

DEPUTY BAILIFF: This matter today arises out of the liquidation or 12
liquidator rather of Mainstate Engineering Limited who was the
plaintiff in an earlier action against Mr. Nixon, who was the
beneficial owner at some stage of the company known as Luxicabs
Limited. We needn't go into the details surrounding the circumstance:
it is sufficient to say that Mr. Nixon found that business was, to say
the least, poor and as a result of which two share transfers were signed
one on the 28th February and one on the 14th May, both in 1981, which
purported to transfer all Mr. Nixon's shares in Luxicabs Limited to
Mr. James Wood. Subsequent to the signing by Mr. Nixon only of the
transfer form or the share transfers the plaintiff obtained an
injunction in the Royal Court against the defendant which included,
upon service of the Order of Justice, an immediate interim injunction
restraining the defendant "or his nominees and each of them from
selling, transferring, parting with possession of or otherwise
dealing in or in any way disposing of or co-operating in any sale,
transfer or disposal of or dealing in any of the shares of the company
known as Luxicabs Limited or from selling, transferring or in any
other way disposing of or co-operating in any sale, transfer or dispos
of or dealing in any of the assets of whatsoever kind and wheresoever
situate which are the property of the company" and so on. Following
that injunction which was in August the books of the company were
transferred from the then accountants Coopers and Lybrand to the new
accountants on the 15th September who were Mr. Hayden of Ralph Hayden
& Associates, 14 Beresford Street. We were told and we have no reason
to disbelieve Mr. Nixon on this point that he collected all the books
of the company and other documents from Coopers Lybrand, having paid
his bill or the company's bill to them, on the 15th September and
deposited them with Mr. Hayden. Subsequently Mr. Hayden told us that
on looking through the papers he realised that the transfers of
February and May had not been registered in the share register of the
company. It is perfectly clear that according to Palmer cited by
Mr. Mourant for the plaintiff a transfer is incomplete until it is
registered. That piece of law appears to have been unknown to Mr.
Hayden but he was aware, because he looked through the Articles, that
the Directors of the company could waive the formalities for the
production of the share certificates, which otherwise they would
require before a transfer could be effected, and he told us that he
thought by inference the Directors had waived that requirement at the
time the share transfers were signed in February and May. We can
find no justification for his coming to that decision or suggesting

to us that that is by inference. If the Directors are to waive in any company transaction a very important requirement of the Articles of Association that waiver should be clearly recorded and we are satisfied that the Directors' minds were not directed to that matter at the time. However that doesn't necessarily invalidate the transfers as such and we are not being called upon today to decide whether the incompleting business of registering the transfers was put a stop to when the injunction was served, in other words did the injunction, what is the effect of an injunction on an incompleting transaction where all that has happened is that there has been a signing of share transfers but no registration of those transfers in the company's books. That is not the issue we have to decide but it might be an issue which might occupy the Court's time at a later date. All we have to decide today on the representation of the plaintiff is whether Mr. Nixon was in breach of the Court's injunction. We are quite satisfied looking at the case which Mr. Boxall produced to us of Bramblevale Limited that indeed, of course the case merely recited what has indeed been the position in this Island for many years, that a contempt of Court is an offence of a criminal character, that is perfectly clear and it must be satisfactorily proved and we are not satisfied really that, the standard of proof being what it is, we have had proved to our satisfaction that Mr. Nixon and not perhaps, and I only say this obituary and not perhaps Mr. Hayden without expressing any opinion on it, was the person responsible for doing something which he should not have done. That being so we discharge him, but as I repeat we are not making any finding because we would want a good deal more of discussion in the matter being addressed on it what is the effect of the interim injunction on the incompleting transfers. We think because however that it was reasonable for the liquidator to bring this action and because there were a number of facts that have been elicited as a result of hearing the witnesses that it would not be right to make any order for costs, we think there should be no order made.