending Ordinance of 1945 and a new section has taken its place which does not contain the

¹ Cap. 152.

provisions quoted above but s. 4 of the amending Ordinance repeals and replaces (*inter alia*) s. 11 of Cap. 152 and in proviso (b) to sub-s. (3) of the new s. 11 :—

“(b) nothing in this Ordinance shall be construed to prevent
“ a Company from deducting the normal tax from dividends payable to shareholders or to a particular class of shareholders.”

It will be observed that the words relating to preference shareholders which formerly appeared in s. 3 (1) (c) of Cap. 152 have been omitted.

In these circumstances the plaintiff comes to the Court to ascertain whether the defendant Company is still bound to deduct income tax from dividends paid to its preference shareholders or, if not so bound, whether it may do so, at its discretion. As a preference shareholder, he contends that the answer to both questions should be in the negative.

The defendant Company does not wish to take sides as between different classes of its own shareholders ; it only desires equitable treatment for both. The second defendant, however, espouses the cause of the ordinary shareholders, of which he is one, and although he does not contend that the defendant Company is bound to deduct income tax from the dividends of the preference shareholders, he does claim that proviso (b) gives the Company the power to do so, a power which it may exercise or not at its discretion.

I am unable to accept this view. Paraphrased proviso (b) of s. 11 (3) says in effect that if a Company has the right to deduct income tax from the dividends paid to its shareholders, nothing in the Ordinance is to prevent it from exercising such right.

Whether a Company has the right to deduct anything from the dividends it has promised to pay to its shareholders depends upon the contract existing between the Company on the one hand and the shareholders on the other. In the present case, it is admitted that there is nothing in the preference share certificates nor in the Memorandum or Articles of Association of the Company which gives a right to the Company to make any deduction from the fixed cumulative dividend of 6 per cent which it has contracted to pay to its preference shareholders.

In these circumstances, the two questions propounded by the plaintiff must be answered in the negative. As the law now is, the Company is neither obliged nor has it the power to deduct income tax from the dividends of its preference shareholders.

SUBBAIYA PILLAI *ats.* POLICE.

[Appellate Jurisdiction (Thomson, J.) March 3, 1946.]

Defence (Liquor) Regulations, 1943—Reg. 70¹—supplying liquor to a prohibited person—whether recipient of liquor is an accomplice whose evidence requires corroboration.

Subbaiya Pillay was convicted of the offence of supplying liquor to one Ismail a prohibited person, the only evidence as to the supplying being that of Ismail himself.

¹ *Rep. Vide Liquor Ordinance, 1946, s. 70.*